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As of: July 28, 2016 (10:00am)

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**** Bill No. ****

Introduced By *****

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 or units; 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; 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; establishing reporting requirements; amending section 15-10-420, MCA; 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 or units on the employees of the unit or units, local governments, schools, and affected tribal governments when a coal-fired generating unit is retired.

(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 or units.

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

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

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

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

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

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

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

(c) would be a public utility as defined in subsection (4) if those retail electricity customers were in Montana.

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

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

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

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

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

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

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

company.

NEW SECTION. **Section 4. Retirement of coal-fired generating unit or units -- notice.** (1) If an electrical company, wholesale exempt generator, or public utility intends to retire a coal-fired generating unit or units, the company, generator, or utility shall file a notice with the public service commission, the governor, and the department of revenue no later than 6 months prior to the intended date of the retirement.

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

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

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

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

NEW SECTION. **Section 5. Coal county impact fee -- exemption.** (1) Except as provided in subsection (9), if an electrical company, wholesale exempt generator, or public utility files a notice pursuant to [section 4] indicating its intent to

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retire a coal-fired generating unit or units, the electrical company, wholesale exempt generator, or public utility shall pay a coal county impact fee in accordance with this section.

(2) (a) In the first 5 tax years annually following the retirement of the coal-fired generating unit or units, an electrical company, wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

(i) \$3 million;

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

(iii) 100% of the electrical energy producers license tax paid in accordance with 15-51-101.

(b) The amount required in accordance with subsection (2)(a) and subsections (3) through (7) does not include:

(i) transmission or distribution facilities taxes paid in accordance with 15-6-141;

(ii) pollution control equipment taxes paid in accordance with 15-6-135; or

(iii) wholesale energy transaction taxes paid in accordance with 15-72-104.

(3) In the sixth tax year following the retirement of the coal-fired generating unit or units, an electrical company, wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

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

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

(4) In the seventh tax year following the retirement of the coal-fired generating unit or units, an electrical company, wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

(a) 80% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired coal-fired generating unit or units during the 2015 tax year; and

(b) 80% of the electrical energy producers license tax paid in accordance with 15-51-101.

(5) In the eighth tax year following the retirement of the coal-fired generating unit or units, an electrical company, wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

(a) 60% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired coal-fired generating unit or units during the 2015 tax year; and

(b) 60% of the electrical energy producers license tax paid in accordance with 15-51-101.

(6) In the ninth tax year following the retirement of the coal-fired generating unit or units, an electrical company,

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wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

(a) 40% of the centrally assessed property taxes paid in accordance with 15-6-156 on the retired coal-fired generating unit or units during the 2015 tax year; and

(b) 40% of the electrical energy producers license tax paid in accordance with 15-51-101.

(7) In the 10th tax year following the retirement of the coal-fired generating unit or units, an electrical company, wholesale exempt generator, or public utility shall, except as provided in subsection (2)(b), pay an amount that includes the following:

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

(b) 20% of the electrical energy producers license tax paid in accordance with 15-51-101.

(8) The impact fee required in accordance with subsection (2)(a) is due the first tax year following the last tax year that the electrical company, wholesale exempt generator, or public utility paid its centrally assessed property taxes on the coal-fired generating unit or units that is being retired.

(9) If an electrical company, wholesale exempt generator, or public utility retires a coal-fired generating unit or units, and demonstrates to the department of revenue that the electrical company, wholesale exempt generator, or public utility is

providing financial assistance to the affected community where a coal-fired generating unit is located for economic mitigation, economic development, and for workforce retraining in an amount similar to the amount that would be generated in this section and in accordance with a legal settlement or other settlement, including but not limited to an order by a utility or regulatory commission, then the electrical company, wholesale exempt generator, or public utility is not subject to the impact fee required in this section.

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

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

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

(a) 25% of all money received pursuant to subsection (1) must be deposited in the coal county impact account established in [section 7] in the county where the coal-fired generating unit or units that were retired are located;

(b) 25% of all money received pursuant to subsection (1) must be deposited in the coal county school district account established in [section 8] in the county where the coal-fired generating unit or units are located;

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

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

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

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

(2) The governing body of a county may in accordance with subsection (5) use the funds in the coal county account to:

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

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

(c) decrease property tax mill levies that are caused by the cessation, reduction, or elimination of activity at the

coal-fired generating unit or units;

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

(e) attract new industry to the impact area;

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

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

(3) Except as provided in subsection (2)(c) and subject to 15-10-420(7)(b), money held in the coal county account may not be considered as cash balance for the purpose of reducing mill levies.

