

1 HOUSE BILL NO. 646

2 INTRODUCED BY G. GOLIE, GILLAN, BIXBY, BOHLINGER, BRANAE, CALLAHAN, CARNEY,
3 CHRISTIAENS, CYR, DELL, FACEY, FRITZ, GALVIN-HALCRO, GUTSCHE, HEDGES, KEANE,
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6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROPERTY TAX LAWS RELATED TO ELECTRICAL
8 GENERATION FACILITIES; EXEMPTING AN ELECTRICAL GENERATION FACILITY AND RELATED
9 DELIVERY FACILITIES THAT OFFER 75 PERCENT OF THEIR NET GENERATING OUTPUT FOR IN-STATE
10 USE AT A COST-BASED RATE FROM PROPERTY TAXATION FOR A SPECIFIC PERIOD OF TIME;
11 REQUIRING THAT IF AN OWNER OR OPERATOR IS EXEMPT FROM PROPERTY TAXATION FOR A
12 SPECIFIC PERIOD OF TIME, ANY OUT-OF-STATE SALES OF ELECTRICITY THAT ARE ABOVE
13 COST-BASED RATES MUST BENEFIT IN-STATE PURCHASERS; AUTHORIZING A LOCAL
14 GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL INFRASTRUCTURE AND SCHOOL
15 DISTRICTS THAT ARE IMPACTED BY A FACILITY EXEMPTED FROM PROPERTY TAXATION; AND
16 PROVIDING A DELAYED EFFECTIVE DATE."

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

19

20 NEW SECTION. **Section 1. Electrical generation and transmission facility exemption -- definitions.**

21 (1) An electrical generation facility and related delivery facilities constructed in the state of Montana after
22 [the effective date of this act] may be exempt from property taxation for a ~~10-year~~ 2-YEAR period beginning
23 on the date that an owner or operator of an electrical generation facility and related delivery facilities
24 commences to construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from
25 property taxation, an owner and operator of an electrical generation facility and related delivery facilities
26 shall offer contracts to sell 75% of that facility's net generating output at a cost-based rate, which
27 includes a ~~reasonable~~ rate of return NOT TO EXCEED 12%, to customers for use within the state of Montana
28 for a 20-year period from the date of the facility's completion.

29 (2) To the extent that 75% of the net generating output of the facility is not contracted for
30 delivery to Montana consumers for a contract term extending 20 years from the completion of the facility,

1 surplus capacity may be marketed outside of the state. On an annual basis, surplus capacity must be
 2 offered for use in Montana on a declining contract term basis for the remainder of the 20-year period. To
 3 the extent that out-of-state sales OF SURPLUS CAPACITY are above cost-based rates, those revenues must
 4 accrue to the benefit of subscribed Montana ratepayers.

5 (3) (a) Except as provided in subsection (3)(b), if an owner or operator signs a contract to sell
 6 power within the state as required in subsection (1) and then fails to perform the contract during the first
 7 10-year period, the ~~10-year~~ 2-YEAR property tax exemption in subsection (1) is void and the property is
 8 subject to a rollback tax as provided in [section 2].

9 (b) If an owner or operator fails to perform the contract due to earthquakes or other acts of God,
 10 theft, sabotage, acts of war, other social instabilities, or ~~the failure of reasonably maintained~~ equipment
 11 FAILURE, the ~~10-year~~ 2-YEAR property tax exemption in ~~[section 1]~~ SUBSECTION (1) is not void and the owner
 12 or operator is not subject to the rollback tax as provided in [section 2].

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

14 (A) "AVERAGE MEGAWATT" MEANS THE ANNUAL NET OUTPUT OF ELECTRICITY IN MEGAWATT HOURS DIVIDED
 15 BY HOURS IN A YEAR.

16 ~~(a)~~(B) (i) "Electrical generation facility" means any combination of a physically connected generator
 17 or generators, associated prime movers, and other associated property, including appurtenant land and
 18 improvements and personal property, that are normally operated together to produce ~~5~~ 3 20 average
 19 megawatts or more of electric power. The term includes but is not limited to generating facilities that
 20 produce electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources,
 21 fuel cells, or turbine generators that are driven by falling water.

22 (ii) The term does not include:

23 (A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
 24 purposes; or

25 (B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that
 26 is owned and operated by a person not primarily engaged in the generation or sale of electricity other than
 27 electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

28 ~~(b)~~(C) "Related delivery facilities" means transmission facilities necessary to deliver the energy
 29 from the electrical generation facility to the existing network transmission system.

30 ~~(c)~~(D) "Surplus capacity" means that portion of the 75% of net generating output not contracted

1 for use in Montana.

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3 **NEW SECTION. Section 2. Rollback tax -- computation.** (1) (a) If an owner or operator fails to
4 perform the contract pursuant to [section 1(1)], the property is subject to a rollback tax in addition to the
5 property tax levied on the property. The rollback tax is a lien on the property and is due and payable by
6 the owner of the property within 30 days after failure to perform the contract.

7 (b) As used in this section, "rollback" means the period of time that an owner or operator of an
8 electrical generation facility was exempt from property taxes pursuant to ~~[section 2(2)(b)]~~ [SECTION 1].

9 (2) The department shall determine the amount of rollback tax due on the property by:

10 (a) determining the taxable value of the property;

11 (b) multiplying this value by the sum of the annual mill levies that would have been levied had the
12 property exemption pursuant to [section 1] not been applied in the taxing jurisdiction in which the land is
13 located during the rollback period; and

14 (c) subtracting from this figure the actual property tax paid on the property during this period less
15 any impact fee paid pursuant to [section 3], if any.

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17 **NEW SECTION. Section 3. Electrical generation facility impact fee for local government units and**
18 **school districts.** (1) If an owner or operator of an electrical generation facility as defined in [section 1] is
19 exempt from property taxation pursuant to [section 1], the owner or operator of the facility is subject to
20 an initial local government and local school infrastructure impact fee, not to exceed 0.5% of the total cost
21 of constructing the electrical generation facility in the first year and not to exceed 0.05% of the total cost
22 of constructing the electrical generation facility in each successive year through the term of the property
23 tax exemption taken pursuant to [section 1].

24 (2) Except as provided in subsection (4), the jurisdictional area of a local government unit in which
25 an electrical generation facility is located is the local governmental unit that is authorized to assess the
26 impact fee pursuant to subsection (1).

27 (3) Thirty percent of the impact fee must be distributed to the local governmental unit for
28 infrastructure impacts and 70% of the impact fee must be distributed to the impacted school districts.

29 (4) If the facility is located within the jurisdictional areas of multiple local governmental units, the
30 local government units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to

1 determine which local governmental unit is authorized to assess the impact fee and how the fee should
2 be distributed among the various local governmental units and impacted school districts pursuant to the
3 percentage allocation required in subsection (3).

4 (5) For purposes of this section, a "local governmental unit" means a county, city, or town.

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6 NEW SECTION. **Section 4. Codification instruction.** (1) [Sections 1 through 3] are intended to be
7 codified as an integral part of Title 15, chapter 6, part 2, and the provisions of Title 15, chapter 6, part
8 2, apply to [sections 1 through 3].

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10 NEW SECTION. **Section 5. Effective date.** [This act] is effective January 1, 2002.

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