

## 1 HOUSE BILL NO. 387

2 INTRODUCED BY E. STAFMAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SMALL ENERGY GENERATION  
5 FACILITY REQUIREMENTS AND UTILITY TRANSITION COSTS; PROVIDING FOR LIMITATIONS ON  
6 CERTAIN CARBON EMISSIONS; REVISING THE USE OF TRANSITION COSTS AND TRANSITION BONDS  
7 BY A UTILITY FOR SMALL ENERGY GENERATION FACILITIES; PROVIDING FOR THE BUYOUT OR  
8 RENEGOTIATION OF CERTAIN CONTRACTS; AMENDING SECTIONS 69-8-103, 69-8-503, 75-2-111, AND  
9 75-2-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10  
11 WHEREAS, customers of Montana's regulated electric utilities have an interest in ensuring that  
12 generating facilities provide efficient and cost-effective electrical generation, taking advantage of the best  
13 available technology at the lowest cost; and

14 WHEREAS, a small number of electrical generation facilities utilize old technologies in Montana that  
15 are not efficient or cost-effective and account for a grossly disproportionate output of gases that result in  
16 distorted iterations in rainfall patterns, drought, flooding, changes in seasonal and diurnal temperature, altered  
17 patterns of pest pressure, and reduced agricultural productivity; and

18 WHEREAS, there are alternative financing mechanisms used by Montana and 21 other states that will  
19 result in lower costs to electric utility customers, and the use of these mechanisms can ensure that the costs of  
20 retiring or replacing electric infrastructure or facilities located in the state can be financed in a way that reduces  
21 the total amount of costs being included in customer rates; and

22 WHEREAS, customer costs of alternative financing mechanisms can be minimized by achieving the  
23 highest possible credit rating from independent credit rating agencies, which requires special procedures and  
24 conditions.

25  
26 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

27  
28 **Section 1.** Section 69-8-103, MCA, is amended to read:

1           **"69-8-103. Definitions.** As used in this chapter, unless the context requires otherwise, the following  
2 definitions apply:

3           (1) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing  
4 vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest  
5 in or right to transition property. The term also includes an entity, corporation, public authority, partnership,  
6 trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the  
7 assignee's interest in or right to transition property.

8           (2) "Board" means the board of investments created by 2-15-1808.

9           (3) "Carbon offset provider" means a qualified third-party entity that arranges for projects or actions  
10 that either reduce carbon dioxide emissions or increase the absorption of carbon dioxide.

11           (4) "Cooperative utility" means:

12           (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

13           (b) an existing municipal electric utility as of May 2, 1997.

14           (5) "Cost-effective carbon offsets" means any combination of certified actions that are taken to reduce  
15 carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not increase  
16 the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:

17           (a) actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the  
18 absorption of carbon dioxide from a facility or equipment used to generate electricity; or

19           (b) actions by a carbon offset provider on behalf of the applicant.

20           (6) "Customer-generator" means a user of a net metering system.

21           (7) "Distribution facilities" means those facilities by and through which electricity is received from  
22 transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.

23           (8) "Electricity supply costs" means the actual costs incurred in providing electricity supply service  
24 through power purchase agreements, demand-side management, and energy efficiency programs, including  
25 but not limited to:

26           (a) capacity costs;

27           (b) energy costs;

28           (c) fuel costs;

- 1 (d) ancillary service costs;
- 2 (e) transmission costs, including congestion and losses;
- 3 (f) planning and administrative costs; and
- 4 (g) any other costs directly related to the purchase of electricity and the management and provision of
- 5 power purchase agreements.

6 (9) "Electricity supply resource" means:

- 7 (a) contracts for electric capacity and generation;
- 8 (b) plants owned or leased by a utility or equipment used to generate electricity;
- 9 (c) customer load management and energy conservation programs; or
- 10 (d) other means of providing adequate, reliable service to customers, as determined by the
- 11 commission.

12 (10) "Electricity supply service" means the provision of electricity supply and related services through

13 power purchase agreements, the acquisition and operation of electrical generation facilities, demand-side

14 management, and energy efficiency programs.

15 (11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that

16 authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

17 (12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not

18 limited to:

- 19 (i) distribution;
- 20 (ii) connection;
- 21 (iii) disconnection; and
- 22 (iv) termination rates and charges that are authorized by the commission in a financing order to permit
- 23 recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition
- 24 costs and of acquiring transition property through a plan approved by the commission in the financing order,
- 25 including the costs of issuing, servicing, and retiring transition bonds.

26 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts

27 must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost

28 recovery period is modified by the transactions approved in the financing order.

1 (13) "Generation assets cost of service" means a return on invested capital and all costs associated  
2 with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or  
3 leased by a public utility and used for the production of electricity.

4 (14) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-  
5 201, the commission, or a utility.

6 (15) "Large customer" means, for universal system benefits programs purposes, a customer with an  
7 individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that  
8 individual load.

