

## SENATE BILL NO. 31

INTRODUCED BY DEBBY BARRETT

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF "ELIGIBLE RENEWABLE RESOURCE" UNDER THE MONTANA RENEWABLE POWER PRODUCTION AND RURAL ECONOMIC DEVELOPMENT ACT AND INCLUDING ~~EXISTING~~ HYDROELECTRIC RESOURCES WITHIN THE DEFINITION; AMENDING SECTIONS 69-3-2003, 90-3-1003, AND 90-4-1005, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 69-3-2003, MCA, is amended to read:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

1 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is  
 2 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or  
 3 cooperative.

4 (b) The term does not include governmental entities selling electricity produced only by facilities  
 5 generating less than 250 kilowatts that were in operation prior to 1990.

6 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting  
 7 in 2008, for which compliance with this part must be demonstrated.

8 (7) "Cooperative utility" means:

9 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

10 (b) an existing municipal electric utility as of May 2, 1997.

11 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric  
 12 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating  
 13 resource in order to respond to the balancing authority's need to match supply resources to loads on the  
 14 transmission system.

15 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any  
 16 means.

17 (10) (a) "Eligible renewable resource" means a facility either located within Montana or delivering  
 18 electricity from another state into Montana that, ~~except as provided in subsection (10)(b),~~ commences commercial  
 19 operation after January 1, 2005, ~~and that~~ OR IS A HYDROELECTRIC PROJECT REFERRED TO IN SUBSECTION  
 20 (10)(A)(IV)(C), ANY OF WHICH produces electricity from one or more of the following sources:

21 ~~(a)(i)~~ (i) wind;

22 ~~(b)(ii)~~ (ii) solar;

23 ~~(c)(iii)~~ (iii) geothermal;

24 ~~(d)(iv)~~ (iv) EXCEPT AS PROVIDED IN SUBSECTION (10)(B), water power, in the case of a hydroelectric project that:

25 ~~(i)(A)~~ (i)(A) does not require a new appropriation, diversion, or impoundment of water ~~and that has a nameplate~~  
 26 ~~rating of 10 megawatts or less; or~~ AND THAT HAS A NAMEPLATE RATING OF 10 MEGAWATTS OR LESS;

27 ~~(ii)(B)~~ (ii)(B) is installed at an existing reservoir or on an existing irrigation system that does not have  
 28 hydroelectric generation as of April 16, 2009, ~~and has a nameplate capacity of 15 megawatts or less,~~ AND HAS  
 29 A NAMEPLATE CAPACITY OF 15 MEGAWATTS OR LESS; OR

30 (C) COMMENCES COMMERCIAL OPERATION IN MONTANA ON OR AFTER JANUARY 1, 2013;

- 1           ~~(e)~~(v) landfill or farm-based methane gas;
- 2           ~~(f)~~(vi) gas produced during the treatment of wastewater;
- 3           ~~(g)~~(vii) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic
- 4 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been
- 5 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;
- 6           ~~(h)~~(viii) hydrogen derived from any of the sources in this subsection ~~(40)~~ (10)(a) for use in fuel cells;
- 7           ~~(i)~~(ix) the renewable energy fraction from the sources identified in ~~subsections (10)(a) through (10)(j)~~ this
- 8 subsection (10)(a) of electricity production from a multiple-fuel process with fossil fuels; and
- 9           ~~(j)~~(x) compressed air derived from any of the sources in this subsection ~~(40)~~ (10)(a) that is forced into
- 10 an underground storage reservoir and later released, heated, and passed through a turbine generator.
- 11 ~~—— (b) (i) Except as provided in subsection (10)(b)(ii), the term also includes electricity produced from an~~
- 12 ~~existing A hydroelectric facility that commenced commercial operation in Montana before AFTER January 1, 2005~~
- 13 ~~2013.~~
- 14 ~~—— (ii) The term does not include federal hydroelectric facilities located in Montana.~~
- 15           (B) THE TERM DOES NOT INCLUDE FEDERAL HYDROELECTRIC PROJECTS LOCATED IN MONTANA OR DELIVERING
- 16 ELECTRICITY FROM ANOTHER STATE INTO MONTANA.
- 17           (11) "Local owners" means:
- 18           (a) Montana residents;
- 19           (b) general partnerships of which all partners are Montana residents;
- 20           (c) business entities organized under the laws of Montana that:
- 21           (i) have less than \$50 million of gross revenue;
- 22           (ii) have less than \$100 million of assets; and
- 23           (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana
- 24 residents;
- 25           (d) Montana nonprofit organizations;
- 26           (e) Montana-based tribal councils;
- 27           (f) Montana political subdivisions or local governments;
- 28           (g) Montana-based cooperatives other than cooperative utilities; or
- 29           (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).
- 30           (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized

1 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency  
2 conditions, unforeseen load swings, and generation disruptions.

