

HOUSE BILL NO. 237

INTRODUCED BY M. MENAHAN, WELBORN, ANKNEY, BELCOURT

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE COMMUNITY RENEWABLE ENERGY PROJECT REQUIREMENTS FROM MONTANA'S RENEWABLE RESOURCE STANDARD; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2005, 90-3-1003, AND 90-4-1202, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 69-3-2003, MCA, is amended to read:

"69-3-2003. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

~~(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.~~

~~(4) "Community renewable energy project" means an eligible renewable resource that:~~
~~—— (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or~~
~~—— (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.~~

~~(5)~~(3) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that

1 is selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
2 cooperative.

3 (b) The term does not include governmental entities selling electricity produced only by facilities
4 generating less than 250 kilowatts that were in operation prior to 1990.

5 ~~(6)~~(4) "Compliance year" means each calendar year beginning January 1 and ending December 31,
6 starting in 2008, for which compliance with this part must be demonstrated.

7 ~~(7)~~(5) "Cooperative utility" means:

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

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

10 ~~(8)~~(6) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric
11 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating
12 resource in order to respond to the balancing authority's need to match supply resources to loads on the
13 transmission system.

14 ~~(9)~~(7) "Electric generating resource" means any plant or equipment used to generate electricity by any
15 means.

16 ~~(10)~~(8) "Eligible renewable resource" means a facility either located within Montana or delivering
17 electricity from another state into Montana that commences commercial operation after January 1, 2005, and that
18 produces electricity from one or more of the following sources:

19 (a) wind;

20 (b) solar;

21 (c) geothermal;

22 (d) water power, in the case of a hydroelectric project that:

23 (i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate
24 rating of 10 megawatts or less; or

25 (ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric
26 generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

27 (e) landfill or farm-based methane gas;

28 (f) gas produced during the treatment of wastewater;

29 (g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
30 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been

1 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

2 (h) hydrogen derived from any of the sources in this subsection ~~(10)~~ (8) for use in fuel cells;

3 (i) the renewable energy fraction from the sources identified in subsections ~~(10)(a) through (10)(j)~~ (8)(a)
4 through (8)(j) of electricity production from a multiple-fuel process with fossil fuels; and

5 (j) compressed air derived from any of the sources in this subsection ~~(10)~~ (8) that is forced into an
6 underground storage reservoir and later released, heated, and passed through a turbine generator.

7 ~~(11)~~ "Local owners" means:

8 ~~— (a) Montana residents or entities composed of Montana residents;~~

9 ~~— (b) Montana small businesses;~~

10 ~~— (c) Montana nonprofit organizations;~~

11 ~~— (d) Montana-based tribal councils;~~

12 ~~— (e) Montana political subdivisions or local governments;~~

13 ~~— (f) Montana-based cooperatives other than cooperative utilities; or~~

14 ~~— (g) any combination of the individuals or entities listed in subsections (11)(a) through (11)(f).~~

15 ~~(12)~~(9) "Nonspinning reserve" means offline generation that can be ramped up to capacity and
16 synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during
17 emergency conditions, unforeseen load swings, and generation disruptions.

18 ~~(13)~~(10) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
19 3, on January 1, 2005, including the public utility's successors or assignees.

20 ~~(14)~~(11) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity
21 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of
22 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

23 ~~(15)~~(12) "Seasonality" means the degree to which an electric generating resource is capable of producing
24 electricity in each of the seasons of the year.

25 ~~(16)~~(13) "Small customer" means a retail customer that has an individual load with an average monthly
26 demand of less than 5,000 kilowatts.

27 ~~(17)~~(14) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system
28 and immediately responsive to frequency control and that is needed to maintain system frequency stability during
29 emergency conditions, unforeseen load swings, and generation disruptions.

30 ~~(18)~~ "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the

1 community renewable energy project and other eligible renewable resources that are:

2 ~~—— (a) located within 5 miles of the project;~~

3 ~~—— (b) constructed within the same 12-month period; and~~

4 ~~—— (c) under common ownership."~~

5

6 **Section 2.** Section 69-3-2004, MCA, is amended to read:

7 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
8 in 69-3-2007 and subsections ~~(11) and (12)~~ (10) and (11) of this section, a graduated renewable energy standard
9 is established for public utilities and competitive electricity suppliers as provided in subsections (2) ~~through (4)~~
10 and (3) of this section.

