

1 SENATE BILL NO. 508

2 INTRODUCED BY M. COLE, MATTHEWS, BECK, BIXBY, BOHLINGER, R. BROWN, CURTISS,
 3 DEPRATU, DEVLIN, EKEGREN, FORRESTER, GILLAN, GOLIE, HEDGES, KITZENBERG, LENHART,
 4 MAHLUM, MCKENNEY, OLSON, ROUSH, SMITH, TESTER, F. THOMAS, WITT, WOLERY

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROPERTY TAX LAWS RELATED TO ELECTRICAL
 7 GENERATION FACILITIES; EXEMPTING AN ELECTRICAL GENERATION FACILITY AND RELATED
 8 DELIVERY FACILITIES THAT OFFER ~~75~~ 50 PERCENT OF THEIR NET GENERATING OUTPUT ~~FOR IN-STATE~~
 9 ~~USE~~ AT A COST-BASED RATE FROM PROPERTY TAXATION FOR A SPECIFIC PERIOD OF TIME;
 10 AUTHORIZING A LOCAL GOVERNMENTAL UNIT TO ASSESS AN IMPACT FEE FOR LOCAL
 11 ~~INFRASTRUCTURE~~ GOVERNMENTAL UNITS AND SCHOOL DISTRICTS THAT ARE IMPACTED BY A
 12 FACILITY EXEMPTED FROM PROPERTY TAXATION; PROVIDING FOR INTERLOCAL IMPACT
 13 AGREEMENTS; AND PROVIDING ~~A DELAYED~~ AN IMMEDIATE EFFECTIVE DATE."

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

16
 17 NEW SECTION. **Section 1. Electrical generation and transmission facility exemption -- definitions.**

18 (1) (A) ~~An~~ EXCEPT AS PROVIDED IN SUBSECTIONS (1)(B) AND (3), AN electrical generation facility and related
 19 delivery facilities constructed in the state of Montana after [the effective date of this act] AND BEFORE
 20 JANUARY 1, 2006, may be exempt from property taxation for a 10-year period beginning on the date that
 21 an owner or operator of an electrical generation facility and related delivery facilities commences to
 22 construct the facility as defined in 75-20-104(6)(a) and (6)(b). In order to be exempt from property
 23 taxation, an owner and operator of an electrical generation facility and related delivery facilities shall offer
 24 contracts to sell ~~75%~~ 50% of that facility's net generating output at a cost-based rate, which includes a
 25 ~~reasonable~~ rate of return NOT TO EXCEED 12%, to customers ~~for use within the state of Montana~~ for a
 26 20-year period from the date of the facility's completion.

27 (B) THE PROPERTY TAX EXEMPTION ALLOWED UNDER SUBSECTION (1)(A) IS LIMITED TO A 5-YEAR PERIOD FOR
 28 GENERATION FACILITIES POWERED BY OIL OR GAS TURBINES.

29 (2) To the extent that ~~75%~~ 50% of the net generating output of the facility is not contracted for
 30 delivery to ~~Montana~~ consumers for a contract term extending 5 YEARS TO 20 years from the completion

1 of the facility, AS DETERMINED BY THE OWNER, SURPLUS CAPACITY MUST BE OFFERED ON A DECLINING CONTRACT TERM
 2 BASIS FOR THE REMAINDER OF THE CONTRACT PERIOD AT A COST-BASED RATE THAT INCLUDES A RATE OF RETURN NOT
 3 TO EXCEED 12%. SURPLUS CAPACITY THAT IS NOT CONTRACTED FOR IN THIS FASHION MAY BE SOLD AT MARKET RATES.
 4 ~~surplus capacity may be marketed outside of the state. On an annual basis, surplus capacity must be~~
 5 ~~offered for use in Montana on a declining contract term basis for the remainder of the 20-year period.~~

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

11 (B) EXCEPT AS PROVIDED IN SUBSECTION (3)(C), IF AN OWNER OR OPERATOR OF PROPERTY EXEMPT FROM
 12 TAXATION UNDER SUBSECTION (1)(B) SIGNS A CONTRACT TO SELL POWER AS REQUIRED IN SUBSECTION (1) AND THEN
 13 FAILS TO PERFORM THE CONTRACT DURING THE FIRST 5-YEAR PERIOD, THE 5-YEAR PROPERTY TAX EXEMPTION IN
 14 SUBSECTION (1) IS VOID AND THE PROPERTY IS SUBJECT TO A ROLLBACK TAX AS PROVIDED IN [SECTION 2].

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

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

20 (a) (i) "Electrical generation facility" means any combination of a physically connected generator
 21 or generators, associated prime movers, and other associated property, including appurtenant land and
 22 improvements and personal property, that are normally operated together to produce ~~100~~ 20 average
 23 megawatts or more of electric power. The term ~~includes but is not~~ limited to generating facilities that
 24 produce electricity from coal-fired steam turbines, oil or gas turbines, ~~wind turbines, solar power sources,~~
 25 ~~fuel cells,~~ or turbine generators that are driven by falling water.

