

SENATE BILL NO. 138

INTRODUCED BY A. WITTICH

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING CLASS FOURTEEN PROPERTY TAX CLASSIFICATION TO ALL FUTURE ELECTRICAL GENERATION FACILITIES AND FUEL AND GAS PRODUCTION FACILITIES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 15-6-137, 15-6-141, 15-6-156, 15-6-157, 75-20-104, AND 75-20-304, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

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**Section 1.** Section 15-6-137, MCA, is amended to read:

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13 **"15-6-137. Class seven property -- description -- taxable percentage.** (1) Except as provided in  
14 subsection (2), class seven property includes:

15 (a) all property owned by cooperative rural electrical associations that serve less than 95% of the  
16 electricity consumers within the incorporated limits of a city or town, except rural electric cooperative properties  
17 described in 15-6-141(1)(c);

18 (b) electric transformers and meters; electric light and power substation machinery; natural gas  
19 measuring and regulating station equipment, meters, and compressor station machinery owned by noncentrally  
20 assessed public utilities; and tools used in the repair and maintenance of this property.

21 (2) Class seven property does not include ~~wind~~ electrical generation facilities, ~~biomass generation~~  
22 ~~facilities~~, and energy storage facilities classified under 15-6-157.

23 (3) Class seven property is taxed at 8% of its market value."  
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**Section 2.** Section 15-6-141, MCA, is amended to read:

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26 **"15-6-141. Class nine property -- description -- taxable percentage.** (1) Class nine property includes:

27 (a) centrally assessed allocations of an electric power company or centrally assessed allocations of an  
28 electric power company that owns or operates transmission or distribution facilities or both;

29 (b) if congress passes legislation that allows the state to tax property owned by an agency created by  
30 congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by



1 a public agency created by congress to transmit or distribute electrical energy produced at privately owned  
2 generating facilities, not including rural electric cooperatives;

3 (c) rural electric cooperatives' property, except ~~wind~~ electrical generation facilities, ~~biomass generation~~  
4 ~~facilities~~; and energy storage facilities classified under 15-6-157 and property used for headquarters, office, shop,  
5 or other similar facilities, used for the sole purpose of serving customers representing less than 95% of the  
6 electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which  
7 a centrally assessed electric power company also owns property or serving an incorporated municipality with a  
8 population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998,  
9 received service from the facilities of an electric cooperative;

10 (d) allocations for centrally assessed natural gas distribution utilities, rate-regulated natural gas  
11 transmission or oil transmission pipelines regulated by either the public service commission or the federal energy  
12 regulatory commission, a common carrier pipeline as defined in 69-13-101, a pipeline carrier as defined in 49  
13 U.S.C. 15102(2), or the gas gathering facilities specified in 15-6-138(6); and

14 (e) centrally assessed companies' allocations except:

15 (i) electrical generation facilities classified under 15-6-156;

16 (ii) all property classified under 15-6-157;

17 (iii) all property classified under 15-6-158 and 15-6-159;

18 (iv) property owned by cooperative rural electric and cooperative rural telephone associations and  
19 classified under 15-6-135;

20 (v) property owned by organizations providing telephone communications to rural areas and classified  
21 under 15-6-135;

22 (vi) railroad transportation property included in 15-6-145;

23 (vii) airline transportation property included in 15-6-145; and

24 (viii) telecommunications property included in 15-6-156.

25 (2) Class nine property is taxed at 12% of market value."  
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27 **Section 3.** Section 15-6-156, MCA, is amended to read:

28 **"15-6-156. Class thirteen property -- description -- taxable percentage.** (1) Except as provided in  
29 subsections (2)(a) through (2)(g), class thirteen property includes:

30 (a) electrical generation facilities, except ~~wind~~ generation facilities, ~~biomass generation facilities~~, and

