

SENATE BILL NO. 512

INTRODUCED BY M. HALLIGAN, BECK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATED TO ELECTRICAL ENERGY;
5 IMPOSING AN ELECTRICAL ENERGY ~~EXCISE~~ EXCESS REVENUE TAX; PROVIDING EXEMPTIONS;
6 CREATING AN ELECTRICAL ENERGY ASSISTANCE AND BUSINESS RECRUITMENT STATE SPECIAL
7 REVENUE ACCOUNT; PROVIDING FOR AFFORDABLE AND STABLE ELECTRICAL ENERGY PRICES BY
8 PROVIDING AN OFFSET TO HIGHER ELECTRICAL ENERGY PRICES FOR CUSTOMERS; ALLOWING THE
9 PUBLIC SERVICE COMMISSION TO ~~RECRUIT~~ ASSIST IN THE RECRUITMENT OF LARGE EMPLOYERS AND
10 ~~TO EXPAND~~ IN THE EXPANSION OF EMPLOYMENT BASED ON STABLE ENERGY PRICES; ALLOWING A
11 PORTION OF THE ELECTRICAL ENERGY ~~EXCISE~~ EXCESS REVENUE TAX TO BE USED FOR LOW-INCOME
12 ENERGY ASSISTANCE; ALLOWING THE PUBLIC SERVICE COMMISSION TO PROVIDE LOW-INTEREST
13 LOANS FOR ELECTRICAL GENERATION AND TRANSMISSION FACILITIES; PROVIDING A STATUTORY
14 APPROPRIATION; AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
15 DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

19 NEW SECTION. Section 1. Electrical energy ~~excise~~ EXCESS REVENUE tax -- rates of tax. (1) There
20 is an ~~excise~~ EXCESS REVENUE tax imposed on THE EXCESS REVENUE DERIVED FROM the sale of electrical energy
21 ~~by a person engaged in the generation, manufacture, or production of electrical energy in the state~~
22 GENERATED IN MONTANA.

23 (2) The tax is imposed on the EXCESS gross revenue derived from the sale of electrical energy and
24 is determined by multiplying the ~~contract~~ NET SALES price by ~~megawatts~~ THE MEGAWATT HOURS sold at the
25 ~~contract~~ NET SALES price according to the following schedule:

<u>Contract</u> SALES price of megawatts sold	Rate of tax
\$0 and less than \$35 <u>\$50</u>	0%
\$35 but less than \$40	10%
\$40 <u>\$50</u> but less than \$45 <u>\$60</u>	20%
\$45 <u>\$60</u> but less than \$55 <u>\$70</u>	40%

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1	\$55 \$70 but less than \$75 \$80	60%
2	\$75 \$80 but less than \$150 \$90	80%
3	\$150 but less than \$250 \$90 AND HIGHER	90%
4	\$250 and higher	95%
5	<u>NET SALES PRICE OF MEGAWATT HOURS SOLD</u>	<u>RATE OF TAX</u>
6	<u>ON THE FIRST \$15 OF NET SALES PRICE OR ANY PART OF THAT PRICE</u>	<u>20%</u>
7	<u>ON THE NEXT \$10 OF NET SALES PRICE OR ANY PART OF THAT PRICE</u>	<u>40%</u>
8	<u>ON THE NEXT \$10 OF NET SALES PRICE OR ANY PART OF THAT PRICE</u>	<u>60%</u>
9	<u>ON THE NEXT \$10 OF NET SALES PRICE OR ANY PART OF THAT PRICE</u>	<u>80%</u>
10	<u>IN EXCESS OF \$45 OF NET SALES PRICE OR ANY PART OF THAT PRICE</u>	<u>90%</u>

11 (3) FOR THE PURPOSES OF THIS SECTION, "NET SALES PRICE" MEANS THE SALES PRICE OF MEGAWATT HOURS
 12 SOLD LESS \$45 FROM THAT SALES PRICE.

13 ~~(3)~~(4) The proceeds of the tax imposed under [sections 1 through 10] must be deposited in the
 14 state special revenue account provided for in [section 11].