9 (16) "Local governing body" means a local board of trustees of a rural electric cooperative.

10 (17) "Low-income customer" means those energy consumer households and families with incomes at  
11 or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

12 (18) "Net metering" means measuring the difference between the electricity distributed to and the  
13 electricity generated by a customer-generator that is fed back to the distribution system during the applicable  
14 billing period.

15 (19) "Net metering system" means a facility for the production of electrical energy that:

16 (a) uses as its fuel solar, wind, or hydropower;

17 (b) has a generating capacity of not more than 50 kilowatts;

18 (c) is located on the customer-generator's premises;

19 (d) operates in parallel with the utility's distribution facilities; and

20 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

21 (20) "Nonbypassable rates or charges" means rates or charges that are approved by the commission  
22 and imposed on a customer to pay the customer's share of transition costs or universal system benefits  
23 programs costs even if the customer has physically bypassed either the utility's transmission or distribution  
24 facilities.

25 (21) "Public utility" has the meaning of a public utility regulated by the commission pursuant to Title 69,  
26 chapter 3, on May 2, 1997, including the public utility's successors or assignees.

27 (22) "Qualifying load" means, for payments and credits associated with universal system benefits  
28 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in

1 which the customer qualifies as a large customer.

2 (23) "Retail customer" means a customer that purchases electricity for residential, commercial, or  
3 industrial end-use purposes and does not resell electricity to others.

4 (24) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents,  
5 and other entities acting for the benefit of that bondholder.

6 (25) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate,  
7 or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is  
8 secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must  
9 be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

10 (26) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay  
11 the customer's share of transition costs.

12 (27) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a  
13 utility customer does not have any liability for payment of transition costs.

14 (28) "Transition costs" means:

15 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of  
16 capital, that become unrecoverable as a result of the implementation of federal law requiring retail open access  
17 or customer choice or of this chapter;

18 (b) those costs that include but are not limited to:

19 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can  
20 be accounted for up to the effective date of the commission's final order regarding a public utility's transition  
21 plan and conservation investments made prior to universal system benefits charge implementation;

22 (ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying  
23 facility contracts;

24 (iii) existing generation investments and supply commitments or other obligations incurred before May  
25 2, 1997, and costs arising from these investments and commitments;

26 (iv) the costs associated with renegotiation or buyout of ~~the existing nonutility and utility power~~  
27 purchase contracts, including for qualifying small power production facility facilities contracts executed before  
28 May 2, 1997; and

1           (v) all costs, expenses, and reasonable fees related to issuing transition bonds; and  
2           ~~(v)~~(vi) the costs of refinancing and retiring of debt or equity capital of the public utility and associated  
3 federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit  
4 customers.

5           (29) "Transition property" means the property right created by a financing order, including without  
6 limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue,  
7 collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts  
8 that are the subject of a financing order, including those nonbypassable rates and other charges and fixed  
9 transition amounts that are authorized by the commission in the financing order to recover transition costs and  
10 the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition  
11 property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the  
12 transition property before the utility's sale or transfer or any other right created under this section or created in  
13 the financing order and assignable under this chapter or assignable pursuant to a financing order is only a  
14 contract right.

15           (30) "Transmission facilities" means those facilities that are used to provide transmission services as  
16 determined by the federal energy regulatory commission and the commission and that are controlled or  
17 operated by a utility.

18           (31) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a  
19 customer to pay the customer's share of universal system benefits programs costs.

20           (32) "Universal system benefits programs" means public purpose programs for:

21           (a) cost-effective local energy conservation;

22           (b) low-income customer weatherization;

23           (c) renewable resource projects and applications, including those that capture unique social and  
24 energy system benefits or that provide transmission and distribution system benefits;

25           (d) research and development programs related to energy conservation and renewables;

26           (e) market transformation designed to encourage competitive markets for public purpose programs;

27           and

28           (f) low-income energy assistance.

1 (33) "Utility" means any public utility or cooperative utility."

2

3 **Section 2.** Section 69-8-503, MCA, is amended to read:

4 **"69-8-503. Transition costs financing.** (1) (a) A utility may apply to the commission for a  
5 determination that certain transition costs may be recovered through the issuance of transition bonds. ~~Except~~  
6 as provided in subsection (1)(b), if transition bonds are issued, cost savings associated with and resulting from  
7 the bonds must benefit customers.

8 (b) Cost savings and risks associated with and resulting from bonds issued through a financing order  
9 for transition costs as defined in 69-8-103(28)(b)(iv) must be shared between the utility and customers based  
10 on the current shared liabilities in place under the existing agreements and orders.

11 (2) After the issuance of a financing order, the utility retains sole discretion regarding whether to sell,  
12 assign, or otherwise transfer or pledge transition property or to cause the transition bonds to be issued,  
13 including the right to defer or postpone the sale, assignment, transfer, pledge, or issuance.