- 1 energy storage facilities classified under 15-6-157, of a centrally assessed electric power company;
- 2 (b) electrical generation facilities, except ~~wind generation facilities, biomass generation facilities,~~ and
- 3 energy storage facilities classified under 15-6-157, owned or operated by an exempt wholesale generator or an
- 4 entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;
- 5 (c) noncentrally assessed electrical generation facilities, except ~~wind generation facilities, biomass~~
- 6 ~~generation facilities,~~ and energy storage facilities classified under 15-6-157, owned or operated by any electrical
- 7 energy producer; and
- 8 (d) allocations of centrally assessed telecommunications services companies.
- 9 (2) Class thirteen property does not include:
- 10 (a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;
- 11 (b) property owned by cooperative rural electric cooperative associations classified under 15-6-137 or
- 12 15-6-157;
- 13 (c) allocations of electric power company property under 15-6-141;
- 14 (d) electrical generation facilities included in another class of property;
- 15 (e) property owned by cooperative rural telephone associations and classified under 15-6-135;
- 16 (f) property owned by organizations providing telecommunications services and classified under
- 17 15-6-135; and
- 18 (g) generation facilities that are exempt under 15-6-225.
- 19 (3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a
- 20 physically connected generator or generators, associated prime movers, and other associated property, including
- 21 appurtenant land and improvements and personal property, that are normally operated together to produce
- 22 electric power. The term includes but is not limited to generating facilities that produce electricity from
- 23 biomass-fired or coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling
- 24 water, or generators driven by wind.
- 25 (b) The term does not include electrical generation facilities used for noncommercial purposes or
- 26 exclusively for agricultural purposes.
- 27 (c) The term also does not include a qualifying small power production facility, as that term is defined
- 28 in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of
- 29 electricity other than electric power from a small power production facility and classified under 15-6-134 and
- 30 15-6-138.

1 (4) Class thirteen property is taxed at 6% of its market value."  
 2

3 **Section 4.** Section 15-6-157, MCA, is amended to read:

4 **"15-6-157. Class fourteen property -- description -- taxable percentage.** (1) Class fourteen property  
 5 includes:

6 (a) ~~wind electrical generation facilities that were classified as class fourteen property under this section~~  
 7 ~~on June 30, 2013, or that have commenced construction after June 30, 2013 of a centrally assessed electric~~  
 8 ~~power company;~~

9 ~~\_\_\_\_\_ (b) wind generation facilities owned or operated by an exempt wholesale generator or an entity certified~~  
 10 ~~as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

11 ~~\_\_\_\_\_ (c) noncentrally assessed wind generation facilities owned or operated by any electrical energy producer;~~

12 ~~\_\_\_\_\_ (d) wind generation facilities owned or operated by cooperative rural electric associations described~~  
 13 ~~under 15-6-137;~~

14 ~~\_\_\_\_\_ (e) biomass generation facilities up to 25 megawatts in nameplate capacity of a centrally assessed~~  
 15 ~~electric power company;~~

16 ~~\_\_\_\_\_ (f) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by an~~  
 17 ~~exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451;~~

18 ~~\_\_\_\_\_ (g) noncentrally assessed biomass generation facilities up to 25 megawatts in nameplate capacity owned~~  
 19 ~~or operated by any electrical energy producer;~~

20 ~~\_\_\_\_\_ (h) biomass generation facilities up to 25 megawatts in nameplate capacity owned or operated by~~  
 21 ~~cooperative rural electric associations described under 15-6-137;~~

22 ~~(b)~~ energy storage facilities of a centrally assessed electric power company;

23 ~~(c)~~ energy storage facilities owned or operated by an exempt wholesale generator or an entity certified  
 24 as an exempt wholesale generator pursuant to 42 U.S.C. 16451;

25 ~~(d)~~ noncentrally assessed energy storage facilities owned or operated by any electrical energy  
 26 producer;

27 ~~(e)~~ energy storage facilities owned or operated by cooperative rural electrical associations described  
 28 under 15-6-137;

29 ~~(f)~~ battery energy storage systems that comply with federal standards on the manufacture and  
 30 installation of the systems that are owned and operated by an electrical energy storage producer, electrical

1 energy producer, or energy trading entity or by the owner or operator of an electrical vehicle charging site;

2 ~~(n)(g)~~ all property of a ~~biodiesel liquid fuel or gaseous fuel~~ production facility, ~~as defined in 15-24-3102,~~  
3 ~~that was classified as class fourteen property under this section on June 30, 2013, or that has commenced~~  
4 ~~construction after June 1, 2007 June 30, 2013;~~

5 ~~—— (o) all property of a biogas production facility, as defined in 15-24-3102, that has commenced~~  
6 ~~construction after June 1, 2007;~~

7 ~~—— (p) all property of a biomass gasification facility, as defined in 15-24-3102;~~