11 ~~(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility~~
12 ~~and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in~~
13 ~~Montana from eligible renewable resources.~~

14 ~~(3) (a)(2)~~ In each compliance year beginning January 1, 2010, through December 31, 2014, each public
15 utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy
16 in Montana from eligible renewable resources.

17 ~~(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall~~
18 ~~purchase both the renewable energy credits and the electricity output from community renewable energy projects~~
19 ~~that total at least 50 megawatts in nameplate capacity.~~

20 ~~—— (c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on~~
21 ~~each public utility's retail sales of electrical energy in Montana in the calendar year 2011.~~

22 ~~(4) (a)(3)~~ In the compliance year beginning January 1, 2015, and in each succeeding compliance year,
23 each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of
24 electrical energy in Montana from eligible renewable resources.

25 ~~(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable~~
26 ~~energy credits and the electricity output from community renewable energy projects that total at least 75~~
27 ~~megawatts in nameplate capacity.~~

28 ~~—— (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under~~
29 ~~subsection (3)(b).~~

30 ~~—— (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on~~

1 ~~each public utility's retail sales of electrical energy in Montana in the calendar year 2014.~~

2 ~~(5)(4)~~ (a) In complying with the standards required under subsections (2) ~~through (4)~~ and (3), a public
3 utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement
4 requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical
5 energy to retail customers in Montana.

6 (b) The standard in subsections (2) ~~through (4)~~ and (3) must be calculated on a delivered-energy basis
7 after accounting for any line losses.

8 ~~(6)(5)~~ A public utility or competitive electricity supplier has until 3 months following the end of each
9 compliance year to purchase renewable energy credits for that compliance year.

10 ~~(7)(6)~~ (a) In order to meet the standard established in subsections (2) ~~through (4)~~ and (3), a public utility
11 or competitive electricity supplier may only use:

12 (i) electricity from an eligible renewable resource in which the associated renewable energy credits have
13 not been sold separately;

14 (ii) renewable energy credits created by an eligible renewable resource purchased separately from the
15 associated electricity; or

16 (iii) any combination of subsections ~~(7)(a)(i) and (7)(a)(ii)~~ (6)(a)(i) and (6)(a)(ii).

17 (b) A public utility or competitive electricity supplier may not resell renewable energy credits and count
18 those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the
19 standards established in subsections (2) ~~through (4)~~ and (3).

20 (c) Renewable energy credits sold through a voluntary service, such as the one provided for in
21 69-8-210(2), may not be applied against a public utility's or competitive electricity supplier's obligation to meet
22 the standards established in subsections (2) ~~through (4)~~ and (3).

23 ~~(8)(7)~~ Nothing in this part limits a public utility or competitive electricity supplier from exceeding the
24 standards established in subsections (2) ~~through (4)~~ and (3).

25 ~~(9)(8)~~ If a public utility or competitive electricity supplier exceeds a standard established in subsections
26 (2) ~~through (4)~~ and (3) in any compliance year, the public utility or competitive electricity supplier may carry
27 forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2
28 subsequent compliance years. The carryforward may not be double-counted.

29 ~~(10)(9)~~ Except as provided in subsections ~~(11) and (12)~~ (10) and (11), if a public utility or competitive
30 electricity supplier is unable to meet the standards established in subsections (2) ~~through (4)~~ and (3) in any

1 compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed
 2 by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or
 3 competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates.
 4 Money generated from these penalties must be deposited in the universal low-income energy assistance fund
 5 established in ~~69-8-412(1)(a)~~ 69-8-412(1)(b).

6 ~~(11)~~(10) A public utility or competitive electricity supplier may petition the commission for a short-term
 7 waiver from full compliance with the standards in subsections (2) ~~through (4)~~ and (3) and the penalties levied
 8 under subsection ~~(10)~~ (9). The petition must demonstrate that the:

9 (a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure
 10 renewable energy credits under long-term contract, but full compliance cannot be achieved either because
 11 renewable energy credits cannot be procured or for other legitimate reasons that are outside the control of the
 12 public utility or competitive electricity supplier; or

13 (b) integration of additional eligible renewable resources into the electrical grid will clearly and
 14 demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity
 15 supplier has undertaken all reasonable steps to mitigate the reliability concerns.

