

SENATE BILL NO. 38

INTRODUCED BY D. ANKNEY

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA ENERGY ACCOUNTABILITY ACT; PROVIDING A PURPOSE STATEMENT; REQUIRING ENTITIES TO NOTIFY THE PUBLIC SERVICE COMMISSION, THE DEPARTMENT OF REVENUE, AND THE GOVERNOR WHEN INTENDING TO RETIRE A COAL-FIRED GENERATING UNIT; REQUIRING ENTITIES TO PAY AN IMPACT FEE WHEN RETIRING A FACILITY OR UNIT; ESTABLISHING AN IMPACT FEE AND REQUIRING THE FEE BE COLLECTED BY THE DEPARTMENT OF REVENUE; ALLOCATING A PORTION OF THE FEE TO THE GENERAL FUND, A PORTION TO CERTAIN COUNTIES, A PORTION TO SCHOOL DISTRICTS, AND A PORTION TO A SPECIAL REVENUE ACCOUNT WITHIN THE DEPARTMENT OF COMMERCE; PROVIDING AN EXCEPTION TO THE IMPACT FEE; REQUIRING ENTITIES THAT RECEIVE AN IMPACT FEE TO ESTABLISH IMPACT ACCOUNTS; PROVIDING FOR THE USE OF THE ACCOUNTS; ESTABLISHING A WORKFORCE REDEVELOPMENT AND TRAINING GRANT PROGRAM; PROVIDING FOR ADMINISTRATION OF THE GRANT PROGRAM BY THE DEPARTMENT OF COMMERCE AND THE USE OF THE GRANT MONEY; PROVIDING RULEMAKING AUTHORITY; ESTABLISHING REPORTING REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Short title. [Sections 1 through 10] may be cited as the "Montana Energy Accountability Act".

NEW SECTION. Section 2. Purpose and intent. (1) The purpose of [sections 1 through 10] is to provide an orderly process to mitigate the effects of the retirement of a coal-fired generating unit on the employees of the unit, local governments, schools, and affected tribal governments.

(2) This process is founded on trust and is committed to protecting the financial interests of Montana's cities, towns, counties, schools, special districts, state government, and those who work at an affected coal-fired generating unit.



1 (3) Because decisions to retire coal-fired generating units in Montana are being based on legal
 2 settlements and political pressures, as opposed to when the coal-fired generating units reach the end of their
 3 useful life, Montana must take steps to protect the communities most impacted.

4 (4) The premature retirement of a coal-fired generating unit will have a negative and unwarranted impact
 5 on state and local governments, as well as on the citizens of Montana.

6
 7 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 10], the following definitions
 8 apply:

9 (1) "Coal-fired generating unit" means an individual unit or units of a coal-fired generating facility located
 10 in Montana, where the unit has a generating capacity that is greater than or equal to 200 megawatts but not more
 11 than 400 megawatts and was placed in service prior to 1980.

12 (2) "Electrical company" means a company owned by investors that:

13 (a) wholly or partially owns a coal-fired generating unit in Montana, directly or through a subsidiary or
 14 an affiliate;

15 (b) furnishes or has furnished electricity from the coal-fired generating unit to retail customers in another
 16 state prior to [the effective date of this act]; and

17 (c) would be a public utility if those retail electricity customers were in Montana.

18 (3) "Local government" means an incorporated city or town, a county, a consolidated local government,
 19 a tribal government, or a county or multicounty water, sewer, or solid waste district.

20 (4) "Public utility" means an electric utility regulated by the public service commission pursuant to Title
 21 69, including the public utility's successors or assignees.

22 (5) "Retire", "retired", or "retirement" means the time at which a coal-fired generating unit:

23 (a) permanently ceases to generate electricity and is removed from service; or

24 (b) is mothballed or kept in working order but operation is suspended and the unit has not yet been
 25 dismantled.

26 (6) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

27 (7) "Wholesale exempt generator" means an entity that wholly or partially owns or operates a coal-fired
 28 generating unit in Montana that is not a public utility or an electrical company.

29
 30 **NEW SECTION. Section 4. Retirement of coal-fired generating unit -- notice.** (1) If an electrical

1 company, wholesale exempt generator, or public utility intends to retire a coal-fired generating unit, the company,
2 generator, or public utility shall file a notice with the public service commission, the governor, and the department
3 of revenue no later than 6 months prior to the intended date of the retirement.