3 (13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter  
4 3, on January 1, 2005, including the public utility's successors or assignees.

5 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity  
6 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of  
7 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

8 (15) "Seasonality" means the degree to which an electric generating resource is capable of producing  
9 electricity in each of the seasons of the year.

10 (16) "Small customer" means a retail customer that has an individual load with an average monthly  
11 demand of less than 5,000 kilowatts.

12 (17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and  
13 immediately responsive to frequency control and that is needed to maintain system frequency stability during  
14 emergency conditions, unforeseen load swings, and generation disruptions.

15 (18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the  
16 community renewable energy project and other eligible renewable resources that are:

- 17 (a) located within 5 miles of the project;  
18 (b) constructed within the same 12-month period; and  
19 (c) under common ownership."  
20

21 **Section 2.** Section 90-3-1003, MCA, is amended to read:

22 **"90-3-1003. Research and commercialization account -- use.** (1) The research and commercialization  
23 account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research  
24 and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

25 (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth  
26 opportunities for Montana and constitute a public purpose.

27 (3) The account may be used only for:

28 (a) loans that are to be used for research and commercialization projects to be conducted at research  
29 and commercialization centers located in Montana;

30 (b) grants that are to be used for production agriculture research, development, and commercialization

1 projects, clean coal research and development projects, or renewable resource research and development  
2 projects to be conducted at research and commercialization centers located in Montana;

3 (c) matching funds for grants from nonstate sources that are to be used for research and  
4 commercialization projects to be conducted at research and commercialization centers located in Montana;

5 (d) the Montana food and agricultural development program provided for in 80-11-901; or

6 (e) administrative costs that are incurred by the board in carrying out the provisions of this part.

7 (4) At least \$195,000 of the account funds must be distributed on an annual basis to the department of  
8 agriculture to support and administer the Montana food and agricultural development program provided for in  
9 80-11-901.

10 (5) (a) At least 30% of the account funds approved for research and commercialization projects must  
11 be directed toward projects that enhance clean coal research and development or renewable resource research  
12 and development.

13 (b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and  
14 development or renewable resource research and development, subsection (5)(a) does not apply.

15 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total  
16 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

17 (7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research  
18 and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

19 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

20 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy  
21 or promise for commercial development of discoveries;

22 (c) whether the project employs or otherwise takes advantage of existing research and commercialization  
23 strengths within the state's public university and private research establishment;

24 (d) whether the project involves a realistic and achievable research project design;

25 (e) whether the project develops or employs an innovative technology;

26 (f) verification that the project activity is located within the state;

27 (g) whether the project's research team possesses sufficient expertise in the appropriate technology area  
28 to complete the research objective of the project;

29 (h) verification that the project was awarded based on its scientific merits, following review by a  
30 recognized federal agency, philanthropic foundation, or other private funding source; and

1 (i) whether the project includes research opportunities for students.

2 (8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated  
3 interest and earnings from the account must be retained in the account. Repayments of loans and any  
4 agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the  
5 transfer of technology from a research and commercialization center to another nonstate organization or  
6 ownership of corporate stock in a private sector organization must be deposited in the account.

7 (9) The board shall refer grant applications to external peer review groups. The board shall compile a  
8 list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall  
9 review the application and make a recommendation to the board as to whether the application for a grant should  
10 be approved. The board shall review the recommendation of the peer review group and either approve or deny  
11 a grant application.

12 (10) The board shall identify whether a grant or loan is to be used for basic research, applied research,  
13 or some combination of both. For the purposes of this section, "applied research" means research that is  
14 conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is  
15 conducted to uncover the basic function or mechanism of a scientific question.

16 (11) For the purposes of this section:

17 (a) "clean coal research and development" means research and development of projects that would  
18 advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source  
19 well beyond the current level of technology used in commercial service;

20 (b) "renewable resource research and development" means research and development that would  
21 advance:

22 (i) the use of any of the sources of energy listed in ~~69-3-2003(10)~~ 69-3-2003(10)(a) to produce electricity;

23 and

24 (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources  
25 as an energy source well beyond the current level of technology used in commercial service."