16 ~~(12)~~(11) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and
 17 conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections
 18 (2) ~~through (4)~~ and (3).

19 (b) The exemption provided for in subsection ~~(12)(a)~~ (11)(a) is terminated upon modification after April
 20 25, 2007, of the prices, terms, or conditions in a written contract."

21

22 **Section 3.** Section 69-3-2005, MCA, is amended to read:

23 **"69-3-2005. Procurement -- cost recovery -- reporting.** (1) In meeting the requirements of this part,
 24 a public utility shall:

25 (a) conduct renewable energy solicitations under which the public utility offers to purchase renewable
 26 energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration;

27 (b) consider the importance of geographically diverse rural economic development when procuring
 28 renewable energy credits; and

29 (c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible renewable
 30 resource contained in the commission's supply procurement rules when considering the procurement of

1 renewable energy or renewable energy credits.

2 (2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate
3 to the commission that these contracts will provide a lower long-term cost of meeting the standard established
4 in 69-3-2004.

5 (3) (a) Contracts signed for projects located in Montana must require all contractors to give preference
6 to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the
7 projects if the Montana residents have substantially equal qualifications to those of nonresidents.

8 (b) Contracts signed for projects located in Montana must require all contractors to pay the standard
9 prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase of the
10 project.

11 (4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced
12 approval under procedures established by the commission. Upon advanced approval by the commission, these
13 contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's
14 ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility
15 has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

16 (5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans
17 to the commission in accordance with rules adopted by the commission. The plans must be submitted to the
18 commission on or before:

19 (a) June 1, 2013, for the standard required in ~~69-3-2004(4)~~ 69-3-2004(3); and

20 (b) any additional future dates as required by the commission.

21 (6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be
22 determined by the commission, demonstrating compliance with this part for each compliance year. The reports
23 must be filed by March 1 of the year following the compliance year.

24 (7) For the purpose of implementing this part, the commission has regulatory authority over competitive
25 electricity suppliers."

26

27 **Section 4.** Section 90-3-1003, MCA, is amended to read:

28 **"90-3-1003. Research and commercialization account -- use.** (1) The research and commercialization
29 account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research
30 and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

- 1 (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth
2 opportunities for Montana and constitute a public purpose.
- 3 (3) The account may be used only for:
- 4 (a) loans that are to be used for research and commercialization projects to be conducted at research
5 and commercialization centers located in Montana;
- 6 (b) grants that are to be used for production agriculture research and commercialization projects, clean
7 coal research and development projects, or renewable resource research and development projects to be
8 conducted at research and commercialization centers located in Montana;
- 9 (c) matching funds for grants from nonstate sources that are to be used for research and
10 commercialization projects to be conducted at research and commercialization centers located in Montana; or
11 (d) administrative costs that are incurred by the board in carrying out the provisions of this part.
- 12 (4) At least 20% of the account funds approved for research and commercialization projects must be
13 directed toward projects that enhance production agriculture.
- 14 (5) (a) At least 30% of the account funds approved for research and commercialization projects must
15 be directed toward projects that enhance clean coal research and development or renewable resource research
16 and development.
- 17 (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and
18 development or renewable resource research and development, subsection (5)(a) does not apply.
- 19 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total
20 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.
- 21 (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research
22 and commercialization strategic plan for the awarding of grants and loans. The criteria must include:
- 23 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;
- 24 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy
25 or promise for commercial development of discoveries;
- 26 (c) whether the project employs or otherwise takes advantage of existing research and commercialization
27 strengths within the state's public university and private research establishment;
- 28 (d) whether the project involves a realistic and achievable research project design;
- 29 (e) whether the project develops or employs an innovative technology;
- 30 (f) verification that the project activity is located within the state;

1 (g) whether the project's research team possesses sufficient expertise in the appropriate technology area
2 to complete the research objective of the project;

3 (h) verification that the project was awarded based on its scientific merits, following review by a
4 recognized federal agency, philanthropic foundation, or other private funding source; and

5 (i) whether the project includes research opportunities for students.

6 (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated
7 interest and earnings from the account must be retained in the account. Repayments of loans and any
8 agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the
9 transfer of technology from a research and commercialization center to another nonstate organization or
10 ownership of corporate stock in a private sector organization must be deposited in the account.