14 (3) (a) Except as provided in subsection (3)(b), if transition bonds are not issued within 4 years of  
15 the issuance of the financing order, the financing order must terminate. The utility may apply for an extension or  
16 renewal of a financing order.

17 (b) The public service commission may not issue a financing order for transition costs as defined in  
18 69-8-103(28)(b)(iv):

19 (i) if the utility does not file an application on or before December 31, 2022;

20 (ii) unless the financing order will save ratepayers a minimum of 6% over the life of the small power  
21 production contracts; and

22 (iii) unless the utility commits to use generation from an eligible renewable resource as defined in 69-3-  
23 2003 to replace the lost generation.

24 ~~(2)(4)~~ (a) The commission may issue financing orders in accordance with this section to facilitate the  
25 recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of transition property.  
26 A financing order may be adopted only upon the application of a utility and may become effective in accordance  
27 with its terms only after the utility files with the commission the utility's written consent to all terms and  
28 conditions of the financing order. A financing order may specify how amounts collected from a customer are

1 allocated between fixed transition amounts and other charges.

2 (b) A financing order must include, without limitation, a procedure for the expeditious approval by the  
3 commission of periodic adjustments to nonbypassable rates and charges associated with fixed transition  
4 amounts included in the order to ensure recovery of all transition costs and the costs of capital associated with  
5 the proposed recovery, reimbursement, financing, or refinancing of transition costs and the acquisition of  
6 transition property, including the costs of issuing, servicing, and retiring the transition bonds contemplated by  
7 the financing order. The order must set forth the term over which the transition bonds are to be paid, but those  
8 terms may not exceed 20 years. These adjustments may not impose fixed transition amounts upon customer  
9 classes that were not subject to the fixed transition amounts in the pertinent financing order.

10 ~~(3)~~(5) (a) Notwithstanding any other provision of law, and except as otherwise provided in this section  
11 with respect to transition property that has been made the basis for the issuance of transition bonds and upon  
12 the issuance of transition bonds, the financing orders and the fixed transition amounts must be irrevocable.

13 (b) If transition bonds have been issued, the commission may not by rescinding, altering, or amending  
14 the financing order or otherwise:

15 (i) revalue or revise for ratemaking purposes the transition costs or the costs of recovering,  
16 reimbursing, financing, or refinancing the transition costs and acquiring transition property;

17 (ii) determine that the fixed transition amounts or rates are unjust or unreasonable; or

18 (iii) in any way reduce or impair the value of transition property either directly or indirectly by taking  
19 fixed transition amounts into account when setting other rates for the utility.

20 (c) The total amount of the transition property may not be subject to reduction, impairment,  
21 postponement, or termination.

22 (d) Except as otherwise provided in this section, the state pledges and agrees with the assignees and  
23 pledgees of transition property and transition bondholders that the state may not limit or alter the fixed transition  
24 amounts, transition property, financing orders, or any right under the bonds until the bonds, together with the  
25 interest on the bonds, are fully met and discharged. The board, as agent for the state, is authorized to include  
26 this pledge and undertaking for the state in these bonds.

27 (e) Notwithstanding any other provision of this section, the commission shall approve those  
28 adjustments to the fixed transition amounts that may be necessary to ensure timely recovery of all transition



1 costs that are the subject of the pertinent financing order and the costs of capital associated with the recovery,  
2 reimbursement, financing, or refinancing of transition costs and acquiring transition property including the costs  
3 of issuing, servicing, and retiring the transition bonds contemplated by the financing order. The adjustments  
4 may not impose fixed transition amounts upon customer classes that were not subject to the fixed transition  
5 amounts in the pertinent financing order.

6 ~~(4)~~(6) (a) Financing orders do not constitute a debt or liability of the state or of any political  
7 subdivision of the state if issued through the board and do not constitute a pledge of the full faith and credit of  
8 the state or any of the state's political subdivisions if issued through the board. The financing orders are  
9 payable solely from the funds provided under this section. The bonds and offering documents must contain on  
10 their face a statement to the following effect:

11 "This bond may not constitute an indebtedness or a loan of credit of the state of Montana or any  
12 political subdivision of the state of Montana within any constitutional or statutory provision. Neither the full faith  
13 and credit nor the taxing power of the state of Montana is pledged to the payment of the principal or interest on  
14 this bond, and neither the state of Montana nor any political subdivision of the state of Montana is obligated,  
15 directly, indirectly, or contingently, to levy or to pledge any form of taxation or to make any appropriation for the  
16 payment of this bond. This bond is a limited obligation of the issuer, payable solely out of the transition property  
17 or the proceeds of that property specifically pledged for its payment and not otherwise."

18 (b) The issuance of bonds under this section may not directly, indirectly, or contingently obligate the  
19 state or any political subdivision of the state to levy or to pledge any form of taxation or to make any  
20 appropriation for bond payment.