4 (2) Within 30 days of receiving the notice required pursuant to subsection (1), the department of revenue
5 shall notify the local governing body of the county where the coal-fired generating unit is located of the filing of
6 the notice.

7 (3) Nothing in [sections 1 through 10] may be construed to:

8 (a) alter or modify the authority of the public service commission to regulate the rates and services of
9 a public utility that is subject to the provisions of this chapter; or

10 (b) expand the authority of the public service commission to regulate an electrical company or an exempt
11 wholesale generator that is not subject to the provisions of [sections 1 through 10].

12

13 **NEW SECTION. Section 5. Coal county impact fee -- exemption.** (1) Except as provided in
14 subsection (10), if an electrical company, wholesale exempt generator, or public utility files a notice pursuant to
15 [section 4] indicating its intent to retire a coal-fired generating unit, the electrical company, wholesale exempt
16 generator, or public utility shall pay a coal county impact fee in accordance with this section.

17 (2) In the first 5 tax years following the retirement of the coal-fired generating unit, an electrical company,
18 wholesale exempt generator, or public utility shall annually pay an amount that includes the following:

19 (a) \$3 million;

20 (b) 100% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired
21 coal-fired generating unit during the 2015 tax year; and

22 (c) 100% of the electrical energy producer's license tax paid in accordance with 15-51-101.

23 (3) In the sixth tax year following the retirement of the coal-fired generating unit, an electrical company,
24 wholesale exempt generator, or public utility shall pay an amount that includes the following:

25 (a) 100% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired
26 coal-fired generating unit during the 2015 tax year; and

27 (b) 100% of the electrical energy producer's license tax paid in accordance with 15-51-101.

28 (4) In the seventh tax year following the retirement of the coal-fired generating unit, an electrical
29 company, wholesale exempt generator, or public utility shall pay an amount that includes the following:

30 (a) 80% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired

- 1 coal-fired generating unit during the 2015 tax year; and
- 2 (b) 80% of the electrical energy producer's license tax paid in accordance with 15-51-101.
- 3 (5) In the eighth tax year following the retirement of the coal-fired generating unit, an electrical company,
- 4 wholesale exempt generator, or public utility shall pay an amount that includes the following:
- 5 (a) 60% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired
- 6 coal-fired generating unit during the 2015 tax year; and
- 7 (b) 60% of the electrical energy producer's license tax paid in accordance with 15-51-101.
- 8 (6) In the ninth tax year following the retirement of the coal-fired generating unit, an electrical company,
- 9 wholesale exempt generator, or public utility shall pay an amount that includes the following:
- 10 (a) 40% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired
- 11 coal-fired generating unit during the 2015 tax year; and
- 12 (b) 40% of the electrical energy producer's license tax paid in accordance with 15-51-101.
- 13 (7) In the 10th tax year following the retirement of the coal-fired generating unit, an electrical company,
- 14 wholesale exempt generator, or public utility shall pay an amount that includes the following:
- 15 (a) 20% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired
- 16 coal-fired generating unit during the 2015 tax year; and
- 17 (b) 20% of the electrical energy producer's license tax paid in accordance with 15-51-101.
- 18 (8) The amounts required in accordance with subsections (2) through (7) do not include:
- 19 (a) transmission or distribution facilities taxes paid in accordance with 15-6-141;
- 20 (b) pollution control equipment taxes paid in accordance with 15-6-135; or
- 21 (c) wholesale energy transaction taxes paid in accordance with 15-72-104.
- 22 (9) The impact fee required in accordance with subsection (2)(a) is due the first tax year following the
- 23 last tax year that the electrical company, wholesale exempt generator, or public utility paid its centrally assessed
- 24 property taxes on the coal-fired generating unit that is being retired.
- 25 (10) If an electrical company, wholesale exempt generator, or public utility retires a coal-fired generating
- 26 unit and demonstrates to the department of revenue that the electrical company, wholesale exempt generator,
- 27 or public utility is providing financial assistance to the affected local governments where a coal-fired generating
- 28 unit is located for economic mitigation, economic development, and for workforce retraining in an amount similar
- 29 to the amount that would be generated in this section and in accordance with a legal settlement or other
- 30 settlement, including but not limited to an order by a utility or regulatory commission, then the electrical company,

1 wholesale exempt generator, or public utility is not subject to the impact fee required in this section.

