

EXHIBIT 9  
DATE 3/23/09  
HB 641

HOUSE BILL NO. 641

INTRODUCED BY A. NOONAN

Grey Bill reflecting HB 641 with amendment  
HB064102.asn

**A BILL FOR AN ACT ENTITLED:**

"AN ACT REQUIRING ELECTRIC AND NATURAL GAS UTILITIES TO DEVELOP ENERGY EFFICIENCY ASSESSMENTS AND TO ACHIEVE ENERGY SAVINGS TARGETS; PROVIDING INCENTIVES, COST RECOVERY, AND DECOUPLING TO ENCOURAGE ENERGY EFFICIENCY; REQUIRING PUBLIC SERVICE COMMISSION OVERSIGHT OF ENERGY EFFICIENCY TARGETS AND ENERGY EFFICIENCY ASSESSMENTS; ~~PROVIDING PENALTIES FOR NONCOMPLIANCE WITH ENERGY EFFICIENCY REQUIREMENTS; REQUIRING THE COMMISSION TO REMIT PENALTIES TO A UTILITY; ESTABLISHING A LOW-INCOME ENERGY EFFICIENCY PROGRAM ACCOUNT;~~ PROVIDING RULEMAKING AUTHORITY; REQUIRING CERTAIN ELECTRIC COOPERATIVE UTILITIES TO ACHIEVE ENERGY SAVINGS TARGETS AND DEVELOP ENERGY EFFICIENCY ASSESSMENTS; REQUIRING A COOPERATIVE TO FORM A COMMITTEE TO ASSIST IN ENERGY EFFICIENCY REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

WHEREAS, the people of the state of Montana believe that energy efficiency should be actively and aggressively pursued as a statewide public policy; and

WHEREAS, cost-effective electricity and natural gas energy efficiency programs will save money for consumers; and

WHEREAS, acquiring energy efficiency will reduce the need for new, more expensive generating resources; and

WHEREAS, acquiring energy efficiency will result in an improved statewide economy and increase the attractiveness of Montana as a place to live and conduct business; and

WHEREAS, Montana's electric and natural gas utilities and rural electric cooperatives are acquiring energy efficiency at varying rates and degrees of effectiveness, and there is a need to make this effort more consistent among utilities to bring the benefits of energy efficiency to all parts of Montana.

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

**NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 6 (4)], unless the context requires otherwise, the following definitions apply:

(1) "Benefit-cost ratio" means the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures.

- (2) "Commission" means the public service commission provided for in 2-15-2602.
- (3) (a) "Cost-effective" means having a benefit-cost ratio equal to or greater than one.
- (b) In calculating the benefit-cost ratio, the benefits must include but are not limited to:
- (i) the utility's avoided generation, transmission, distribution, capacity, and energy costs;
  - (ii) the value of avoided emissions determined by the commission; and
  - (iii) nonenergy benefits determined by the commission.
- (c) In calculating the benefit-cost ratio, the costs must include but are not limited to applicable utility or customer expenditures for:
- (i) labor, program design, administration, evaluation, advertising, and promotion;
  - (ii) customer education programs;
  - (iii) incentives and discounts;
  - (iv) capital costs;
  - (v) customer cost contributions; and
  - (vi) operation and maintenance expenses.
- (4) "Customer" means a utility customer at a single, contiguous field, location, or facility, regardless of the number of meters at that field, location, or facility, that purchases electricity or natural gas for residential, commercial, or industrial end-use purposes.
- (5) "Demand response" means measures undertaken by customers to reduce energy usage over a given time period or to shift that usage to another time period in response to price, monetary incentives, or utility directives that optimize the production, delivery, and use of energy, maintain reliable service, and minimize costs.
- (6) "Education program" means an energy audit or another program that contributes indirectly to cost-effective energy efficiency acquisitions.
- (7) "Energy efficiency" means measures that reduce the amount of electricity and natural gas required to achieve a given end use and includes demand response and load management measures.
- (8) "Energy efficiency assessment" means an analysis that quantifies the total amount of cost-effective energy efficiency that is available and achievable on the utility's system by 2020.
- (9) (a) "Fixed costs" means those reasonable costs incurred by a utility to provide service to customers that, during the time between rate proceedings, do not ordinarily vary directly with consumption or sales.

(b) The term does not include the cost of fuel or the costs associated with power purchase contracts.

(10) "Load management" means measures or programs that seek to optimize the production, delivery, and use of energy by targeting equipment or devices to result in decreased peak electricity demand or shift demand from peak to off-peak periods.