21 ~~(5)~~(7) The commission shall establish procedures for the expeditious processing of applications for  
22 financing orders, including the approval or disapproval of applications within 120 days after a utility submits a  
23 complete application. The commission shall provide in any financing order for a procedure for the expeditious  
24 approval by the commission of periodic adjustments to the fixed transition amounts that are the subject of the  
25 pertinent financing order pursuant to subsection ~~(2)~~(4). The commission shall determine on each anniversary  
26 of the issuance of the financing order and at additional intervals as may be provided for in the financing order  
27 whether the adjustments are required and shall provide for the adjustments, if required, to be approved within  
28 60 days of each anniversary of the issuance of the financing order or of each additional interval provided for in

1 the financing order.

2 ~~(6)~~(8) Fixed transition amounts become transition property when and to the extent that a financing  
3 order authorizing the fixed transition amounts has become effective in accordance with subsection ~~(2)~~(4), and  
4 the transition property must thereafter continuously exist as property for all purposes with all of the rights and  
5 privileges of this chapter for the period and to the extent provided in the financing order or until the transition  
6 bonds are paid in full, including all principal, interest, premium, costs, and arrearages on the transition bonds.

7 ~~(7)~~(9) Transition bonds may be issued upon commission approval in the pertinent financing order.  
8 Transition bonds must specify that they do not provide recourse to the credit or any assets of the utility, other  
9 than the transition property as specified in the pertinent financing order.

10 ~~(8)~~(10) (a) A utility may sell, assign, or transfer all or portions of the utility's interest in transition  
11 property to an assignee. A utility or an assignee may further sell, assign, or transfer the utility's interest in that  
12 transition property to one or more assignees in connection with the issuance of transition bonds to the extent  
13 approved in the pertinent financing order.

14 (b) A utility or an assignee may pledge transition property as collateral for transition bonds to the  
15 extent approved in the pertinent financing order and may provide for a security interest in the transition property  
16 as provided in this section.

17 (c) Transition property may be sold, assigned, or transferred for the benefit of:

- 18 (i) transition bondholders in connection with the exercise of remedies upon a default; or  
19 (ii) any person acquiring the transition property after a sale, assignment, or transfer pursuant to this  
20 section.

21 ~~(9)~~(11) (a) To the extent that any interest in transition property is sold, assigned, transferred, or  
22 pledged as collateral, the commission shall authorize the utility to contract with any assignee so that the utility  
23 will, subject to the utility's rights under subsection ~~(18)~~(20):

- 24 (i) continue to operate the utility's system and to provide service to the utility's customers;  
25 (ii) collect amounts in respect of the fixed transition amounts for the benefit and account of the  
26 assignee; and  
27 (iii) account for and remit these amounts to or for the account of the assignee.

28 (b) Contracting with the assignee in accordance with the commission's authorization may not impair

1 or negate the characterization of the sale, assignment, transfer, or pledge as a true sale, an absolute  
2 assignment or transfer, or a grant of a security interest, as applicable.

3 ~~(10)~~(12) Notwithstanding any other provision of law, any provision under this section or under a  
4 financing order requiring that the commission take or refrain from taking action with respect to the subject  
5 matter of a financing order binds the commission and any successor commission or agency exercising  
6 functions similar to the commission, and the commission or any successor commission or agency may not  
7 rescind, alter, or amend that requirement in a financing order.

8 ~~(11)~~(13) A pledge or any other security interest in transition property is valid, is enforceable against the  
9 pledgor and third parties, including judgment lien creditors, subject only to the rights of any third parties holding  
10 security interests in the transition property perfected in the manner described in this section, and attaches only  
11 when all of the following have taken place:

12 (a) the commission has issued the financing order authorizing the fixed transition amounts included in  
13 the transition property;

14 (b) value has been given by the pledgees of the transition property; and

15 (c) the pledgor has signed a security agreement or other financing-related agreement covering the  
16 transition property.

17 ~~(12)~~(14) (a) A valid and enforceable security interest in transition property is perfected only when it  
18 has attached and when a financing statement has been filed with the secretary of state in accordance with  
19 procedures that the secretary of state may establish. The financing statement must name the pledgor of the  
20 transition property as debtor and identify the transition property.

21 (b) Any description of the transition property is sufficient if the description refers to the financing order  
22 creating the transition property.

23 (c) The commission may require other filings with respect to the security interest in accordance with  
24 procedures the commission may establish, except that these filings may not affect the perfection of the security  
25 interest.

26 ~~(13)~~(15) A perfected security interest in transition property is a continuously perfected security interest  
27 in all revenue and proceeds arising with respect to the transition property, whether or not the revenue or  
28 proceeds have accrued. Conflicting security interests must rank according to priority in time of perfection.

1 Transition property constitutes property for all purposes, including for contracts securing transition bonds,  
2 whether or not the revenue and proceeds arising with respect to the transition property have accrued.