26 (ii) The term does not include:

27 (A) electrical generation facilities used for noncommercial purposes or exclusively for agricultural
 28 purposes; or

29 (B) a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that
 30 is owned and operated by a person not primarily engaged in the generation or sale of electricity other than

1 electric power from a small power production facility and that is classified under 15-6-134 and 15-6-138.

2 (b) "Related delivery facilities" means transmission facilities necessary to deliver the energy from
3 the electrical generation facility to the existing network transmission system.

4 (c) "Surplus capacity" means that portion of the ~~75%~~ 50% of net generating output not
5 contracted for use in ~~Montana~~.

6 (5) THE DEPARTMENT SHALL APPRAISE EXEMPT ELECTRICAL GENERATION FACILITIES FOR EACH YEAR THAT THE
7 PROPERTY IS EXEMPT AND DETERMINE THE TAXABLE VALUE OF THE PROPERTY AS IF IT WERE SUBJECT TO PROPERTY
8 TAXATION. THE TAXABLE VALUE DETERMINED BY THE DEPARTMENT MUST BE INCLUDED AS TAXABLE VALUATION FOR THE
9 PURPOSES OF COUNTY CLASSIFICATION UNDER 7-1-2111.

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11 NEW SECTION. Section 2. Rollback tax -- computation. (1) (a) If an owner or operator fails to
12 perform the contract pursuant to [section 1(1)], the property is subject to a rollback tax in addition to the
13 property tax levied on the property. The rollback tax is a lien on the property and is due and payable by
14 the owner of the property within 180 days after failure to perform the contract.

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

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

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

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

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

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25 NEW SECTION. Section 3. Electrical generation facility impact fee for local government units and
26 school districts. (1) (A) If an owner or operator of an electrical generation facility as defined in [section 1]
27 is exempt from property taxation pursuant to [section 1], the owner or operator of the facility is subject
28 to an initial local government and local school ~~infrastructure~~ impact fee, ~~not to exceed 0.5% 1%~~ of the
29 total cost of constructing the electrical generation facility in the first year and ~~not to exceed 0.05% 0.5%~~
30 of the total cost of constructing the electrical generation facility in each successive year through the term

1 ~~of the property tax exemption taken pursuant to [section 1].~~ IN THE FIRST 2 YEARS OF CONSTRUCTION, THE
2 IMPACT FEE MAY NOT EXCEED 0.75% OF THE TOTAL COST OF CONSTRUCTING THE ELECTRICAL GENERATION FACILITY.

3 (B) IN THE CASE OF A GENERATION FACILITY POWERED BY OIL OR GAS TURBINES, THE IMPACT FEE MAY NOT
4 EXCEED 0.1% OF THE TOTAL CONSTRUCTION COST IN THE REMAINING 3 YEARS OF THE TAX EXEMPTION PERIOD AS
5 PROVIDED IN [SECTION 1].

6 (C) IN THE CASE OF ANY OTHER GENERATION FACILITY, THE IMPACT FEE MAY NOT EXCEED 0.1% OF THE TOTAL
7 CONSTRUCTION COST IN THE SUBSEQUENT 4 YEARS AND MAY NOT EXCEED 0.08% OF THE TOTAL CONSTRUCTION COST
8 IN THE REMAINING 4 YEARS OF THE TAX EXEMPTION PERIOD AS PROVIDED IN [SECTION 1].

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

12 (3) ~~Thirty FIFTY percent of the~~ THE impact fee must be distributed to the local governmental unit
13 for ~~infrastructure~~ LOCAL impacts and ~~70% 50%~~ of the impact fee must be distributed to the impacted
14 school districts.

15 (4) ~~IF~~ SUBJECT TO THE CONDITIONS OF SUBSECTION (5) AND [SECTION 4], IF the facility is located within
16 the jurisdictional areas of multiple local governmental units OF THE COUNTY OR CONTIGUOUS COUNTIES, the local
17 governmental units may enter into an interlocal agreement under Title 7, chapter 11, part 1, to determine
18 ~~which local governmental unit is authorized to assess the impact fee and~~ how the fee should be distributed
19 among the various local governmental units and impacted school districts pursuant to the percentage
20 allocation required in subsection (3). THE COUNTY IN WHICH THE ELECTRICAL GENERATION FACILITY IS LOCATED IS
21 AUTHORIZED TO ASSESS THE FEE UNDER THE INTERLOCAL AGREEMENT.