~~(11) "Low income" means a customer whose gross household income, as defined in 15-30-171, is at or less than 175% of the poverty level set according to the most current federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2).~~

~~(12)~~ (11) "Reported energy savings" means the total energy savings capability, expressed as the annualized megawatt hours, dekatherms, or both estimated using accepted industry practices, including but not limited to engineering calculations, sampling of onsite verifications, customer interviews and surveys, and statistical techniques, attributable to a utility's energy efficiency programs and activities.

~~(13)~~ (12) "Utility" means:

(a) an electric utility with more than 20,000 customers regulated by the commission pursuant to Title 69, chapter 3, including the utility's successors or assignees; and

(b) a natural gas utility with more than 20,000 customers regulated by the commission pursuant to Title 69, chapter 3, including the utility's successors or assignees.

**NEW SECTION. Section 2. Energy efficiency acquisition.** (1) A utility shall acquire achievable cost-effective energy efficiency as provided in [sections 1 through 6].

(2) (a) ~~Within~~ Except as provided in subsection (2)(b), within 1 year of [the effective date of this act], a utility shall submit an energy efficiency assessment to the commission.

(b) By January 1, 2010, a utility that restructured pursuant to Title 69, chapter 8, that was not an electric cooperative shall submit an energy efficiency assessment to the commission.

~~(b)~~ (c) The energy efficiency assessment must:

(i) be completed by an independent entity with experience in performing energy efficiency evaluations for utilities;

(ii) estimate the amount of all available and achievable cost-effective energy efficiency on the utility's system that could reasonably be acquired by any and all utility programs by 2020, taking into account the effect of any federal or state energy efficiency acquisition programs; and

(iii) be updated every 4 years in accordance with a schedule established by commission rule.

(3) The energy efficiency assessment must be accompanied by a plan for acquiring all

achievable cost-effective energy efficiency identified by the assessment, including the establishment of biennial energy savings targets.

(4) (a) The commission shall, by January 1, 2011, and in subsequent years in accordance with a schedule established by commission rule, approve, disapprove, or modify the energy efficiency assessment and the plan submitted by the a utility pursuant to subsection (2)(a) under procedures established by commission rule.

(b) The commission shall, by July 1, 2010, and in subsequent years in accordance with a schedule established by commission rule, approve, disapprove, or modify the energy efficiency assessment and the plan submitted by a utility pursuant to subsection (2)(b) under procedures established by commission rule.

~~(b)~~ (c) In making the determination pursuant to subsection (4)(a) and (4)(b), the commission shall consider:

- (i) compliance with the requirements of [sections 1 through ~~6~~ 4];
- (ii) the adequacy and methodological soundness of the analysis contained in the energy efficiency assessment;
- (iii) the amount of available and achievable cost-effective energy efficiency on the utility's system;
- (iv) the need for energy resources;
- (v) the benefits of energy efficiency investments, including nonenergy benefits;
- (vi) the reasonable capacity of the utility to implement cost-effective energy efficiency programs and measures, including consideration of a reasonable and feasible schedule for the implementation of the programs and measures and the acquisition of cost-effective energy efficiency;
- (vii) that successful utility acquisition of energy efficiency through utility programs depends in part on voluntary participation and actions by utility customers that, in turn, determine timing and levels of energy efficiency that can be acquired and the establishment of reasonable targets;
- (viii) that a utility's ability to acquire achievable energy efficiency may be impacted by the availability of other federal or state energy efficiency programs administered by or on behalf of the federal or state government or their agents; and
- (ix) any other factor the commission determines relevant.

(5) (a) Beginning On a biennial basis, beginning in 2012, by March 1 of each year, a utility shall submit to the commission a statement providing a preliminary estimate of energy savings achieved during the preceding calendar year.

(b) On a biennial basis, beginning in 2013, by March 1, a utility shall submit to the

commission, under procedures established by commission rule, a report:

- (i) describing the utility's energy efficiency acquisition activities;
- (ii) identifying the utility's energy efficiency expenditures;
- (iii) documenting customer participation levels;
- (iv) quantifying energy savings, using reported energy savings;
- (v) demonstrating the utility's progress in ~~the preceding year in~~ meeting the biennial energy savings targets, taking into account any energy efficiency savings by the utility customers resulting from other federal or state energy efficiency programs administered by or on behalf of the federal or state government or their agents; and
- (vi) containing any other information required by the commission.

~~(b)~~ (c) If a utility is unable to meet the energy savings targets established pursuant to subsection (4), the utility shall provide an explanation of why the targets were not achieved. The report may include a request by the utility to adjust the targets.