3 ~~(14)~~(16) (a) Subject to the terms of the security agreement covering the transition property and the  
4 rights of any third parties holding security interests in the transition property perfected in the manner described  
5 in this section, the validity and relative priority of a security interest created under this section is not defeated or  
6 adversely affected by:

7 (i) the commingling of revenue arising with respect to the transition property with other funds of the  
8 utility that is the pledgor or transferor of the transition property; or

9 (ii) any security interest of any third party in a deposit account of that utility perfected under Title 30,  
10 chapter 9A, part 3, into which the revenue is deposited.

11 (b) Subject to the terms of the security agreement, upon compliance with the requirements of this  
12 section, a pledgee of the transition property has a perfected security interest in all cash and deposit accounts of  
13 the utility in which revenue arising with respect to the transition property has been commingled with other funds,  
14 but the perfected security interest must be limited to an amount no greater than the amount of the revenue with  
15 respect to the transition property received by the utility within 12 months before any default under the security  
16 agreement or the institution of insolvency proceedings by or against the utility, less payments from the revenue  
17 to the pledgees during that 12-month period.

18 ~~(15)~~(17) (a) If a default occurs under the security agreement covering the transition property, a  
19 pledgee of the transition property, subject to the terms of the security agreement, has all rights and remedies of  
20 a secured party upon default under Title 30, chapter 9A, part 6, and is entitled to foreclose or otherwise enforce  
21 the pledgee's security interest in the transition property, subject to the rights of any third parties holding prior  
22 security interests in the transition property perfected in the manner provided in this section.

23 (b) The commission may require in the financing order creating the transition property that in the  
24 event of default by the utility in payment of revenue arising with respect to the transition property, the  
25 commission and any successor to the commission, upon the application by a pledgee or assignee of the  
26 transition property and without limiting any other remedies available to the pledgees or transferees by reason of  
27 the default shall order the sequestration and payment to the pledgee or assignee of the proceeds of the  
28 transition property. An order must remain in full force and effect notwithstanding any bankruptcy,

1 reorganization, or other insolvency proceedings with respect to the public utility or a debtor, pledgor, or  
2 transferor of the transition property.

3 (c) Any sum in excess of amounts necessary to pay principal, premium, if any, interest, costs, and  
4 arrearages on the transition bonds and other costs arising under the security agreement must be remitted to the  
5 debtor or to the pledgor as provided in the security agreement.

6 ~~(16)~~(18) (a) A transfer of transition property by a utility to an assignee or by the assignee to another  
7 assignee that the parties have in the governing documentation expressly stated to be a sale or other absolute  
8 transfer in a transaction approved or authorized in a financing order must be treated as an absolute transfer of  
9 all of the transferors right, title, and interest, as in a true sale, and not as a pledge or other financing of the  
10 transition property, other than for federal and state income and franchise tax purposes.

11 (b) Granting to transition bondholders a preferred right to revenue of the utility or the provision by the  
12 utility or an assignee of other credit enhancement with respect to transition bonds may not impair or negate the  
13 characterization of any transfer as a true sale, other than for federal and state income and franchise tax  
14 purposes.

15 (c) Notwithstanding the provisions of this subsection ~~(16)~~(18), for state tax purposes, a transfer must  
16 be treated as a pledge or other financing unless the governing documentation of transfer specifically states that  
17 the transfer is intended to be treated otherwise. The characterization of the transfer as a true sale or other  
18 absolute transfer in the governing documentation of a transfer is not intended to prejudice the characterization  
19 of the transfer as a pledge or other financing for federal tax purposes.

20 ~~(17)~~(19) A sale, assignment, or other transfer of transition property may be considered perfected as  
21 against any third person, including any judicial lien creditor, only when both of the following have taken place:

22 (a) the financing order authorizing the fixed transition amounts included in the transition property has  
23 become effective in accordance with subsection ~~(2)~~(4); and

24 (b) an assignment of the transition property, in writing, has been executed and delivered to the  
25 transferee.

26 ~~(18)~~(20) (a) As between bona fide assignees of the same right for value without notice, the assignee  
27 first filing a financing statement with the secretary of state in accordance with procedures that the secretary of  
28 state may establish has priority. The financing statement must name the assignor of the transition property as

1 debtor and must identify the transition property. Any description of the transition property is sufficient if the  
2 description refers to the financing order creating the transition property. The commission may require the  
3 assignor or the assignee to make other filings with respect to the transfer in accordance with procedures that  
4 the commission may establish, but these filings may not affect the perfection of the transfer.

5 (b) Any successor to the utility, whether pursuant to any bankruptcy, reorganization, or other  
6 insolvency proceeding or pursuant to any merger, sale, or transfer, by operation of law or otherwise, shall  
7 perform and satisfy all obligations of the utility pursuant to this section in the same manner and to the same  
8 extent as the utility, including but not limited to collecting and paying to the assignee or pledgee, as the case  
9 may be, revenue arising with respect to the transition property sold, assigned, transferred, or pledged to secure  
10 transition bonds.