8 ~~—— (q) all property of a coal gasification facility, as defined in 15-24-3102, except for property in subsection~~  
9 ~~(1)(t) of this section, that sequesters carbon dioxide;~~

10 ~~—— (r) all property of an ethanol production facility, as defined in 15-24-3102, that has commenced~~  
11 ~~construction after June 1, 2007;~~

12 ~~—— (s) all property of a geothermal facility, as defined in 15-24-3102;~~

13 ~~—— (t) all property of an integrated gasification combined cycle facility, as defined in 15-24-3102, that~~  
14 ~~sequesters carbon dioxide, as required by 15-24-3111(4)(c);~~

15 ~~(u)(h)~~ all property or a portion of the property of a renewable energy manufacturing facility, as defined  
16 in 15-24-3102, that has commenced construction after June 1, 2007;

17 ~~—— (v) all property of a natural gas combined cycle facility;~~

18 ~~(w)(i)~~ equipment that is used to capture and to prepare for transport carbon dioxide that will be  
19 sequestered or injected for the purpose of enhancing the recovery of oil and gas, other than that equipment at  
20 coal combustion plants of the types that are generally in commercial use as of December 31, 2007, that  
21 commence construction after December 31, 2007;

22 ~~(x)(j)~~ high-voltage direct-current transmission lines and associated equipment and structures, including  
23 converter stations and interconnections, other than property classified under 15-6-159, that:

24 (i) originate in Montana with a converter station located in Montana east of the continental divide and  
25 that are constructed after July 1, 2007;

26 (ii) are certified under the Montana Major Facility Siting Act; and

27 (iii) provide access to energy markets for Montana electrical generation facilities listed in this section that  
28 commenced construction after June 1, 2007;

29 ~~(y)(k)~~ all property of electric transmission lines, including substations, that originate at facilities specified  
30 in this subsection (1), with at least 90% of electricity carried by the line originating at facilities specified in this

1 subsection (1) and terminating at an existing transmission line or substation that has commenced construction  
 2 after June 1, 2007; and

3 ~~(z)(l)~~ the qualified portion of an alternating current transmission line and its associated equipment and  
 4 structures, including interconnections, that has commenced construction after June 1, 2007.

5 (2) (a) The qualified portion of an alternating current transmission line in subsection ~~(1)(z)~~ (1)(l) is that  
 6 percentage, as determined by the department of environmental quality, of rated transmission capacity of the line  
 7 contracted for on a firm basis by buyers or sellers of electricity generated by facilities specified in subsection (1)  
 8 that are located in Montana.

9 (b) The department of revenue shall classify the total value of an alternating current transmission line  
 10 in accordance with the determination made by the department of environmental quality pursuant to subsection  
 11 (2)(a).

12 (c) The owner of property described under this subsection (2) shall disclose the location of the generation  
 13 facilities specified in subsection (1) and information sufficient to demonstrate that there is a firm contract for  
 14 transmission capacity available throughout the year. For purposes of the initial qualification, the owner is not  
 15 required to disclose financial terms and conditions of contracts beyond that needed for classification.

16 (3) Class fourteen property does not include facilities:

17 (a) at which the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, was  
 18 not paid during the construction phase; or

19 (b) that are exempt under 15-6-225.

20 (4) For the purposes of this section, the following definitions apply:

21 ~~—— (a) "Biomass generation facilities" means any combination of boilers, generators, associated prime~~  
 22 ~~movers, and other associated property, including appurtenant land and improvements and personal property, that~~  
 23 ~~are normally operated together to produce electric power from the burning of organic material other than coal,~~  
 24 ~~petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas~~  
 25 ~~or other fuels allowed for ignition and to stabilize boiler operations.~~

26 ~~(b) (i)(a)~~ (i) "Compressed air energy storage" means the conversion of electrical energy to compressed  
 27 air by using an electrically powered turbocompressor for storage in vessels designed for that purpose and in the  
 28 earth, including but not limited to deep saline formations, basalt formations, aquifers, depleted oil or gas  
 29 reservoirs, abandoned mines, and mined rock cavities.

30 (ii) The term includes the conversion of compressed air into electrical energy by using turboexpander

1 equipment and electrical generation equipment.

2 (b) "Electrical generation facilities" has the meaning provided in 15-6-156(3).