15 ~~(4)~~(5) The department may request assistance from the public service commission in analyzing
 16 data necessary to calculate the electrical energy ~~excise~~ EXCESS REVENUE tax.

17
 18 NEW SECTION. Section 2. Exemptions. The following are exempt from the tax imposed by
 19 [section 1]:

20 (1) electrical energy sold from an electrical generation facility that is placed in service after [the
 21 effective date of this act];

22 (2) electrical energy produced from an electrical generation facility owned or leased by a person
 23 if at least 50% of the electrical energy generated is used by the person in the person's business even if
 24 the person sells a portion of the electrical energy produced to another entity;

25 (3) electrical energy sold from an electrical generation facility that has a generation capacity of
 26 less than ~~60~~ 30 megawatts;

27 (4) A QUALIFYING SMALL POWER PRODUCTION FACILITY, AS THAT TERM IS DEFINED IN 16 U.S.C. 796(17),
 28 THAT IS OWNED AND OPERATED BY A PERSON NOT PRIMARILY ENGAGED IN THE GENERATION OR SALE OF ELECTRICITY
 29 OTHER THAN ELECTRIC POWER FROM A SMALL POWER PRODUCTION FACILITY;

30 (5) ELECTRICAL ENERGY GENERATED IN MONTANA BY A FULLY INTEGRATED, REGULATED PUBLIC UTILITY AND

1 SOLD TO CUSTOMERS WITHIN THE AUTHORIZED SERVICE TERRITORY OF THE PUBLIC UTILITY;

2 ~~(4)~~(6) electrical energy sold from an electrical generation facility owned by an agency of the United
3 States government; and

4 ~~(5)~~(7) electrical energy sold from an electrical generation facility that is owned by a rural electric
5 cooperative organized under the provisions of Title 35, chapter 18.

6

7 NEW SECTION. Section 3. Returns -- payment -- authority of department. (1) On or before the
8 30th day of the month following the end of the month in which the tax imposed by [sections 1 through
9 10] is payable, a return, on a form provided by the department, and payment of the tax for the preceding
10 month must be filed with the department.

11 (2) Each person engaged in the generation, manufacture, or production of electrical energy in this
12 state that is subject to the tax under [sections 1 through 10] shall file a return.

13 (3) (a) A person required to pay to the department the tax imposed by [sections 1 through 10]
14 shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through
15 10] and the rules prescribed by the department. Each return or statement must include the information
16 required by the rules of the department.

17 (b) For the purpose of determining compliance with the provisions of [sections 1 through 10], the
18 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
19 relevant to making a determination of the amount of tax due, whether the books, papers, records, or
20 memoranda are the property of or in the possession of the person filing the return or another person. In
21 determining compliance, the department may use statistical sampling and other sampling techniques
22 consistent with generally accepted auditing standards. The department may also:

23 (i) require the attendance of a person having knowledge or information relevant to a return;

24 (ii) compel the production of books, papers, records, or memoranda by the person required to
25 attend;

26 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the
27 tax is or may be jeopardized because of delay;

28 (iv) take testimony on matters material to the determination; and

29 (v) administer oaths or affirmations.

30 (4) Pursuant to rules established by the department, returns may be computer-generated and

1 electronically filed.

2

3 NEW SECTION. **Section 4. Examination of return -- adjustments -- delivery of notices and**
4 **demands.** (1) If the department determines that the amount of tax due is different from the amount
5 reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 3]
6 constitutes the tax to be paid.

7 (2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess
8 must be paid to the department within 30 days after notice of the amount and demand for payment is
9 mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided
10 in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on
11 the return and if the tax has been paid, the excess must be credited or, if no tax liability exists or is likely
12 to exist, refunded to the person making the return.

13 (3) The notice and demand provided for in this section must contain a statement of the
14 computation of the tax and interest and must be:

15 (a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the
16 taxpayer's last-known address; or

17 (b) served personally upon the taxpayer.

18 (4) A taxpayer filing an objection to the demand for payment is subject to and governed by the
19 uniform tax review procedure provided in 15-1-211.

20

21 NEW SECTION. **Section 5. Penalties and interest for violation.** (1) (a) A person who fails to file
22 a return as required by [section 3] must be assessed a penalty as provided in 15-1-216. The department
23 may waive the penalty as provided in 15-1-206.