(4) Money in the coal county impact account must be invested as provided by law. Interest and income from the investment of funds in the account must be credited to the account.

(5) (a) The governing body of the county shall establish a coal county impact committee. The committee shall include two members of the county's governing body and one representative of:

(i) a tribal government impacted by the retirement of a coal-fired generating unit or units;

(ii) each incorporated city or town where the coal-fired

generating unit or units is located;

(iii) each water, sewer, or solid waste district where the coal-fired generating unit or units are located; and

(iv) a regional economic development organization that represents a local government where the coal-fired generating unit or units are located.

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

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

NEW SECTION. **Section 8. Retirement coal county school district account -- expenditures and restrictions.** (1) The county treasurer shall:

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

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

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

(3) Money held in the coal county school district account

may not be considered as cash balance for the purpose of reducing mill levies.

(4) The districts may use the funds in the accounts proportionally for educational purposes in accordance with the provisions of law. Interest and income from the investment of funds in the account must be credited to the account.

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

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

(2) There must be deposited in the account:

(a) money received from legislative allocations;

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

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

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

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

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

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

NEW SECTION. **Section 10. Coal county workforce**

redevelopment and training grants. (1) (a) The department may award workforce redevelopment and training grants using money in the coal county workforce redevelopment and training special revenue account established in [section 9].

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

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

(3) A grant may be provided only to an employer offering a new job that has an average weekly wage that meets or exceeds the current average weekly wage of the county in which the employees were principally employed prior to the retirement of a coal-fired generating unit or units.

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

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

(b) a training plan, which must include:

(i) a timetable for providing training;

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

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

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

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

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

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

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

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

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

(b) "Eligible training provider" means:

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

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

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

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

(v) an entity approved to provide workforce training that is approved by representatives of the BEAR program as defined in 53-2-1216, the small business development centers, or the Montana manufacturing extension center at Montana state university-Bozeman.

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

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

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

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

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

Section 11. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3 years. The maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated

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pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the

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year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(ii), the value of newly taxable class four property that was constructed, expanded, or remodeled property since the completion of the last reappraisal cycle is the current year market value of that property less the previous year market value of that property.

(d) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property under 15-6-134 or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) a mill levy imposed for a newly created regional resource authority.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity:

(a) may increase the number of mills to account for a decrease in reimbursements; and

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(b) may not increase the number of mills to account for a loss of tax base:

(i) because of legislative action that is reimbursed under the provisions of 15-1-121(7);

(ii) due to the retirement of a coal-fired generating unit or units, if the governmental entity is collecting an impact fee or receiving distributions from the county impact fund in accordance with [section 5] that account for the loss of tax base; or

(iii) because of the cessation of the payment of a coal county impact fee in accordance with [section 5] that has accounted for the loss of tax base.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-108, 20-9-331, 20-9-333, 20-9-360, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in tenths of mills. If the mill levy calculation does not result in an even tenth of a mill, then the calculation must be rounded up to the nearest tenth of a mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402;

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326;

(iv) a levy for the support of a study commission under 7-3-184;

(v) a levy for the support of a newly established regional resource authority;

(vi) the portion that is the amount in excess of the base contribution of a governmental entity's property tax levy for contributions for group benefits excluded under 2-9-212 or 2-18-703; or

(vii) a levy for reimbursing a county for costs incurred in transferring property records to an adjoining county under 7-2-2807 upon relocation of a county boundary.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

(11) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new improvements, or newly taxable property in a governmental unit."

{Internal References: Good bill drafting practices require that all MCA sections be redrafted using current MCA data - see Bill Drafting Manual section 1-6}

NEW SECTION. **Section 12. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell Chippewa tribe.

NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 10] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 10].

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

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 17. {standard} Retroactive**

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applicability. [This act] applies retroactively, within the meaning of 1-2-109, to coal-fired generating units retired on or after January 1, 2017.

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