

SENATE BILL NO. 114

INTRODUCED BY DEBBY BARRETT

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE MONTANA RENEWABLE POWER PRODUCTION
5 AND RURAL ECONOMIC DEVELOPMENT ACT; REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE
6 RESOURCE" TO INCLUDE EXISTING HYDROELECTRIC RESOURCES; REQUIRING A PUBLIC UTILITY TO
7 REFUND CUSTOMERS FOR THE VALUE OF CERTAIN RENEWABLE ENERGY CREDITS ASSOCIATED
8 WITHHYDROELECTRICRESOURCES; AMENDING SECTIONS 69-3-2003, 69-3-2004, 69-3-2006, 90-3-1003,
9 AND 90-4-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE
10 APPLICABILITY DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 69-3-2003, MCA, is amended to read:
15 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following
16 definitions apply:

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

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

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

29 (4) "Community renewable energy project" means an eligible renewable resource that:
30 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and

1 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

2 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

3 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is
4 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or
5 cooperative.

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

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

10 (7) "Cooperative utility" means:

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

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

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

17 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any
18 means.

19 (10) (a) "Eligible renewable resource" means a facility either located within Montana or delivering
20 electricity from another state into Montana that, except as provided in subsection (10)(b), commences commercial
21 operation after January 1, 2005, ~~or a hydroelectric project expansion referred to in subsection (10)(d)(iii), any of~~
22 ~~which~~ and that produces electricity from one or more of the following sources:

23 ~~(a)~~(i) wind;

24 ~~(b)~~(ii) solar;

25 ~~(c)~~(iii) geothermal;

26 ~~(d)~~(iv) water power, in the case of a hydroelectric project that:

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

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

1 ~~_____ (iii) is an expansion of an existing hydroelectric project that commences construction and increases~~
 2 ~~existing generation capacity on or after October 1, 2013. Engineering estimates of the average incremental~~
 3 ~~generation from the increase in existing generation capacity must be submitted to the commission for review. The~~
 4 ~~commission shall determine an average annual incremental generation that will constitute the eligible renewable~~
 5 ~~resource from the capacity expansion, subject to further revision by the commission in the event of significant~~
 6 ~~changes in stream flow or dam operation.~~

7 ~~(e)(v)~~ landfill or farm-based methane gas;

8 ~~(f)(vi)~~ gas produced during the treatment of wastewater;

9 ~~(g)(vii)~~ low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
 10 fuels from wood, forest, or field residues, including wood pieces that have been treated with chemical
 11 preservatives, such as creosote, pentachlorophenol, or copper-chrome arsenic, and that are used at a facility that
 12 has a nameplate capacity of 5 megawatts or less;

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

14 ~~(i)(ix)~~ the renewable energy fraction from:

15 ~~(i)(A)~~ the sources identified in this subsection (10) of electricity production from a multiple-fuel process
 16 with fossil fuels;

17 ~~(ii)(B)~~ flywheel storage as defined in 15-6-157(4)(d);

18 ~~(iii)(C)~~ hydroelectric pumped storage as defined in 15-6-157(4)(e);

19 ~~(iv)(D)~~ batteries; and

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

22 (b) (i) Except as provided in subsection (10)(b)(ii), the term also includes electricity produced from an
 23 existing hydroelectric facility that commenced commercial operation in Montana before January 1, 2005.

24 (ii) The term does not include federal hydroelectric facilities located in Montana.

25 (11) "Local owners" means:

26 (a) Montana residents;

27 (b) general partnerships of which all partners are Montana residents;

28 (c) business entities organized under the laws of Montana that:

29 (i) have less than \$50 million of gross revenue;

30 (ii) have less than \$100 million of assets; and

1 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
2 residents;

3 (d) Montana nonprofit organizations;

4 (e) Montana-based tribal councils;

5 (f) Montana political subdivisions or local governments;

6 (g) Montana-based cooperatives other than cooperative utilities; or

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

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

11 (13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter
12 3, on January 1, 2005, including the public utility's successors or assignees.

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

16 (15) "Renewable energy fraction" means the proportion of electricity output directly attributable to
17 electricity and associated renewable energy credits produced by one of the sources identified in subsection (10).

18 (16) "Seasonality" means the degree to which an electric generating resource is capable of producing
19 electricity in each of the seasons of the year.