11 ~~(19)~~(21) Transition property or any right, title, or interest of a utility, assignee, or pledgee described in  
12 the definition of transition property, whether before or after the issuance of a financing order, does not  
13 constitute an account or general intangibles as those terms are defined in 30-9A-102. Any right, title, or interest  
14 pertaining to a financing order, including the interest pertaining to a financing order, along with the associated  
15 transition property and any revenue, collections, claims, payments, money, or proceeds of or arising from fixed  
16 transition amounts pursuant to the financing order, may not be considered proceeds of any right, title, or  
17 interest other than in the order and the transition property arising from the order.

18 ~~(20)~~(22) The lien under this section is enforceable against the pledgor and all third parties, including  
19 judicial lien creditors, subject only to the rights of any third parties holding security interests in the transition  
20 property previously perfected in the manner described in this section if value has been given by the purchasers  
21 of transition bonds. A perfected lien in transition property is a continuously perfected security interest in all  
22 revenue and proceeds arising with respect to the associated transition property, whether or not revenue has  
23 been accrued. Transition property constitutes property for the purposes of contracts securing transition bonds,  
24 whether or not the related revenue has accrued. The lien created under this section is perfected and ranks  
25 before any lien, including any judicial lien, that subsequently attaches to the transition property, to the fixed  
26 transition costs, and to the financing order and any rights created by the order or any proceeds of the order.  
27 The relative priority of a lien created under this section is not defeated or adversely affected by changes to the  
28 financing order or to the fixed transition amounts payable by any customer.

1           ~~(21)~~(23) The commission shall establish and maintain a separate system of records to reflect the date  
2 and time of receipt of all filings made under this section and may provide that transfers of transition property to  
3 an assignee be filed in accordance with the same system.

4           ~~(22)~~(24) Any sale, assignment, or other transfer of transition property or any pledge of transition  
5 property is exempt from any state or local sales, income, transfers, gains, receipts, or similar taxes.

6           ~~(23)~~(25) The transition bonds issued under this chapter are exempt from the provisions of Title 30,  
7 chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with  
8 the state securities commissioner.

9           ~~(24)~~(26) The granting, perfection, and priority of security interests with respect to transition property  
10 and the proceeds of transition property are governed by this section rather than by Title 30, chapter 9A.

11           ~~(25)~~(27) Upon the payment in full of transition bond principal and interest, the utility shall discontinue  
12 charging and collecting the competitive transition charge associated with that portion of the utility's approved  
13 transition costs.

14           ~~(26)~~(28) The commission may, by order or rule and subject to terms and conditions that it may  
15 prescribe, exempt any security or class of securities for which an application is required under this title or any  
16 public utility or class of public utility from the provisions of this title if it finds that the application of this title to the  
17 security, class of security, public utility, or class of public utility is not required by the public interest."  
18

19           **Section 3.** Section 75-2-111, MCA, is amended to read:

20           **"75-2-111. Powers of board.** ~~The~~ Except as provided in [section 5], the board shall, subject to the  
21 provisions of 75-2-207:

22           (1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this  
23 chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of  
24 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than  
25 agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:

26           (a) any agricultural activity or equipment that is associated with the use of agricultural land or the  
27 planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that  
28 is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

1 (b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that  
2 remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475,  
3 7503, or 7661a; or

4 (c) forestry equipment and its associated engine used for forestry practices that remain in a single  
5 location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;

6 (2) hold hearings relating to any aspect of or matter in the administration of this chapter at a place  
7 designated by the board. The board may compel the attendance of witnesses and the production of evidence at  
8 hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter  
9 who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will  
10 be available to the public at cost.

11 (3) issue orders necessary to effectuate the purposes of this chapter;

12 (4) by rule require access to records relating to emissions;

13 (5) by rule adopt a schedule of fees required for permits, permit applications, and registrations  
14 consistent with this chapter;

15 (6) have the power to issue orders under and in accordance with 42 U.S.C. 7419."  
16

17 **Section 4.** Section 75-2-211, MCA, is amended to read:

18 **"75-2-211. Permits for construction, installation, alteration, or use.** (1) ~~The~~ Except as provided in  
19 [section 5], the board shall by rule provide for the issuance, modification, suspension, revocation, and renewal  
20 of a permit issued under this part.

21 (2) (a) Except as provided in 75-1-208(4)(b), 75-2-234, and subsections (2)(b) and (2)(c) of this  
22 section, not later than 180 days before construction, installation, or alteration begins or as a condition of use of  
23 any machine, equipment, device, or facility that the board finds may directly or indirectly cause or contribute to  
24 air pollution or that is intended primarily to prevent or control the emission of air pollutants, the owner or  
25 operator shall file with the department the appropriate permit application on forms available from the  
26 department.