(a) ~~At regular intervals, but not more often than every 4 years, under~~ Under a schedule and procedures established by commission rule, a utility shall submit to the commission a comprehensive measurement, verification, and program evaluation report prepared by an independent entity that has experience in performing energy efficiency program evaluations for utilities.

(b) In preparing the report, the independent program evaluator shall:

- (i) measure and verify energy and demand savings;
- (ii) determine the cost-effectiveness of the energy efficiency programs and measures;
- (iii) assess the performance of the utility or contractors of the utility in implementing energy efficiency programs and measures;
- (iv) provide recommendations on how program performance can be improved; and
- (v) include any other information the commission considers necessary.

(c) The independent program evaluator may not be the same entity that prepared the energy efficiency assessment and plan pursuant to subsection (2).

(7) This section does not preclude an entity that provides both electric and natural gas service and is subject to the provisions of [sections 1 through 6 4] from meeting the requirements of this section by integrating electricity and natural gas energy efficiency planning and program implementation.

**NEW SECTION. Section 3. Energy efficiency -- cost recovery, incentives, and**

**decoupling.** (1) The commission shall provide for the timely recovery of the actual costs of energy efficiency activities, prudently incurred, through annual cost adjustments, plus the interest on the accumulated amount.

(2) The commission shall allow an incentive for a utility's cost-effective energy efficiency programs.

(3) In complying with subsection (2) the commission shall:

(a) subject to subsection (4), create a performance-based incentive that shares the net economic benefits resulting from energy efficiency acquired as a result of utility programs between the utility and its customers at a ratio of 70% to customers and 30% to the utility;

(b) provide other incentives the commission determines appropriate, including but not limited to incentives for energy efficiency programs that deliver durable, multiyear, cost-effective energy savings and other energy efficiency initiatives.

(4) Incentives rendered pursuant to subsection (3)(a) apply only to the net economic benefits resulting from the first year of energy savings.

(5) The commission shall establish mechanisms, specific to individual utilities, that decouple revenue recovery from electricity and natural gas sales by authorizing periodic rate adjustments for the purpose of preventing fluctuations in retail energy use from affecting recovery of a utility's previously authorized fixed costs of service, without shifting authorized fixed costs from variable to fixed charges.

**NEW SECTION. Section 4. Energy efficiency acquisition -- noncompliance.** (1) (a) Except as provided in subsection (2), if a utility, as defined in [section 1(13)(a)], is unable to meet the biennial target established in [section 2(4)], the utility shall pay an administrative penalty, assessed by the commission, of \$30 for each megawatt hour of additional resources that would have been saved if the utility had met the energy savings goals. Progress toward the energy savings goals must be based on reported energy savings.

— (b) Except as provided in subsection (2), if a utility, as defined in [section 1(13)(b)], is unable to meet the biennial target established in [section 2(4)], the utility shall pay an administrative penalty, assessed by the commission, of \$4 for each dekatherm of additional resources that would have been saved if the utility had met the energy savings goals. Progress toward the energy savings goals must be based on reported energy savings.

— (c) Penalties must be assessed for the current year only and may not be accumulated or carried forward.

— (d) A utility may not recover the penalty in rates.

— (2) (a) A utility may request that the commission waive the penalties levied under subsection (1) for good cause.

— (b) The request must demonstrate that the utility has taken reasonable steps to achieve the target but that full compliance cannot be achieved for legitimate reasons that are outside the control of the utility, including but not limited to the lack of voluntary participation by utility customers or difficulty estimating available and achievable energy efficiency and meeting energy savings goals because of federal or state energy efficiency programs administered by or on behalf of the federal or state government or their agents.

(c) The commission may grant, grant in part, or deny a waiver request.

— **NEW SECTION. Section 5. Low-income energy efficiency program account.** (1) There is a low-income energy efficiency program account within the state special revenue fund established in 17-2-102.

— (2) Penalties collected pursuant to [section 4] must be deposited in the account.

— (3) (a) Money deposited in the account is controlled by the commission and must be remitted to the utility that incurred the penalty for the purpose of undertaking commission authorized low-income energy efficiency activities and programs within the service territory of the utility that incurred the penalty.

— (b) In determining the specific energy efficiency measures to pursue, the commission may not base its decision solely on a benefit-cost ratio analysis but shall consider societal objectives, including health, safety, and structural improvements necessary for the performance, integrity, and maintenance of installed energy efficiency measures.