22 (5) For purposes of this section, a "local governmental unit" means a county, city, or town. IF AN
23 EXEMPT ELECTRICAL GENERATION FACILITY IS LOCATED WITHIN A TAX INCREMENT FINANCING DISTRICT, THE TAX
24 INCREMENT FINANCING DISTRICT IS CONSIDERED A LOCAL GOVERNMENT UNIT AND IS ENTITLED TO THE DISTRIBUTION OF
25 IMPACT FEES UNDER THIS SECTION. A TAX INCREMENT FINANCING DISTRICT MAY NOT RECEIVE A DISTRIBUTION OF IMPACT
26 FEES IF AN EXEMPT ELECTRICAL GENERATION FACILITY IS NOT LOCATED WITHIN THE DISTRICT.

27 (6) IMPACT FEES IMPOSED UNDER SUBSECTION (4) MUST BE DEPOSITED IN THE COUNTY ELECTRICAL ENERGY
28 GENERATION RESERVE ACCOUNT ESTABLISHED IN [SECTION 4] FOR THE COUNTY IN WHICH THE ELECTRICAL GENERATION
29 FACILITY IS LOCATED. MONEY IN THE ACCOUNT MAY NOT BE EXPENDED UNTIL THE MULTIPLE LOCAL GOVERNMENTS HAVE
30 ENTERED INTO AN INTERLOCAL AGREEMENT.

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NEW SECTION. SECTION 4. ELECTRICAL ENERGY GENERATION IMPACT FEE RESERVE ACCOUNT. (1) THE GOVERNING BODY OF A COUNTY RECEIVING IMPACT FEES UNDER [SECTION 3(4)] SHALL ESTABLISH AN ELECTRICAL ENERGY GENERATION IMPACT FEE RESERVE ACCOUNT TO BE USED TO HOLD THE COLLECTIONS. MONEY HELD IN THE ACCOUNT MAY NOT BE CONSIDERED AS CASH BALANCE FOR THE PURPOSE OF REDUCING MILL LEVIES.

(2) MONEY MAY BE EXPENDED FROM THE ACCOUNT FOR ANY PURPOSE OF AN INTERLOCAL AGREEMENT PROVIDED FOR IN [SECTION 3]. THE COUNTY TREASURER SHALL DISTRIBUTE MONEY IN THE ACCOUNT TO EACH LOCAL GOVERNMENT UNIT ACCORDING TO THE TERMS OF THE INTERLOCAL AGREEMENT.

(3) MONEY IN THE ACCOUNT MUST BE INVESTED AS PROVIDED BY LAW. INTEREST AND INCOME FROM THE INVESTMENT OF THE ELECTRICAL ENERGY GENERATION RESERVE ACCOUNT MUST BE CREDITED TO THE ACCOUNT.

NEW SECTION. SECTION 5. ELECTRICAL GENERATION IMPACT FUND. (1) A LOCAL GOVERNMENT UNIT, AS DEFINED IN [SECTION 3], AND A SCHOOL DISTRICT THAT RECEIVES IMPACT FEES PURSUANT TO [SECTION 3(2)] OR [SECTION 4] SHALL ESTABLISH AN ELECTRICAL GENERATION IMPACT FUND FOR THE DEPOSIT OF THE FEES. A LOCAL GOVERNMENT UNIT OR SCHOOL DISTRICT MAY RETAIN THE MONEY IN THE FUND FOR ANY TIME PERIOD CONSIDERED APPROPRIATE BY THE GOVERNING BODY OF THE LOCAL GOVERNMENT UNIT OR SCHOOL DISTRICT. MONEY RETAINED IN THE FUND MAY NOT BE CONSIDERED AS FUND BALANCE FOR THE PURPOSE OF REDUCING MILL LEVIES.

(2) MONEY MAY BE EXPENDED FROM THE FUND FOR ANY PURPOSE ALLOWED BY LAW.

(3) MONEY IN THE FUND MUST BE INVESTED AS PROVIDED BY LAW. INTEREST AND INCOME EARNED ON THE INVESTMENT OF MONEY IN THE FUND MUST BE CREDITED TO THE FUND.

(4) THE FUND MUST BE FINANCIALLY ADMINISTERED AS A NONBUDGETED FUND BY A COUNTY UNDER THE PROVISIONS OF TITLE 7, CHAPTER 6, PART 23, BY A CITY OR TOWN UNDER THE PROVISIONS OF TITLE 7, CHAPTER 6, PART 42, OR BY A SCHOOL DISTRICT UNDER THE PROVISIONS OF TITLE 20, CHAPTER 9, PART 5.

NEW SECTION. SECTION 6. Codification instruction. [Sections 1 through 3 5] are intended to be codified as an integral part of Title 15, chapter 6 24, part 2, and the provisions of Title 15, chapter 6 24, part 2, apply to [sections 1 through 3 5].

NEW SECTION. SECTION 7. Effective date. [This act] is effective January 1, 2002 ON PASSAGE AND APPROVAL.

- END -