27 (b) Except as provided in subsection (2)(e), the owner or operator of an oil or gas well facility shall file  
28 the permit application with the department no later than January 3, 2006, or 60 days after the initial well



1 completion date, whichever is later. For purposes of this section, the initial well completion date for an oil or gas  
2 well facility is:

3 (i) for an oil or gas well facility producing oil, the date when the first oil is produced through wellhead  
4 equipment into lease tanks from the ultimate producing interval after casing has been run; and

5 (ii) for an oil or gas well facility producing gas, the date when the oil or gas well facility is capable of  
6 producing gas through wellhead equipment from the ultimate producing interval after casing has been run.

7 (c) An owner or operator who complies with subsection (2)(b) may construct, install, or use equipment  
8 necessary to complete or operate an oil or gas well facility without a permit until the department's decision on  
9 the application is final. If the owner or operator does not comply with subsection (2)(b), the owner or operator  
10 may not operate the oil or gas well facility and is liable for a violation of this section for every day of  
11 construction, installation, or operation of the facility.

12 (d) The board shall adopt rules establishing air emission control requirements applicable to an oil or  
13 gas well facility during the time from the initial well completion date until the department's decision on the  
14 application is final.

15 (e) The provisions of subsections (2)(b) and (2)(c) do not apply to an oil or gas well facility subject to  
16 the federal air permitting provisions of 42 U.S.C. 7475 or 7503.

17 (3) The permit program administered by the department pursuant to this section must include the  
18 following:

19 (a) requirements and procedures for permit applications, including standard application forms;

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

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

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

25 (e) requirements for inspection, monitoring, recordkeeping, and reporting;

26 (f) procedures for the transfer of permits;

27 (g) requirements and procedures for suspension, modification, and revocation of permits by the  
28 department;

1 (h) requirements and procedures for appropriate emission limitations and other requirements,  
2 including enforceable measures necessary to ensure compliance with those limitations and requirements;

3 (i) requirements and procedures for permit modification and amendment; and

4 (j) requirements and procedures for issuing a single permit authorizing emissions from similar  
5 operations at multiple temporary locations, which permit may include conditions necessary to ensure  
6 compliance with the requirements of this chapter at all authorized locations and a requirement that the owner or  
7 operator notify the department in advance of each change in location.

8 (4) This section does not restrict the board's authority to adopt regulations providing for a single air  
9 quality permit system.

10 (5) Department approval of an application to transfer a portable emission source from one location to  
11 another is exempt from the provisions of 75-1-201(1).

12 (6) The department may, for good cause shown, waive or shorten the time required for filing the  
13 appropriate applications.

14 (7) The department shall require that applications for permits be accompanied by any plans,  
15 specifications, and other information that it considers necessary.

16 (8) An application is not considered filed until the applicant has submitted all fees required under 75-  
17 2-220 and all information and completed application forms required pursuant to subsections (2), (3), and (7) of  
18 this section. If the department fails to notify the applicant in writing within 30 days after the purported filing of an  
19 application that the application is incomplete and fails to list the reasons why the application is considered  
20 incomplete, the application is considered filed as of the date of the purported filing.

21 (9) (a) Except as provided in 75-1-205(4) and 75-1-208(4)(b), if an application for a permit requires  
22 the preparation of an environmental impact statement under the Montana Environmental Policy Act, Title 75,  
23 chapter 1, parts 1 through 3, the department shall notify the applicant in writing of the approval or denial of the  
24 application:

25 (i) within 180 days after the department's receipt of a filed application, as provided in subsection (8), if  
26 the department prepares the environmental impact statement;

27 (ii) within 30 days after issuance of the final environmental impact statement by the lead agency if a  
28 state agency other than the department has been designated by the governor as lead agency for preparation of

1 the environmental impact statement; or

2 (iii) if the application is for a machine, equipment, a device, or a facility at an operation that requires a  
3 permit under Title 82, chapter 4, part 1, 2, or 3, within 30 days of issuance of the final environmental impact  
4 statement in accordance with time requirements of Title 82, chapter 4, part 1, 2, or 3.

5 (b) If an application does not require the preparation of an environmental impact statement, is not  
6 subject to the provisions of 75-2-215, and is not subject to the federal air quality permitting provisions of 42  
7 U.S.C. 7475, 7503, or 7661a, the department shall notify the applicant in writing within 60 days after its receipt  
8 of a filed application, as provided in subsection (8), of its approval or denial of the application, except as  
9 provided in subsection (14).

10 (c) If an application does not require the preparation of an environmental impact statement and is  
11 subject to the federal air permitting provisions of 42 U.S.C. 7475, 7503, or 7661a, the department shall notify  
12 the applicant, in writing, within 75 days after its receipt of a filed application, as provided in subsection (8), of its  
13 approval or denial of the application.