— **NEW SECTION. Section 6 4. Commission authority -- rulemaking.** (1) The commission may promulgate rules necessary to implement [sections 1 through 5 3] and shall exercise its authority in a timely fashion to provide certainty to each utility regarding their responsibilities under [sections 1 through 5 3].

(2) The commission shall, to the greatest extent possible, integrate any existing commission rules concerning utility acquisition of energy efficiency with rules promulgated pursuant to [sections 1 through 5 3].

(3) In establishing procedures to be followed, the commission shall ensure that the due process rights of the utilities subject to the provisions of [sections 1 through 5 3] are not infringed upon and that the public has a right to participate in commission proceedings with respect to the utilities' acquisition of energy efficiency.

— **NEW SECTION. Section 7 5. Definitions.** As used in [sections 7 through 10 5 through 7], unless the context requires otherwise, the following definitions apply:

(1) "Benefit-cost ratio" has the meaning provided in [section 1].

(2) "Cooperative" means a rural electric cooperative organized pursuant to this chapter with more than 20,000 customers.

- (3) (a) "Cost-effective" means having a benefit-cost ratio equal to or greater than one.
- (b) In calculating the benefit-cost ratio, the benefits must include but are not limited to:
- (i) the cooperative's avoided generation, transmission, distribution, capacity, and energy costs;
  - (ii) the value of avoided emissions; and
  - (iii) nonenergy benefits.

(c) In calculating the benefit-cost ratio, the costs must include but are not limited to applicable cooperative or member expenditures for:

- (i) labor, program design, administration, evaluation, advertising, and promotion;
- (ii) member education programs;
- (iii) incentives and discounts;
- (iv) capital costs;
- (v) member cost contributions; and
- (vi) operation and maintenance expenses.

(4) "Demand response" means measures undertaken by members to reduce energy usage over a given time period or to shift that usage to another time period in response to price, monetary incentives, or cooperative directives that optimize the production, delivery, and use of energy, maintain reliable service, and minimize costs.

(5) "Department" means the department of environmental quality provided for in 2-15-3501.

(6) "Education program" has the meaning provided in [section 1].

(7) "Energy efficiency" means measures that reduce the amount of electricity and natural gas required to achieve a given end use and includes demand response and load management measures.

(8) "Energy efficiency assessment" means an analysis that quantifies the total amount of cost-effective energy efficiency that is available and achievable on the cooperative's system by 2020.

~~(9) "Low income" has the meaning provided in [section 1].~~

~~(10)~~ (9) "Member" means any person as defined in 35-18-102 who uses electrical energy or electrical energy delivery services provided by a cooperative.

**NEW SECTION. Section 8 6. Electric cooperatives -- energy efficiency acquisition.**

(1) A cooperative shall acquire cost-effective energy efficiency pursuant to [sections ~~7 through 10~~ 5 through 7].

(2) (a) Within 1 year of [the effective date of this act], a cooperative board of trustees shall prepare an energy efficiency assessment.

(b) The energy efficiency assessment must:

(i) be undertaken by an independent entity, working under the direction and control of the cooperative, that has experience in performing energy efficiency evaluations for utilities, cooperatives, or both;

(ii) estimate the amount of all available and achievable cost-effective energy efficiency on the cooperative's system that could reasonably be acquired by any and all cooperative programs by 2020, taking into account the effect of any federal or state energy efficiency acquisition programs;

(iii) include all information and analysis necessary for a comprehensive presentation of the subject; and

(iv) be updated every 4 years in accordance with a schedule established by the cooperative.

(3) The energy efficiency assessment must be accompanied by a plan for acquiring all achievable cost-effective energy efficiency identified by the assessment, including the establishment of biennial energy savings targets.

(4) (a) Notice of the assessment and plan must be provided to the cooperative's members and made available to the public. A copy of the assessment and plan must be placed in public libraries in the service territory of the cooperative.

(b) The assessment and plan must be filed with the energy and pollution prevention bureau of the department.

(5) (a) A cooperative shall, by appropriate action of the cooperative board of trustees, formally adopt the energy efficiency assessment and the plan.

(b) Notice of the adoption of the energy efficiency assessment and the plan must be provided to the cooperative's members and to the department.