3 (c) (i) "Energy storage facilities" means hydroelectric pumped storage property, compressed air energy  
4 storage property, regenerative fuel cells, batteries, flywheel storage property, or any combination of energy  
5 storage facilities directly connected to the electrical power grid and associated property, appurtenant land and  
6 improvements, and personal property that are designed to:

7 (A) receive and store electrical energy as potential energy; and

8 (B) convert the stored energy into electrical energy for sale as an energy commodity or as electricity  
9 services to balance energy flow on the electrical power grid in order to maintain a stable transmission grid,  
10 including but not limited to frequency regulation ancillary services and frequency control.

11 (ii) The term includes only property that in the aggregate can store at least 0.25 megawatt hour and has  
12 a power rating of at least 1 megawatt for a period of at least 0.25 hour.

13 (iii) The term does not include property, including associated property and appurtenant land and  
14 improvements, that is used to hold water in ponds, reservoirs, or impoundments related to hydroelectric pumped  
15 storage as defined in subsection (4)(e).

16 (d) "Flywheel storage" means a process that stores energy kinetically in the form of a rotating flywheel.  
17 Energy stored by the rotating flywheel can be converted to electrical energy through the flywheel's integrated  
18 electric generator.

19 (e) "Hydroelectric pumped storage" means a process that converts electrical energy to potential energy  
20 by pumping water to a higher elevation, where it can be stored indefinitely and then released to pass through  
21 hydraulic turbines and generate electrical energy.

22 (f) "Liquid fuel or gaseous fuel production facility" means a property, including storage tanks and other  
23 associated property, used to produce liquid or gaseous fuels that are intended to be consumed in the state  
24 through a production process that involves a chemical or biological transformation of organic or inorganic  
25 materials, including coal, petroleum, and natural gas, or renewable matter, including dedicated energy crops and  
26 trees, agricultural food and feed crops, agricultural crop wastes and residues, wood wastes and residues, aquatic  
27 plants, animal wastes, municipal wastes, and other waste materials.

28 ~~(f)(g)~~ "Regenerative fuel cell" means a device that produces hydrogen and oxygen from electricity and  
29 water and alternately produces electrical energy and water from stored hydrogen and oxygen.

30 ~~(g) "Wind generation facilities" means any combination of a physically connected wind turbine or~~

1 ~~turbines, associated prime movers, and other associated property, including appurtenant land and improvements~~  
 2 ~~and personal property, that are normally operated together to produce electric power from wind.~~

3 (5) (a) The department of environmental quality shall determine whether to certify that a transmission  
 4 line meets the criteria of subsection ~~(1)(x)~~ (1)(j), ~~(1)(y)~~ (1)(k), or ~~(1)(z)~~ (1)(l), as applicable, based on an application  
 5 provided for in 15-24-3112. The department of environmental quality shall review the certification 10 years after  
 6 the line is operational, and if the property no longer meets the requirements of subsection ~~(1)(x)~~ (1)(j), ~~(1)(y)~~  
 7 (1)(k), or ~~(1)(z)~~ (1)(l), the certification must be revoked.

8 (b) If the department of revenue finds that a certification previously granted was based on an application  
 9 that the applicant knew was false or fraudulent, the property must be placed in class nine under 15-6-141. If the  
 10 application was fraudulent, the applicant may be liable for additional taxes, penalty, and interest from the time  
 11 that the certification was in effect.

12 (6) Class fourteen property is taxed at 3% of its market value."  
 13

14 **Section 5.** Section 75-20-104, MCA, is amended to read:

15 **"75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions  
 16 apply:

17 ~~—— (1) "Addition thereto" means the installation of new machinery and equipment that would significantly~~  
 18 ~~change the conditions under which the facility is operated.~~

19 ~~(2)~~ (1) "Application" means an application for a certificate submitted in accordance with this chapter and  
 20 the rules adopted under this chapter.

21 ~~(3)~~ (2) (a) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts,  
 22 diversion dams, pipelines, storage ponds, reservoirs, and any other device or equipment associated with the  
 23 delivery of the energy form or product produced by a facility.

24 (b) The term does not include a transmission substation, a switchyard, voltage support, or other control  
 25 equipment or a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

26 (3) "Biomass generation facilities" means any combination of boilers, generators, associated prime  
 27 movers, and other associated property, including appurtenant land and improvements and personal property, that  
 28 are normally operated together to produce electric power from the burning of organic material other than coal,  
 29 petroleum, natural gas, or any products derived from coal, petroleum, or natural gas, with the use of natural gas  
 30 or other fuels allowed for ignition and to stabilize boiler operations.



