

1 HOUSE BILL NO. 643

2 INTRODUCED BY C. JUNEAU, SMITH

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO ELECTRIC ENERGY; CLARIFYING
5 THE DEFINITION OF "PROJECT" UNDER THE ECONOMIC DEVELOPMENT BOND LAWS TO ALLOW
6 ELECTRIC GENERATION FACILITIES AND TRANSMISSION LINES TO BE FINANCED UNDER THE LAWS;
7 MODIFYING THE CREDIT LIMITATION AND CARRYOVER PROVISIONS FOR WIND-GENERATED
8 ELECTRICITY ON MONTANA RESERVATION LANDS; EXEMPTING ELECTRICITY GENERATED ON
9 MONTANA RESERVATION LANDS FROM THE WHOLESALE ENERGY TAX FOR OUT-OF-STATE
10 DISTRIBUTION; AMENDING SECTIONS 15-32-403, 15-32-404, 15-72-104, AND 90-5-101, MCA; AND
11 PROVIDING EFFECTIVE DATES."

12

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

14

15 **Section 1.** Section 15-32-403, MCA, is amended to read:

16 **"15-32-403. Limitation on credit.** (1) Except as provided in subsection (2), ~~Whenever~~ whenever
17 any federal wind energy tax credits for a system that generates electricity by means of wind power are
18 allowed or allowable under section 48(a) of the Internal Revenue Code (26 U.S.C. 48(a)) or any other
19 federal law, the state credit allowed by 15-32-402 must be reduced by the amount of federal credits so
20 that the effective credit does not exceed 60% of the eligible costs.

21 (2) An individual, corporation, partnership, or small business corporation, as defined in 15-31-201,
22 is exempt from the provisions of subsection (1) of this section if the individual, corporation, partnership,
23 or small business corporation:

24 (a) invests in a commercial system located within the exterior boundaries of a Montana Indian
25 reservation, which commercial system is 5 megawatts or larger in size; and

26 (b) signs an employment agreement with the tribal government of the reservation where the
27 commercial system would be constructed regarding the training and employment of tribal members in the
28 construction, operation, and maintenance of the commercial system-; AND

29 (c) OFFERS CONTRACTS WITH A DURATION OF AT LEAST 5 YEARS TO SELL AT LEAST 33% OF THAT COMMERCIAL
30 SYSTEM'S NET GENERATING OUTPUT AT THE COST OF PRODUCTION PLUS A REASONABLE RATE OF RETURN AS DESIGNATED

1 BY THE PUBLIC SERVICE COMMISSION TO CUSTOMERS FOR USE WITHIN THE STATE OF MONTANA.

2 (3) THE COST OF PRODUCTION MUST BE DETERMINED BY DIVIDING THE COST AND OPERATION OF THE
 3 COMMERCIAL SYSTEM OVER AN APPROPRIATE TIME PERIOD BY THE KILOWATT OUTPUT OF THE SYSTEM."

4

5 **Section 2.** Section 15-32-404, MCA, is amended to read:

6 **"15-32-404. Carryover of credit.** (1) The tax credit allowed under 15-32-402 is to be deducted
 7 from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the ~~taxable~~ tax year in
 8 which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit
 9 exceeds the taxpayer's tax liability for the ~~taxable~~ tax year, the amount that exceeds the tax liability may
 10 be carried over for credit against the taxpayer's tax liability in the next succeeding ~~taxable~~ tax year or
 11 years until the total amount of the tax credit, subject to the limitation of 15-32-403, has been deducted
 12 from tax liability. However, except as provided in subsection (2), no a credit may not be carried beyond
 13 the seventh ~~taxable~~ tax year succeeding the ~~taxable~~ tax year in which the equipment was placed in
 14 service.

15 (2) A credit may be extended through the 15th tax year succeeding the tax year in which the
 16 equipment was placed in service if an individual, corporation, partnership, or small business corporation,
 17 as defined in 15-31-201:

18 (a) invests in a commercial system located within the exterior boundaries of a Montana Indian
 19 reservation, which commercial system is 5 megawatts or larger in size; and

20 (b) signs an employment agreement with the tribal government of the reservation where the
 21 commercial system would be constructed regarding the training and employment of tribal members in the
 22 construction, operation, and maintenance of the commercial system."

23

24 **Section 3.** Section 15-72-104, MCA, is amended to read:

25 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)
 26 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity
 27 transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per
 28 kilowatt hour of electricity transmitted by a transmission services provider in the state.

29 (b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person
 30 owning or operating the electrical generation facility producing the electricity. The transmission services

1 provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission
2 lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced
3 by 5% to compensate for transmission line losses.