20 (17) "Small customer" means a retail customer that has an individual load with an average monthly
21 demand of less than 5,000 kilowatts.

22 (18) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and
23 immediately responsive to frequency control and that is needed to maintain system frequency stability during
24 emergency conditions, unforeseen load swings, and generation disruptions.

25 (19) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the
26 community renewable energy project and other eligible renewable resources that are:

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

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

29 (c) under common ownership."
30

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

2 **"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided
3 in 69-3-2007 and subsections (11) through (14) of this section, a graduated renewable energy standard is
4 established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of
5 this section.

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

9 (3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public
10 utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure a
11 minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

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

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

17 (4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each
18 public utility and competitive electricity supplier, except as provided in subsections (13) and (14), shall procure
19 a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

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

23 (ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under
24 subsection (3)(b).

25 (c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on
26 each public utility's proportion of the total retail sales of electrical energy by public utilities in Montana in the
27 calendar year 2014.

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

1 customers in Montana.

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

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

6 (7) (a) In order to meet the standards established in subsections (2) through (4), a public utility or
7 competitive electricity supplier may only use:

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

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

12 (iii) any combination of subsections (7)(a)(i) and (7)(a)(ii).

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

16 (c) Renewable energy credits sold through a voluntary service such as the one provided for in
17 69-8-210(2) may not be applied against a public utility's or competitive electricity supplier's obligation to meet the
18 standards established in subsections (2) through (4).

19 (d) Unless a public utility is exempt from the standards established in subsections (2) through (4) in
20 accordance with subsection (13), beginning January 1, 2015, a public utility shall credit customers with the
21 proceeds from the sale of all renewable energy credits that are attributable to a hydroelectric project and are not:

22 (i) used in order to meet the standards established in subsections (2) through (4); or

23 (ii) carried forward in accordance with subsection (9).

24 (E) BEGINNING JANUARY 1, 2015, IF A PUBLIC UTILITY USES HYDROELECTRIC PROJECTS AND THE ASSOCIATED
25 RENEWABLE ENERGY CREDITS IN ORDER TO MEET THE STANDARDS ESTABLISHED IN SUBSECTIONS (2) THROUGH (4) AND
26 SELLS RENEWABLE ENERGY CREDITS THAT ARE ATTRIBUTABLE TO A RENEWABLE ENERGY PROJECT CERTIFIED BY THE
27 COMMISSION AS AN ELIGIBLE RENEWABLE RESOURCE, THE PUBLIC UTILITY SHALL CREDIT CUSTOMERS WITH THE PROCEEDS
28 FROM THE SALE OF THOSE RENEWABLE ENERGY CREDITS THAT ARE ATTRIBUTABLE TO THE RENEWABLE ENERGY PROJECT
29 AND ARE NOT:

30 (I) USED IN ORDER TO MEET THE STANDARDS ESTABLISHED IN SUBSECTIONS (2) THROUGH (4); OR

1 (II) CARRIED FORWARD IN ACCORDANCE WITH SUBSECTION (9).

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

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

8 (10) Except as provided in subsections (11) and (12), if a public utility or competitive electricity supplier
9 is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public
10 utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10
11 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed
12 to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties
13 must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

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

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

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

24 (12) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions
25 of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through
26 (4).

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

29 (13) A public utility that served 50 or fewer retail customers in Montana on December 31, 2012, is exempt
30 from the requirements of subsections (2) through (4).

1 (14) (a) A competitive electricity supplier with four or fewer small customers in Montana is exempt from
2 the requirements of subsections (2) through (4).

3 (b) For the purposes of determining the number of small customers served by a competitive electricity
4 supplier, an entity that purchases electricity for commercial or industrial use and does not resell electricity to
5 others is one small customer regardless of the number of its metered locations."

6

7 **Section 3.** Section 69-3-2006, MCA, is amended to read:

8 **"69-3-2006. Commission authority -- rulemaking authority.** (1) The commission has the authority to
9 generally implement and enforce the provisions of this part.

10 (2) The commission shall adopt rules before June 1, 2006, to:

- 11 (a) select a renewable energy credit tracking system to verify compliance with this part;
12 (b) establish a system by which renewable resources become certified as eligible renewable resources;
13 (c) define the process by which waivers from full compliance with this part may be granted;
14 (d) establish procedures under which contracts for eligible renewable resources and renewable energy
15 credits may receive advanced approval;
16 (e) define the requirements governing renewable energy procurement plans and annual reports; and
17 (f) generally implement and enforce the provisions of this part.