24 (b) A person who fails to file the return required by [section 3] and to pay the tax before the due
25 date must be assessed a penalty and interest as provided in 15-1-216. The department may waive any
26 penalty pursuant to 15-1-206.

27 (2) A person who purposely fails to pay the tax when due must be assessed an additional penalty
28 as provided in 15-1-216.

29

30 NEW SECTION. **Section 6. Authority to collect delinquent taxes.** (1) (a) The department shall

1 collect taxes that are delinquent as determined under [sections 1 through 10].

2 (b) If a tax imposed by [sections 1 through 10] or any portion of the tax is not paid when due, the
3 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

4 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal
5 has expired, the department may direct the offset of tax refunds or other funds that are due to the
6 taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

7 (3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any
8 offset by the department.

9 (4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required
10 before funds are available for offset.

11

12 NEW SECTION. **Section 7. Interest on deficiency -- penalty.** (1) Interest accrues on unpaid or
13 delinquent taxes as provided in 15-1-216. The interest must be computed from the date on which the
14 return and tax were originally due.

15 (2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and
16 if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed
17 by 15-1-216(1)(c) must be added to the amount of the deficiency.

18

19 NEW SECTION. **Section 8. Limitations.** (1) Except in the case of a person who purposely or
20 knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions
21 of [sections 1 through 10], a deficiency may not be assessed or collected with respect to a month for
22 which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally
23 served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this
24 section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

25 (2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the
26 tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency
27 may be assessed at any time prior to the expiration of the period consented to.

28

29 NEW SECTION. **Section 9. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as
30 a result of overpayment of taxes collected under [sections 1 through 10] must be filed within 5 years of

1 the date on which the return was due, without regard to any extension of time for filing.

2 (2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate
3 charged on unpaid taxes as provided in 15-1-216.

4 (b) Except as provided in subsection (2)(c), interest must be paid from the date on which the
5 return was due or the date of overpayment, whichever is later. Interest does not accrue during any period
6 in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished
7 necessary information.

8 (c) The department is not required to pay interest if:

9 (i) the overpayment is refunded or credited within 6 months of the date on which a claim was
10 filed; or

11 (ii) the amount of overpayment and interest does not exceed \$1.

12

13 NEW SECTION. **Section 10. Administration -- rules.** The department shall:

14 (1) administer and enforce the provisions of [sections 1 through 10];

15 (2) cause to be prepared and distributed forms and information that may be necessary to
16 administer the provisions of [sections 1 through 10]; and

17 (3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of
18 [sections 1 through 10].

19

20 NEW SECTION. **Section 11. Electrical energy assistance and business recruitment state special**
21 **revenue account -- revenue allocated -- rules.** (1) There is an electrical energy assistance and business
22 recruitment state special revenue account within the state special revenue fund established in 17-2-102.

23 (2) Revenue derived from the electrical energy ~~excise~~ EXCESS REVENUE tax imposed by [sections 1
24 through 10] must be deposited into the account.

25 (3) Pursuant to rules adopted by the commission under [section 12], at least 80% of the revenue
26 received under this section must be used to promote price stability of the supply of electrical energy in
27 Montana:

28 (a) for default customers of a public utility that has submitted a transition plan pursuant to parts
29 1 through 5 of this chapter on or before [the effective date of this act]; and

30 (b) for customers that chose an electrical energy supplier as provided in Title 69, chapter 8, part

1 2.

2 (4) Pursuant to rules adopted by the commission under [section 12], the amount remaining in the
3 account after promoting price stability of the supply of electrical energy under subsection (3) of this
4 section may be used for the following purposes:

5 (a) ~~recruiting~~ ASSISTING IN THE RECRUITMENT OF new employers with 100 employees or more and
6 ~~promoting~~ IN THE PROMOTION OF the expansion of employment by a 100 employees or more by existing
7 employers who need a reasonable and stable supply of electrical energy;

8 (b) funding ~~low-income energy assistance~~ UNIVERSAL SYSTEM BENEFITS PROGRAMS provided for in
9 ~~69-8-412~~ THIS CHAPTER;

10 (c) providing low-interest loans for new transmission facilities or for improvements to existing
11 transmission facilities;

12 (d) providing low-interest loans for the construction of new, temporary or permanent electrical
13 generation facilities and for the expansion of net generation capacity of existing electrical generation
14 facilities. The electrical generation facilities referred to in this subsection must have an electrical generation
15 capacity of 60 megawatts or less.