4 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution
5 services provider. The transmission services provider shall collect the tax based upon the amount of
6 kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a
7 refund for overpayment of taxes pursuant to 15-72-116.

8 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the
9 distribution services provider. The transmission services provider shall collect the tax based upon the
10 amount of kilowatt hours of electricity delivered to the distribution services provider.

11 (e) For electricity delivered to a distribution services provider that is a rural electric cooperative
12 for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter
13 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect
14 the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider
15 that is attributable to customers that have opted for customer choice.

16 (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was
17 owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services
18 provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours
19 of electricity delivered to the distribution services provider.

20 (2) (a) If more than one transmission services provider transmits electricity, the last transmission
21 services provider transmitting or delivering the electricity shall collect the tax.

22 (b) If the transmission services provider is an agency of the United States government, the
23 distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of
24 this part.

25 (c) If an electrical generation facility located within the state produces electricity for sale inside
26 and outside the state, sales within the state are considered to have come from electricity produced within
27 the state for purposes of the tax imposed by this section.

28 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is
29 exempt from the tax imposed by this section.

30 (b) Electricity produced in the state by an agency of the ~~of the~~ United States government or

1 ELECTRICITY PRODUCED FROM AN ELECTRIC ENERGY GENERATION FACILITY AS DEFINED IN 90-5-101(3) CONSTRUCTED
 2 AFTER [THE EFFECTIVE DATE OF SECTION 4] THAT IS WITHIN THE EXTERIOR BOUNDARIES OF A MONTANA INDIAN
 3 RESERVATION FOR DELIVERY OUTSIDE OF THE STATE IS EXEMPT FROM THE TAX IMPOSED BY THIS SECTION.

4 (c) Electricity delivered to a distribution services provider that is a municipal utility described in
 5 69-8-103(5)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is
 6 exempt from the tax imposed by this section.

7 (d) Electricity delivered to a purchaser that receives its power directly from a transmission or
 8 distribution facility owned by an entity of the United States government on or before May 2, 1997, or
 9 electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of
 10 the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

11 [(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000
 12 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the
 13 tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract
 14 or contracts that establish the purchase price or prices of electricity. The exemption allowed by this
 15 subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing
 16 contract or existing contracts.]

17 (4) A distribution services provider is allowed to recover the tax imposed by this section and the
 18 administrative costs to comply with this part in its rates. (Bracketed language terminates January 1,
 19 2003--sec. 40, Ch. 556, L. 1999.)"

20

21 **Section 4.** Section 90-5-101, MCA, is amended to read:

22 **"90-5-101. Definition of terms.** As used in this part, unless the context otherwise requires, the
 23 following definitions apply:

24 (1) "Agricultural enterprises" ~~include~~ includes but ~~are~~ is not limited to producing, warehousing,
 25 storing, fattening, treating, handling, distributing, or selling farm products or livestock.

26 (2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality
 27 or county under the authority of this part, including without limitation short-term bonds or notes issued
 28 in anticipation of the issuance of long-term bonds or notes.

29 (3) "Electric energy generation facility" means any combination of a physically connected
 30 generator or generators, associated prime movers, and other associated property and transmission facilities

1 and upgrades and improvements of transmission facilities, including appurtenant land and improvements
 2 and personal property, that are normally operated together to produce and transfer electric power. The
 3 term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired
 4 steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators
 5 that are driven by falling water.

6 ~~(3)~~(4) "Governing body" means the board or body in which the general legislative powers of the
 7 municipality or county are vested.

8 ~~(4)~~(5) "Higher education facilities" means any real or personal properties required or useful for the
 9 operation of an institution of higher education.

10 ~~(5)~~(6) "Institution of higher education" means any private, nonprofit corporation or institution
 11 within the state of Montana:

12 (a) authorized to provide or operate educational facilities; and

13 (b) providing a program of education beyond the high school level.

14 ~~(6)~~(7) "Mortgage" means a mortgage or deed of trust or other security device.

15 ~~(7)~~(8) "Municipality" means any incorporated city or town in the state.

16 ~~(8)~~(9) "Project" means any land; any building or other improvement; and any other real or personal
 17 properties considered necessary in connection with the improvement, whether or not now in existence,
 18 ~~which that~~ must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;
 19 recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing,
 20 hospitals, long-term care facilities, community-based facilities for individuals who are persons with
 21 developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities;
 22 ~~small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; electric energy~~
 23 generation facilities; and any combination of these projects."

24

25 NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send
 26 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little
 27 Shell band of Chippewa.

28

29 NEW SECTION. Section 6. Effective dates. (1) [Sections 4 and 5 and this section] are effective
 30 on passage and approval.