18 ~~(3) The commission may adopt rules to ensure that the calculation of energy generation and the
19 renewable energy credits for eligible renewable resources under 69-3-2003(10)(d)(iii) reflects the actual electrical
20 production from the expansion as typically reduced by seasonal water conditions."~~

21

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

23 **"90-3-1003. Research and commercialization account -- use.** (1) The research and commercialization
24 account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research
25 and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

26 (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth
27 opportunities for Montana and constitute a public purpose.

28 (3) The account may be used only for:

29 (a) loans that are to be used for research and commercialization projects to be conducted at research
30 and commercialization centers located in Montana;

1 (b) grants that are to be used for production agriculture research, development, and commercialization
2 projects, clean coal research and development projects, or renewable resource research and development
3 projects to be conducted at research and commercialization centers located in Montana;

4 (c) matching funds for grants from nonstate sources that are to be used for research and
5 commercialization projects to be conducted at research and commercialization centers located in Montana;

6 (d) the Montana food and agricultural development program provided for in 80-11-901; or

7 (e) administrative costs that are incurred by the board in carrying out the provisions of this part.

8 (4) At least \$195,000 of the account funds must be distributed on an annual basis to the department of
9 agriculture to support and administer the Montana food and agricultural development program provided for in
10 80-11-901.

11 (5) (a) At least 30% of the account funds approved for research and commercialization projects must
12 be directed toward projects that enhance clean coal research and development or renewable resource research
13 and development.

14 (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and
15 development or renewable resource research and development, subsection (5)(a) does not apply.

16 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total
17 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

18 (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research
19 and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

20 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

21 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy
22 or promise for commercial development of discoveries;

23 (c) whether the project employs or otherwise takes advantage of existing research and commercialization
24 strengths within the state's public university and private research establishment;

25 (d) whether the project involves a realistic and achievable research project design;

26 (e) whether the project develops or employs an innovative technology;

27 (f) verification that the project activity is located within the state;

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

30 (h) verification that the project was awarded based on its scientific merits, following review by a

1 recognized federal agency, philanthropic foundation, or other private funding source; and

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

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

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

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

17 (11) For the purposes of this section:

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

21 (b) "renewable resource research and development" means research and development that would
22 advance:

23 (i) the use of any of the sources of energy listed in ~~69-3-2003(10)~~ 69-3-2003(10)(a) to produce electricity;
24 and

25 (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources
26 as an energy source well beyond the current level of technology used in commercial service."
27

28 **Section 5.** Section 90-4-1005, MCA, is amended to read:

29 **"90-4-1005. Energy development and demonstration grant program.** (1) There is an energy
30 development and demonstration grant program within the department of environmental quality to fund technology

1 development and demonstration:

2 (a) advancing the development and utilization of energy storage systems, including but not limited to
3 mediums, such as accumulators, fuel cells, and batteries, that store energy that may be drawn upon at a later
4 date for use;

5 (b) developing storage systems specifically designed to store energy generated from eligible renewable
6 resources ~~as defined listed in 69-3-2003~~ 69-3-2003(10)(a), including but not limited to compressed air energy
7 storage systems;

8 (c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage
9 systems beyond the current level of technology; and

10 (d) advancing the development of alternative energy systems as defined in 15-32-102.

11 (2) Entities that may be eligible for grants include but are not limited to units of the Montana university
12 system, agricultural research centers, or private entities or research centers.

13 (3) Money appropriated to the department of environmental quality for the purpose of the energy
14 development and demonstration grant program may be used by the department for providing individual grants
15 in amounts up to \$500,000 and for administrative costs of 1% of the grant award.

16 (4) The grant application may include:

17 (a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of
18 advancing energy storage or alternative energy systems;

19 (b) a business plan to allow a reasonable determination regarding the financial feasibility of the project;
20 and

21 (c) a reporting process to ensure progress toward project goals."
22

23 **NEW SECTION. Section 6. Notification to tribal governments.** The secretary of state shall send a
24 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
25 Chippewa tribe.

26

27 **NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.
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30 **NEW SECTION. Section 8. Retroactive applicability.** [This act] applies retroactively, within the
31 meaning of 1-2-109, to the compliance year beginning January 1, 2015.

31

- END -