1 (4) "Board" means the board of environmental review provided for in 2-15-3502.

2 (5) "Certificate" means the certificate of compliance issued by the department under this chapter that  
3 is required for the construction or operation of a facility.

4 (6) "Commence to construct" means:

5 (a) any clearing of land, excavation, construction, or other action that would affect the environment of  
6 the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility  
7 purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

8 (b) the fracturing of underground formations by any means if the activity is related to the possible future  
9 development of a gasification facility or a facility employing geothermal resources but does not include the  
10 gathering of geological data by boring of test holes or other underground exploration, investigation, or  
11 experimentation;

12 (c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or  
13 rights-of-way upon or over which a facility may be constructed;

14 (d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including  
15 upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal  
16 maintenance or repair of an existing facility.

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

18 (8) "Facility" means, subject to 75-20-1202:

19 (a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts,  
20 except that the term:

21 (i) does not include an electric transmission line and associated facilities of a design capacity of 230  
22 kilovolts or less and 10 miles or less in length;

23 (ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts for which  
24 the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from  
25 more than 75% of the owners who collectively own more than 75% of the property along the centerline;

26 (iii) does not include electric transmission lines that are collectively less than 150 miles in length and are  
27 required under state or federal regulations and laws, with respect to reliability of service, for an electrical  
28 generation facility, as defined in 15-24-3001(4), ~~or a wind generation facility, biomass generation facility, or an~~  
29 energy storage facility, as defined in 15-6-157, a wind generation facility, or a biomass generation facility to  
30 interconnect to a regional transmission grid or secure firm transmission service to use the grid for which the

1 person planning to construct the line or lines has obtained right-of-way agreements or options for a right-of-way  
 2 from more than 75% of the owners who collectively own more than 75% of the property along the centerline or  
 3 centerlines;

4 (iv) does not include an upgrade to an existing transmission line of a design capacity of 50 kilovolts or  
 5 more to increase that line's capacity, including construction outside the existing easement or right-of-way. Except  
 6 for a newly acquired easement or right-of-way necessary to comply with electromagnetic field standards, a newly  
 7 acquired easement or right-of-way outside the existing easement or right-of-way as described in this subsection  
 8 (8)(a)(iv) may not exceed a total of 10 miles in length or be more than 10% of the existing transmission  
 9 right-of-way, whichever is greater, and the purpose of the easement must be to avoid sensitive areas or inhabited  
 10 areas or conform to state or federal safety, reliability, and operational standards designed to safeguard the  
 11 transmission network and protect electrical workers and the public.

12 (v) does not include a transmission substation, a switchyard, voltage support, or other control equipment;

13 (vi) does not include an energy storage facility, as defined in 15-6-157;

14 (b) (i) each pipeline, whether partially or wholly within the state, greater than 25 inches in inside diameter  
 15 and 50 miles in length, and associated facilities, except that the term does not include:

16 (A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural  
 17 crops or for drinking water; or

18 (B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person  
 19 planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more  
 20 than 75% of the owners who collectively own more than 75% of the property along the centerline;

21 (ii) each pipeline, whether partially or wholly within the state, greater than 17 inches in inside diameter  
 22 and 30 miles in length, and associated facilities used to transport coal suspended in water;

23 (c) any use of geothermal resources, including the use of underground space in existence or to be  
 24 created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived  
 25 power equivalent to 50 megawatts or more or any ~~addition thereto~~ installation of new machinery and equipment  
 26 that would significantly change the conditions under which the facility is operated, except pollution control facilities  
 27 approved by the department and added to an existing plant, except that the term does not include a compressed  
 28 air energy storage facility, as defined in 15-6-157; or

29 (d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts  
 30 of hydroelectric power or more or any ~~addition thereto~~ installation of new machinery and equipment that would

1 significantly change the conditions under which the facility is operated.

2 (9) "Person" means any individual, group, firm, partnership, corporation, limited liability company,  
3 cooperative, association, government subdivision, government agency, local government, or other organization  
4 or entity.