26

27 **Section 3.** Section 90-4-1005, MCA, is amended to read:

28 **"90-4-1005. Energy development and demonstration grant program.** (1) There is an energy  
29 development and demonstration grant program within the department of environmental quality to fund technology  
30 development and demonstration:

1 (a) advancing the development and utilization of energy storage systems, including but not limited to  
 2 mediums, such as accumulators, fuel cells, and batteries, that store energy that may be drawn upon at a later  
 3 date for use;

4 (b) developing storage systems specifically designed to store energy generated from eligible renewable  
 5 resources ~~as defined listed in 69-3-2003~~ 69-3-2003(10)(a), including but not limited to compressed air energy  
 6 storage systems;

7 (c) promoting the efficiency, environmental performance, and cost-competitiveness of energy storage  
 8 systems beyond the current level of technology; and

9 (d) advancing the development of alternative energy systems as defined in 15-32-102.

10 (2) Entities that may be eligible for grants include but are not limited to units of the Montana university  
 11 system, agricultural research centers, or private entities or research centers.

12 (3) Money appropriated to the department of environmental quality for the purpose of the energy  
 13 development and demonstration grant program may be used by the department for providing individual grants  
 14 in amounts up to \$500,000 and for administrative costs of 1% of the grant award.

15 (4) The grant application may include:

16 (a) a project plan sufficient to allow a reasonable determination regarding the potential feasibility of  
 17 advancing energy storage or alternative energy systems;

18 (b) a business plan to allow a reasonable determination regarding the financial feasibility of the project;  
 19 and

20 (c) a reporting process to ensure progress toward project goals."  
 21

22 **NEW SECTION. Section 4. Notification to tribal governments.** The secretary of state shall send a  
 23 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
 24 Chippewa tribe.  
 25

26 **COORDINATION SECTION. SECTION 5. COORDINATION INSTRUCTION.** IF BOTH SENATE BILL NO. 45 AND  
 27 [THIS ACT] ARE PASSED AND APPROVED AND IF BOTH CONTAIN A SECTION THAT AMENDS 69-3-2003, THEN THE SECTIONS  
 28 AMENDING 69-3-2003 ARE VOID AND 69-3-2003 MUST BE AMENDED AS FOLLOWS:

29 **"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following  
 30 definitions apply:

1 (1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric  
2 power other than simple generation, transmission, or distribution. Ancillary services related to transmission  
3 services include energy losses, energy imbalances, scheduling and dispatching, load following, system  
4 protection, spinning reserves and nonspinning reserves, and reactive power.

5 (2) "Balancing authority" means a transmission system control operator who balances electricity supply  
6 and load at all times to meet transmission system operating criteria and to provide reliable electric service to  
7 customers.

8 (3) "Common ownership" means the same or substantially similar persons or entities that maintain a  
9 controlling interest in more than one community renewable energy project even if the ownership shares differ  
10 between two community renewable energy projects. Two community renewable energy projects may not be  
11 considered to be under common ownership simply because the same entity provided debt or equity or both debt  
12 and equity to both projects.

13 (4) "Community renewable energy project" means an eligible renewable resource that:

14 (a) is interconnected on the utility side of the meter in which local owners have a controlling interest and  
15 that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

16 (b) is owned by a public utility and has less than or equal to 25 megawatts in total nameplate capacity.

17 (5) (a) "Competitive electricity supplier" means any person, corporation, or governmental entity that is  
18 selling electricity to small customers at retail rates in the state of Montana and that is not a public utility or  
19 cooperative.

20 (b) The term does not include governmental entities selling electricity produced only by facilities  
21 generating less than 250 kilowatts that were in operation prior to 1990.

22 (6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting  
23 in 2008, for which compliance with this part must be demonstrated.

24 (7) "Cooperative utility" means:

25 (a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

26 (b) an existing municipal electric utility as of May 2, 1997.

27 (8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric  
28 generating resource to rapidly start, stop, increase, or decrease electricity production from that generating  
29 resource in order to respond to the balancing authority's need to match supply resources to loads on the  
30 transmission system.

1 (9) "Electric generating resource" means any plant or equipment used to generate electricity by any  
2 means.