16 (5) The funds deposited in the account under this section but not expended for the purposes
17 established in this section must be transferred to the general fund ~~after [the termination date of this act]~~.

18 (6) The money in the state special revenue account ~~must be~~ IS STATUTORILY appropriated, ~~by the~~
19 ~~legislature~~ AS PROVIDED IN 17-7-502, for the purposes of this section.

20

21 NEW SECTION. Section 12. Rules. (1) (a) The commission shall promulgate rules for determining
22 the appropriate mechanism that, to the extent possible, provides for stable and reasonable electrical energy
23 prices. The implementation of stable electrical energy prices may include offsets to high electrical energy
24 prices.

25 (b) The commission's rules must include the determination of a price range for electrical energy
26 prices that are stable and reasonable.

27 (c) The commission shall devise the least costly method for maintaining stable and reasonable
28 electrical energy prices for customers that may include a buydown ~~of a contract~~ for electrical energy
29 purchased by a default supplier OR CUSTOMER.

30 (2) (a) The commission's rules must provide for an offset for customers, within the constraints

1 of available revenue, that is reasonable as determined by the commission.

2 (b) The offset must ~~be calculated based on the cost of service of electrical energy supply~~ TAKE INTO
 3 ACCOUNT THE COST CHARACTERISTICS OF DIFFERENT CLASSIFICATIONS OF SERVICE AS PROVIDED IN 69-3-306 and must
 4 be reflected on each customer's monthly bill.

5 (3) The commission shall promulgate rules for the purposes of [section 11(4)]. The commission's
 6 rules must take into account the following:

7 (a) the feasibility of recruiting a large employer to Montana or significantly expanding the
 8 employment of an existing employer;

9 (b) the effectiveness of low-interest loans in enhancing the generation and distribution of electrical
 10 energy in Montana;

11 (c) the need for additional financial assistance for low-income households; and

12 (d) the importance of an affordable supply of electrical energy to promote economic development
 13 and stability in Montana.

14

15 **SECTION 13. SECTION 17-7-502, MCA, IS AMENDED TO READ:**

16 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 17 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
 18 without the need for a biennial legislative appropriation or budget amendment.

19 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
 20 with both of the following provisions:

21 (a) The law containing the statutory authority must be listed in subsection (3).

22 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 23 statutory appropriation is made as provided in this section.

24 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901;
 25 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702;
 26 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404;
 27 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
 28 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;
 29 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301;
 30 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703;

1 53-24-206; 67-3-205; [section 11]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222;
 2 80-4-416; 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

3 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 4 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 5 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 6 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 7 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 8 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
 9 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 10 supplemental benefit; pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1,
 11 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of
 12 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability
 13 is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1,
 14 2014; and pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710
 15 terminates June 30, 2005.)"

16

17 NEW SECTION. **Section 14. Codification instruction.** (1) [Sections 1 through 10] are intended
 18 to be codified as an integral part of Title 15, chapter 72, and the provisions of Title 15, chapter 72, apply
 19 to [sections 1 through 10].

20 (2) [Sections 11 and 12] are intended to be codified as an integral part of Title 69, chapter 8, part
 21 4, and the provisions of Title 69, chapter 8, part 4, apply to [sections 11 and 12].

22

23 NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

24

25 NEW SECTION. **Section 16. Applicability.** [This act] applies to electrical energy produced and sold
 26 after May 31, 2001.

27

28 NEW SECTION. **Section 17. Termination -- contingency.** [This act] terminates on the earlier of
 29 December 31, 2004, or the date that the public service commission certifies to the secretary of state that
 30 the market prices of electrical energy are stable and reasonable. The secretary of state shall notify the

- 1 department of administration, the department of revenue, the code commissioner, and the legislative fiscal
- 2 division of this certification.
- 3 - END -