2 (11) Nothing in this section changes how centrally assessed property taxes related to a coal-fired
3 generating unit are levied after the 10-year payment of the impact fee required in accordance with subsections
4 (2) through (7).

5
6 **NEW SECTION. Section 6. Coal county impact fee -- distribution of fees.** (1) On or before March
7 1 of each year, an electrical company, wholesale exempt generator, or public utility shall submit the impact fee
8 required in accordance with [section 5] to the department of revenue. The penalty and interest provisions
9 contained in 15-1-216 apply to late payments of the fee.

10 (2) The money paid in accordance with [section 5] must be distributed as follows:

11 (a) 25% of all money received pursuant to subsection (1) of this section must be deposited in a coal
12 county impact fund established in [section 7] in the county where the coal-fired generating unit that was retired
13 is located;

14 (b) 25% of all money received pursuant to subsection (1) of this section must be deposited in a coal
15 county school district fund established in [section 8] in the county where the coal-fired generating unit is located;

16 (c) 25% of all money received pursuant to subsection (1) of this section must be deposited in the
17 workforce redevelopment and training special revenue account established in [section 9]; and

18 (d) 25% of all money received pursuant to subsection (1) must be deposited in the general fund.

19 (3) On August 15 following the close of the fiscal year, the state treasurer shall distribute the revenue
20 dedicated in subsection (2) for deposit into the appropriate funds.

21
22 **NEW SECTION. Section 7. Coal county impact fund -- expenditures and restrictions.** (1) The
23 governing body of a county eligible to receive a coal county impact fee shall establish a coal county impact fund.

24 (2) The governing body of a county may, in accordance with subsection (5), use the fund to:

25 (a) mitigate property losses and provide housing security for those who are unemployed due to the
26 retirement of a coal-fired generating unit;

27 (b) pay for outstanding capital project bonds or other expenses incurred prior to retirement of the
28 coal-fired generating unit;

29 (c) decrease property tax mill levies that are caused by the cessation, reduction, or elimination of activity
30 at the coal-fired generating unit;

1 (d) promote diversification and development of the economic base within the jurisdiction of a local
2 government through assistance to existing business, retention and expansion of existing business, unemployment
3 assistance in addition to a formerly employed individual's unemployment compensation and unemployment
4 benefits, or assistance to new business;

5 (e) attract new industry to the impact area;

6 (f) provide cash incentives for expanding the employment base of the area impacted by the changes at
7 the coal-fired generating unit;

8 (g) provide grants or loans to other local governments to assist with impacts; or

9 (h) any combination of subsections (2)(a) through (2)(g).

10 (3) Money in the fund must be invested as provided by law. Interest and income from the investment of
11 funds must be credited to the account.

12 (4) (a) The governing body of the county shall establish a coal county impact committee. The committee
13 must include two members of the county's governing body and:

14 (i) one representative of a tribal government impacted by the retirement of the coal-fired generating unit;

15 (ii) one representative of each incorporated city or town where the coal-fired generating unit is located;

16 (iii) one representative of each water, sewer, or solid waste district where the coal-fired generating unit
17 is located; and

18 (iv) one representative of a regional economic development organization that represents a local
19 government where the coal-fired generating unit is located.

20 (b) The coal county impact committee shall determine the distribution and use of the impact fee in
21 accordance with subsection (2).

22 (c) The committee shall elect a presiding officer from among its members.

23

24 **NEW SECTION. Section 8. Coal county school district fund -- expenditures and restrictions.** (1)

25 The county treasurer shall:

26 (a) keep the impact fee received in accordance with [section 6(2)(b)] in a separate coal county school
27 district fund and keep separate accounting of its disbursement to the several school districts that are entitled to
28 receive it; and

29 (b) notify the county superintendent of schools of the amount of the impact fee in the county treasury for
30 disbursement to the districts.

1 (2) The impact fee must be shared equally among the school districts in the county where the coal-fired
2 generating unit is located that are eligible to receive an impact fee in accordance with [section 6(2)(b)].

3 (3) Money held in the fund may not be considered as cash balance for the purpose of reducing mill
4 levies.

5 (4) The districts may use the fund proportionally for educational purposes in accordance with the
6 provisions of law. Interest and income from investments of money in the fund must be credited to the fund.

7 (5) The fund must be financially administered as nonbudgeted funds under the provisions of Title 20.
8

9 **NEW SECTION. Section 9. Coal county workforce redevelopment and training -- special revenue**
10 **account.** (1) There is an account in the state special revenue fund established by 17-2-102 to be known as the
11 coal county workforce redevelopment and training account.