11 (9) The board shall refer grant applications to external peer review groups. The board shall compile a
12 list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall
13 review the application and make a recommendation to the board as to whether the application for a grant should
14 be approved. The board shall review the recommendation of the peer review group and either approve or deny
15 a grant application.

16 (10) The board shall identify whether a grant or loan is to be used for basic research, applied research,
17 or some combination of both. For the purposes of this section, "applied research" means research that is
18 conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is
19 conducted to uncover the basic function or mechanism of a scientific question.

20 (11) For the purposes of this section:

21 (a) "clean coal research and development" means research and development of projects that would
22 advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source
23 well beyond the current level of technology used in commercial service;

24 (b) "renewable resource research and development" means research and development that would
25 advance:

26 (i) the use of any of the sources of energy listed in ~~69-3-2003(10)~~ 69-3-2003(8) to produce electricity;
27 and

28 (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources
29 as an energy source well beyond the current level of technology used in commercial service."
30

1 **Section 5.** Section 90-4-1202, MCA, is amended to read:

2 **"90-4-1202. Definitions.** Unless the context requires otherwise, in this part, the following definitions
3 apply:

4 (1) "Ancillary services" has the meaning provided in 69-3-2003.

5 (2) "Bond" means bond, note, or other obligation.

6 (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant
7 to section 54 of the Internal Revenue Code, 26 U.S.C. 54, and this part.

8 (4) "Commission" means the public service commission provided for in 69-1-102.

9 (5) "Common ownership" means the same or substantially similar persons or entities that maintain a
10 controlling interest in more than one community renewable energy project even if the ownership shares differ
11 between two community renewable energy projects. Two community renewable energy projects may not be
12 considered to be under common ownership simply because the same entity provided debt or equity or both debt
13 and equity to both projects.

14 (6) "Community renewable energy project" means an eligible renewable resource as defined in 69-3-2003
15 that is interconnected on the utility side of the meter in which local owners have a controlling interest and that is
16 less than or equal to 25 megawatts in total calculated nameplate capacity.

17 ~~(5)~~(7) "Governing authority" means a council, board, or other body governing the affairs of the
18 governmental body.

19 ~~(6)~~(8) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian
20 tribal government, or any other political subdivision of the state, however organized.

21 ~~(7)~~(9) "Intermittent generation resource" means a generator that operates on a limited and irregular basis
22 due to the inconsistent nature of its fuel supply, which is primarily wind or solar power.

23 ~~(8)~~(10) "Internal Revenue Code" has the meaning provided in 15-30-2101.

24 (11) "Local owners" means:

25 (a) Montana residents or entities composed of Montana residents;

26 (b) Montana small businesses;

27 (c) Montana nonprofit organizations;

28 (d) Montana-based tribal councils;

29 (e) Montana political subdivisions or local governments;

30 (f) Montana-based cooperatives other than cooperative utilities; or

1 (g) any combination of the individuals or entities listed in subsections (11)(a) through (11)(f).

2 ~~(9)(12)~~ "Project" means:

3 (a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal
4 Revenue Code, 26 U.S.C. 54(d)(2);

5 (b) a community renewable energy project ~~as defined in 69-3-2003(4)(a);~~ or

6 (c) an alternative renewable energy source as defined in 15-6-225.

7 (13) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
8 community renewable energy project and other eligible renewable resources that are:

9 (a) located within 5 miles of the project;

10 (b) constructed within the same 12-month period; and

11 (c) under common ownership."

12

13 COORDINATION SECTION. SECTION 6. COORDINATION INSTRUCTION. IF BOTH HOUSE BILL NO. 78 AND
14 [THIS ACT] ARE PASSED AND APPROVED, THEN HOUSE BILL NO. 78 IS VOID.

15

16 NEW SECTION. Section 7. Notification to tribal governments. The secretary of state shall send a
17 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
18 Chippewa tribe.

19

20 NEW SECTION. Section 8. Saving clause. [This act] does not affect rights and duties that matured,
21 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

22

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

24

25 NEW SECTION. Section 10. Retroactive applicability. [This act] applies retroactively, within the
26 meaning of 1-2-109, to the compliance year beginning January 1, 2011.

27

- END -