14 (d) Except as provided in subsection (9)(e), if an application does not require the preparation of an  
15 environmental impact statement and is subject to the provisions of 75-2-215, the department shall notify the  
16 applicant of its approval or denial of the application, in writing, within 75 days after its receipt of a filed  
17 application, as provided in subsection (8).

18 (e) If an application for a permit is for the construction, installation, alteration, or use of a source that  
19 is also required to obtain a license pursuant to 75-10-221 or a permit pursuant to 75-10-406, the department  
20 shall prepare a single environmental review document pursuant to Title 75, chapter 1, for the permit required  
21 under this section and the license or permit required under 75-10-221 or 75-10-406 and act on the applications  
22 within the time period provided for in 75-2-215(3)(e).

23 (f) The time for notification may be extended for 30 days by written agreement of the department and  
24 the applicant. Additional 30-day extensions may be granted by the department upon the request of the  
25 applicant. Notification of approval or denial may be served personally or by certified mail on the applicant or the  
26 applicant's agent.

27 (g) Failure by the department to act in a timely manner does not constitute approval or denial of the  
28 application. This does not limit or abridge the right of any person to seek available judicial remedies to require

1 the department to act in a timely manner.

2 (10) Except as provided in 75-2-213, when the department approves or denies the application for a  
3 permit under this section, a person who is directly and adversely affected by the department's decision may  
4 request a hearing before the board. The request for hearing must be filed within 15 days after the department  
5 renders its decision. An affidavit setting forth the grounds for the request must be filed within 30 days after the  
6 department renders its decision. The contested case provisions of the Montana Administrative Procedure Act,  
7 Title 2, chapter 4, part 6, apply to a hearing before the board under this subsection.

8 (11) Except as provided in 75-2-213:

9 (a) the department's decision on the application is not final until 15 days have elapsed from the date  
10 of the decision;

11 (b) the filing of a request for hearing does not stay the department's decision. However, the board  
12 may order a stay upon receipt of a petition and a finding, after notice and opportunity for hearing, that:

13 (i) the person requesting the stay is entitled to the relief demanded in the request for a hearing; or

14 (ii) continuation of the permit during the appeal would produce great or irreparable injury to the person  
15 requesting the stay.

16 (c) upon granting a stay, the board may require a written undertaking to be given by the party  
17 requesting the stay for the payment of costs and damages incurred by the permit applicant and its employees if  
18 the board determines that the permit was properly issued. When requiring an undertaking, the board shall use  
19 the same procedures and limitations as are provided in 27-19-306(2) through (4) for undertakings on  
20 injunctions.

21 (12) The board shall provide, by rule, a period of 30 days in which the public may submit comments on  
22 draft air quality permits for applications that:

23 (a) are subject to the federal air quality permitting provisions of 42 U.S.C. 7475, 7503, or 7661a;

24 (b) are subject to the requirements of 75-2-215; or

25 (c) require the preparation of an environmental impact statement.

26 (13) The board shall provide, by rule, a period of 15 days in which the public may submit comments on  
27 draft air quality permits not subject to subsection (12).

28 (14) The board shall provide, by rule, the basis upon which the department may extend by 15 days:

1 (a) the period as provided in subsection (13) in which the public may submit comments on draft air  
2 quality permits not subject to subsection (12); and

3 (b) the period for notifying an applicant of its final decision on approval or denial of an application, as  
4 provided in subsection (9)(b).

5 (15) (a) The board may adopt rules for issuance, modification, suspension, revocation, renewal, or  
6 creation of:

7 (i) general permits covering multiple similar sources; or

8 (ii) other permits covering multiple similar sources.

9 (b) Rules adopted pursuant to subsection (15)(a) may provide for construction and operation under  
10 the permit upon authorization by the department or upon notice to the department."  
11

12 **NEW SECTION. Section 5. Emissions limits -- carbon intensity.** (1) Except as provided in  
13 subsection (2), after January 1, 2022, a major stationary source located in the state that generates electricity  
14 and is a qualifying small power production facility may not emit more than 1.2 metric tons of carbon dioxide for  
15 each megawatt-hour measured on an annual basis.

16 (2) (a) A major stationary source is exempt from the requirements of subsection (1) if it must  
17 generate electricity in order to fulfill the requirements of a contract executed prior to [the effective date of this  
18 act]. A copy of the contract, verifying required generation, must be provided to the department.

19 (b) A contract that expires after [the effective date of this act] may not be extended unless the source  
20 complies with the requirements of subsection (1).  
21

22 **NEW SECTION. Section 6. Notification to tribal governments.** The secretary of state shall send a  
23 copy of [this act] to each federally recognized tribal government in Montana.  
24

25 **NEW SECTION. Section 7. Codification instruction.** [Section 5] is intended to be codified as an  
26 integral part of Title 75, chapter 2, part 1, and the provisions of Title 75, chapter 2, part 1, apply to [section 5].  
27

28 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,

1 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

2

3 NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

4

- END -