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

13 (a) money received from legislative allocations;

14 (b) money transferred in accordance with [section 6(2)(c)];

15 (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [section 10]; and

16 (d) interest or other income earned on the money in the account.

17 (3) The account must be used by the department of commerce:

18 (a) to provide grants to mitigate the impacts of the retirement of a coal-fired generating unit in accordance
19 with [section 10]; and

20 (b) for the department's costs of administering [section 10].
21

22 **NEW SECTION. Section 10. Coal county workforce redevelopment and training grants --**
23 **rulemaking.** (1) (a) The department may award workforce redevelopment and training grants using money in the
24 coal county workforce redevelopment and training special revenue account established in [section 9].

25 (b) The department may award workforce redevelopment and training grants to primary sector
26 businesses that provide education or skills-based training, through eligible training providers, for employees
27 seeking a new job.

28 (2) To be eligible for a grant, an applicant shall demonstrate that the applicant is a primary sector
29 business.

30 (3) A grant may be provided only to an employer offering a new job that has an average weekly wage

1 that meets or exceeds the current average weekly wage of the county in which the employees were principally
2 employed prior to the retirement of a coal-fired generating unit.

3 (4) The grant application, at a minimum, must contain:

4 (a) a plan containing information that is sufficient for the department to obtain an adequate understanding
5 of how an employee will be assisted through training; and

6 (b) a training plan, which must include:

7 (i) a timetable for providing training;

8 (ii) procedures for outreach, recruitment, screening, training, and placement of employees;

9 (iii) a description of the training curriculum and resources; and

10 (iv) a description of the type and method of training to be provided to employees.

11 (5) If the department determines that an applicant meets the criteria established in this section and has
12 complied with the applicable procedures and review processes established by the department, the department
13 may award a workforce redevelopment and training grant to the employer and authorize the disbursement of
14 funds under contract to the primary sector business.

15 (6) (a) A contract with a grant recipient must contain provisions providing the department with annual
16 reports on training and placement of employees and a final closeout report that documents the wages to be paid
17 to an employee placed in a new job upon completion of the training.

18 (b) The contract must be signed by the person in the primary sector business who is assigned the duties
19 and responsibilities for training and the overall success of the program and by the primary sector business's chief
20 executive.

21 (7) The department may adopt rules to implement this section.

22 (8) For the purposes of this section the following definitions apply:

23 (a) "Department" means the department of commerce established in 2-15-1801.

24 (b) "Eligible training provider" means:

25 (i) a unit of the university system, as defined in 20-25-201;

26 (ii) a community college district, as defined in 20-15-101;

27 (iii) an accredited, tribally controlled community college located in the state of Montana;

28 (iv) an apprenticeship program that is in compliance with Title 39, chapter 6; or

29 (v) an entity approved to provide workforce training that is approved by representatives of the BEAR
30 program as defined in 53-2-1216, the small business development centers, or the Montana manufacturing

1 extension center at Montana state university-Bozeman.

2 (c) "Employee" means an individual seeking a new job because of the retirement of a coal-fired
3 generating unit. The term may include an individual who did not work directly in a coal-fired generating unit but
4 is unemployed due to the retirement of a coal-fired generating unit.

5 (d) "Employer" means the individual, corporation, partnership, or association providing new jobs and
6 entering into a grant contract.

7 (e) "New job" means a job in a primary sector business.

8 (f) "Primary sector business" means an employer engaged in operations within Montana.

9 (g) "Workforce redevelopment and training grants" means grants provided to employers for the purpose
10 of working with eligible training providers to provide employees with education and training required for new jobs
11 in primary sector businesses in the state.

12

13 **NEW SECTION. Section 11. Notification to tribal governments.** The secretary of state shall send
14 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
15 Chippewa tribe.

16

17 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be
18 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 10].

19

20 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22

23 **NEW SECTION. Section 14. Severability.** If a part of [this act] is invalid, all valid parts that are
24 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
25 the part remains in effect in all valid applications that are severable from the invalid applications.

26

27 **NEW SECTION. Section 15. Effective date.** [This act] is effective on passage and approval.

28

29 **NEW SECTION. Section 16. Retroactive applicability.** [This act] applies retroactively, within the
30 meaning of 1-2-109, to coal-fired generating units retired on or after January 1, 2017.

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- END -