3 (10) (a) "Eligible renewable resource" means a facility either located within Montana or delivering  
4 electricity from another state into Montana that commences commercial operation after January 1, 2005, is a  
5 hydroelectric project referred to in subsection (10)(a)(iv)(C), or is a hydroelectric project expansion referred to  
6 in subsection (10)(a)(iv)(D), and that any of which produces electricity from one or more of the following sources:

7 ~~(a)~~(i) wind;

8 ~~(b)~~(ii) solar;

9 ~~(c)~~(iii) geothermal;

10 ~~(d)~~(iv) except as provided in subsection (10)(b), water power, in the case of a hydroelectric project that:

11 ~~(i)~~(A) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate  
12 rating of 10 megawatts or less; ~~or~~

13 ~~(ii)~~(B) is installed at an existing reservoir or on an existing irrigation system that does not have  
14 hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

15 (C) commences commercial operation in Montana on or after January 1, 2013, and is not an expansion  
16 under subsection (10)(a)(iv)(D); or

17 (D) is an expansion of a hydroelectric project that increases existing generation capacity on or after  
18 December 31, 2010. The eligible renewable resource includes only the proportion of actual hourly generation  
19 resulting from the expansion based on the ratio of added capacity to the total capacity of the expanded  
20 hydroelectric project. If the total capacity of the expanded hydroelectric project subsequently changes, the ratio  
21 of added capacity to the total capacity of the hydroelectric project must be recalculated.

22 ~~(e)~~(v) landfill or farm-based methane gas;

23 ~~(f)~~(vi) gas produced during the treatment of wastewater;

24 ~~(g)~~(vii) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic  
25 fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been  
26 treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

27 ~~(h)~~(viii) hydrogen derived from any of the sources in this subsection ~~(10)~~ (10)(a) for use in fuel cells;

28 ~~(i)~~(ix) the renewable energy fraction from the sources identified in ~~subsections (10)(a) through (10)(j)~~ this  
29 subsection (10)(a) of electricity production from a multiple-fuel process with fossil fuels; and

30 ~~(j)~~(x) compressed air derived from any of the sources in this subsection ~~(10)~~ (10)(a) that is forced into

1 an underground storage reservoir and later released, heated, and passed through a turbine generator.

2 (b) The term does not include federal hydroelectric projects located in Montana or delivering electricity  
3 from another state into Montana.

4 (11) "Local owners" means:

5 (a) Montana residents;

6 (b) general partnerships of which all partners are Montana residents;

7 (c) business entities organized under the laws of Montana that:

8 (i) have less than \$50 million of gross revenue;

9 (ii) have less than \$100 million of assets; and

10 (iii) have at least 50% of the equity interests, income interests, and voting interests owned by Montana  
11 residents;

12 (d) Montana nonprofit organizations;

13 (e) Montana-based tribal councils;

14 (f) Montana political subdivisions or local governments;

15 (g) Montana-based cooperatives other than cooperative utilities; or

16 (h) any combination of the individuals or entities listed in subsections (11)(a) through (11)(g).

17 (12) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized  
18 to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency  
19 conditions, unforeseen load swings, and generation disruptions.

20 (13) "Public utility" means any electric utility regulated by the commission pursuant to Title 69, chapter  
21 3, on January 1, 2005, including the public utility's successors or assignees.

22 (14) "Renewable energy credit" means a tradable certificate of proof of 1 megawatt hour of electricity  
23 generated by an eligible renewable resource that is tracked and verified by the commission and includes all of  
24 the environmental attributes associated with that 1 megawatt-hour unit of electricity production.

25 (15) "Seasonality" means the degree to which an electric generating resource is capable of producing  
26 electricity in each of the seasons of the year.

27 (16) "Small customer" means a retail customer that has an individual load with an average monthly  
28 demand of less than 5,000 kilowatts.

29 (17) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and  
30 immediately responsive to frequency control and that is needed to maintain system frequency stability during

1 emergency conditions, unforeseen load swings, and generation disruptions.

2 (18) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the  
3 community renewable energy project and other eligible renewable resources that are:

4 (a) located within 5 miles of the project;

5 (b) constructed within the same 12-month period; and

6 (c) under common ownership."  
7

8 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.  
9

10 **NEW SECTION. Section 7. Retroactive applicability.** [This act] applies retroactively, within the  
11 meaning of 1-2-109, to the compliance year beginning January 1, 2013.

12 - END -