(6) (a) Beginning in 2011, by January 1 of each year On a biennial basis, beginning in 2013, by March 1, a cooperative board of trustees shall prepare a report:

(i) describing the cooperative's energy efficiency activities;

(ii) identifying the cooperative's energy efficiency expenditures;

- (iii) documenting customer participation levels;
  - (iv) quantifying the energy savings achieved as a result of the cooperative's acquisition of energy efficiency;
  - (v) demonstrating the cooperative's progress ~~in the preceding year~~ in meeting the biennial energy savings targets established pursuant to subsection (5) and, when appropriate, demonstrating compliance with the targets; and
  - (vi) including any other information the cooperative board of trustees determines necessary for comprehensive treatment of its energy efficiency activities.
- (b) If a cooperative is unable to meet the energy savings targets established pursuant to subsection (5), the cooperative board of trustees shall provide an explanation to its members of why the targets were not achieved.
- (c) The report may adjust the energy savings targets established pursuant to subsection (5) if the plan prepared pursuant to subsection (5) is revised.
- (d) Notice of the report and any plan revisions must be provided to the cooperative's members and made available to the public. A copy of the report must be placed in public libraries in the service territory of the cooperative.
- (e) The report and any plan revisions must be filed with the energy and pollution prevention bureau of the department.
- (7) (a) ~~At regular intervals, but not more often than every 4 years~~ Based on a schedule established by the cooperative, a cooperative board of trustees shall hire an independent entity that has experience in performing energy efficiency program evaluations for utilities, cooperatives, or both to prepare a comprehensive measurement, verification, and program evaluation report.
- (b) In preparing the evaluation report, the independent program evaluator shall:
    - (i) measure and verify energy and demand savings;
    - (ii) determine the cost-effectiveness of the programs;
    - (iii) assess the performance of the cooperative in implementing energy efficiency programs and measures;
    - (iv) provide recommendations on how program performance can be improved; and
    - (v) include any other information the cooperative board of trustees and independent evaluator determine to be necessary.
  - (c) The independent program evaluator may not be the same entity that prepared the energy efficiency assessment and plan pursuant to subsection (2).

(d) Notice of the evaluation report must be provided to the cooperative's members and made available to the public. A copy of the report must be placed in public libraries in the service territory of the cooperative.

(e) The evaluation report must be filed with the energy and pollution prevention bureau of the department.

(8) The filing of information with the energy and pollution prevention bureau of the department, as required by this section, may not be construed to imply regulation of a cooperative by the department.

**NEW SECTION. Section 9 7. Electric cooperative -- member participation in cooperative energy efficiency planning.** (1) A cooperative board of trustees shall develop and institute a process that enables members to meaningfully participate in the development and implementation of the cooperative's energy efficiency obligations pursuant to [section 8 6].

(2) At a minimum, procedures established by the cooperative board of trustees must:

(a) include an opportunity for member comment; and

(b) ensure public access to all background materials used in the preparation of the documents required pursuant to [section 8 6].

(3) Comments pursuant to subsection (2)(a) must be considered by the cooperative board of trustees.

(4) To assist in its planning, consideration, and decisionmaking regarding energy efficiency acquisition, the cooperative board of trustees shall establish an advisory committee consisting of members, or other individuals with a legitimate connection to the cooperative, representing a range of perspectives and having either expertise in cooperative matters or knowledge that would be of value in considering issues related to energy efficiency.

**NEW SECTION. Section 10. Energy efficiency -- noncompliance.** (1) If a cooperative is unable to meet the biennial targets established in [section 8(5)], the cooperative board of trustees shall determine a dollar-per-megawatt-hour amount equivalent to the cooperative's cost of acquiring energy efficiency and apply that to the energy savings shortfall:

—— (2) The dollar amount determined pursuant to subsection (1) must be deposited in a separate account, segregated from other cooperative funds, and used by the cooperative for low-income energy efficiency purposes. In determining the specific energy efficiency measures to pursue, the cooperative board of trustees may not base its decision solely on a benefit-cost ratio analysis but must also consider societal objectives, including health, safety, and structural improvements necessary for the performance, integrity, and maintenance of installed energy efficiency measures:

—— (3) On a biennial basis, the cooperative shall develop a report including accounting for the expenditures required pursuant to subsection (2) and detailing the expenditures. The report

~~must be filed with the department.~~

**NEW SECTION. Section ~~11-8~~. Codification instruction.** (1) [Sections 1 through ~~6 4~~] are intended to be codified as an integral part of Title 69, chapter 3, and the provisions of Title 69, chapter 3, apply to [sections 1 through ~~6 4~~].

(2) [Sections ~~7 through 10 5~~ through ~~7~~] are intended to be codified as an integral part of Title 35, chapter 18, and the provisions of Title 35, chapter 18, apply to [sections ~~7 through 10 5~~ through ~~7~~].

**NEW SECTION. Section ~~12 9~~. Effective date.** [This act] is effective on passage and approval.