5 (10) "Sensitive areas" means government-designated areas that have been recognized for their  
6 importance to Montana's wildlife, wilderness, culture, and historic heritage, including but not limited to national  
7 wildlife refuges, state wildlife management areas, federal areas of critical environmental concern, state parks and  
8 historic sites, designated wilderness areas, wilderness study areas, designated wild and scenic rivers, or national  
9 parks, monuments, or historic sites.

10 (11) "Transmission substation" means any structure, device, or equipment assemblage, commonly  
11 located and designed for voltage regulation, circuit protection, or switching necessary for the construction or  
12 operation of a proposed transmission line.

13 (12) "Transmission reliability agencies" means the federal energy regulatory commission, the western  
14 electricity coordinating council, the national electric reliability council, and the midwest reliability organization.

15 (13) "Upgrade" means to increase the electrical carrying capacity of a transmission line by actions  
16 including but not limited to:

- 17 (a) installing larger conductors;  
18 (b) replacing insulators;  
19 (c) replacing pole or tower structures;  
20 (d) changing structure spacing, design, or guying; or  
21 (e) installing additional circuits.

22 (14) "Utility" means any person engaged in any aspect of the production, storage, sale, delivery, or  
23 furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

24 (15) "Wind generation facilities" means any combination of a physically connected wind turbine or  
25 turbines, associated prime movers, and other associated property, including appurtenant land and improvements  
26 and personal property, that are normally operated together to produce electric power from wind."

27

28 **Section 6.** Section 75-20-304, MCA, is amended to read:

29 **"75-20-304. Waiver of provisions of certification proceedings.** (1) The department may waive  
30 compliance with any of the provisions of 75-20-216 and this part if the applicant makes a clear and convincing

1 showing to the department at a public hearing that an immediate, urgent need for a facility exists and that the  
2 applicant did not have knowledge that the need for the facility existed sufficiently in advance to fully comply with  
3 the provisions of 75-20-216 and this part.

4 (2) The department may waive compliance with any of the provisions of this chapter upon receipt of  
5 notice by a person subject to this chapter that a facility or associated facility has been damaged or destroyed as  
6 a result of fire, flood, or other natural disaster or as the result of insurrection, war, or other civil disorder and there  
7 exists an immediate need for construction of a new facility or associated facility or the relocation of a previously  
8 existing facility or associated facility in order to promote the public welfare.

9 (3) The department shall waive compliance with the requirements of 75-20-301(1)(c), (2)(b), and (2)(c)  
10 and the requirements of 75-20-211(1)(a)(iii) and (1)(a)(iv) and 75-20-216(3) relating to consideration of alternative  
11 sites if the applicant makes a clear and convincing showing to the department at a public hearing that:

12 (a) a proposed facility will be constructed in a county where a single employer within the county has  
13 permanently curtailed or ceased operations, causing a loss of 250 or more permanent jobs within 2 years at the  
14 employer's operations within the preceding 10-year period;

15 (b) the county and municipal governing bodies in whose jurisdiction the facility is proposed to be located  
16 support by resolution the waiver;

17 (c) the proposed facility will be constructed within a 15-mile radius of the operations that have ceased  
18 or been curtailed; and

19 (d) the proposed facility will have a beneficial effect on the economy of the county in which the facility  
20 is proposed to be located.

21 (4) The waiver provided for in subsection (3) applies only to permanent job losses by a single employer.  
22 The waiver provided for in subsection (3) does not apply to jobs of a temporary or seasonal nature, including but  
23 not limited to construction jobs or job losses during labor disputes.

24 (5) The waiver provided for in subsection (3) does not apply to consideration of alternatives or minimum  
25 adverse environmental impact for a facility defined in 75-20-104(8)(a) or (8)(b) or for an associated facility defined  
26 in 75-20-104~~(3)~~(2).

27 (6) The applicant shall pay all expenses required to process and conduct a hearing on a waiver request  
28 under subsection (3). However, any payments made under this subsection must be credited toward the fee paid  
29 under 75-20-215 to the extent that the data or evidence presented at the hearing or the decision of the  
30 department under subsection (3) can be used in making a certification decision under this chapter.

1           (7) The department may grant only one waiver under subsections (3) and (4) for each permanent loss  
2 of jobs as defined in subsection (3)(a)."

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4           NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2013.

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6           NEW SECTION. **Section 8. Applicability.** [This act] applies to tax years beginning after December 31,  
7 2013.

8

- END -