

SENATE BILL NO. 90

INTRODUCED BY A. OLSON

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE OPERATION OF RURAL ELECTRIC COOPERATIVES; REQUIRING A ~~TWO-THIRDS~~ THREE-FIFTHS VOTE OF DISTRIBUTION COOPERATIVE BOARDS OF TRUSTEES AND A TWO-THIRDS VOTE OF GENERATION AND TRANSMISSION COOPERATIVE BOARDS OF TRUSTEES WHEN ENTERING INTO AGREEMENTS FOR CONSTRUCTION OF CERTAIN ELECTRIC GENERATING FACILITIES OR ENTERING INTO CERTAIN CONTRACTS; ESTABLISHING VOTE REQUIREMENTS; REQUIRING DISCLOSURE OF LOAD FORECAST INFORMATION; ESTABLISHING REQUIREMENTS FOR GENERATION AND TRANSMISSION COOPERATIVES; AMENDING SECTIONS 35-18-317 AND 35-18-318, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 35-18-317, MCA, is amended to read:

"35-18-317. Disposition or encumbrance of property. (1) Except as provided in subsection (2) and in accordance with 35-18-318, a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless ~~such~~ the sale, mortgage, lease, or other disposition or encumbrance is:

(a) authorized at a duly held meeting of cooperative members; ~~thereof~~

(b) approved by ~~the affirmative vote of~~ not less than two-thirds of all the members of the cooperative; and ~~unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained~~

(c) described in the notice of the meeting.

(2) ~~The~~ Except as provided in 35-18-318, the board of trustees of a cooperative, without authorization by the cooperative members, ~~thereof, shall have full power and authority to~~ may:

(a) authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbering of any or all of:

1 (i) the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether
2 acquired or to be acquired and wherever situated, ~~as well as; and~~

3 (ii) the ~~revenues~~ revenue and income ~~therefrom; from the property, assets, rights, privileges, licenses,~~
4 franchises, and permits; and all upon such

5 (b) determine the terms and conditions ~~as the board of trustees shall determine; necessary~~ to secure
6 any indebtedness of the cooperative to ~~the:~~

7 (i) the United States of America; ~~or~~

8 (ii) any instrumentality or agency ~~thereof~~ of the United States; or ~~to~~

9 (iii) any other financing sources within the United States.

10 (3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of
11 trustees shall:

12 (a) have the property appraised by three appraisers chosen by the board and not associated with the
13 cooperative or a proposed buyer of cooperative property;

14 (b) notify all cooperative members, at least 90 days in advance, of a meeting to vote on disposition of
15 cooperative property. Detailed proposals for disposition of ~~such~~ the property must accompany the notice.

16 (c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state
17 that the property is available for disposition and include with the notice one copy of each appraisal on the
18 cooperative property; and

19 (d) at least 30 days before the meeting, mail to all members any alternative proposal made by
20 cooperative members if it has been submitted to the board and signed by 50 or more members.

21 (4) The vote on property disposition may take place at an annual meeting if the board notifies the
22 members as provided in this section.

23 (5) This section does not apply to the transfer of cooperative property in a merger or consolidation of
24 cooperatives."

25

26 **Section 2.** Section 35-18-318, MCA, is amended to read:

27 **"35-18-318. Long-term indebtedness -- membership approval and review -- cooperative**
28 **requirements.** (1) Before a cooperative ~~may create~~ creates or ~~enter~~ enters into an agreement that results in any
29 direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly
30 the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate

1 increase to the cooperative's members for repayment of the obligation, the cooperative must receive approval
2 from a majority of those members present and voting at the meeting. The approval must be obtained at a special
3 meeting held for that purpose.

4 (2) Except as provided in subsection (6) and in accordance with subsections (3) and (4), a generation
5 and transmission cooperative must receive approval from a two-thirds majority of the distribution cooperative
6 members of the generation and transmission cooperative before the generation and transmission cooperative:

7 (a) creates or enters into an agreement that results in direct or indirect obligation for the repayment of
8 long-term bonded indebtedness for financing directly or indirectly the construction of electric generating facilities
9 with a nameplate capacity exceeding 10% of a generation and transmission cooperative's maximum 1-hour
10 demand for the prior year; or

11 (b) enters into an energy contract allowing for the purchase of electricity that exceeds the generation and
12 transmission cooperative's load levels after factoring in existing supply contracts and generation, if any, for the
13 period to be contracted.

14 (3) Approval required pursuant to subsection (2) is granted using a ~~two-thirds~~ THREE-FIFTHS majority of
15 the board of trustees of each distribution cooperative that is a member of the generation and transmission
16 cooperative.

17 (4) (a) Approval of each distribution cooperative's board of trustees pursuant to subsection (3) must be
18 obtained at a special meeting held for that purpose.

19 (b) Notice of the need for a vote by each distribution cooperative's board of trustees must be provided
20 at least 60 days in advance of the vote.

21 (5) (a) A member distribution cooperative may provide a study by an independent entity of rate impact
22 and comparative costs of projects similar to those proposed by a generation and transmission cooperative. The
23 study must be conducted in the most cost-effective manner practicable.

24 (b) If the study is provided pursuant to this subsection (5), the generation and transmission cooperative
25 must reimburse up to 50% of the cost of the study to the distribution cooperative that provides the study.

26 (c) If the study is provided pursuant to this subsection (5), it must be considered by the generation and
27 transmission cooperative's board of trustees prior to the vote required in subsection (2).

28 (6) Vote requirements pursuant to subsection (2) are not required for agreements created or entered into
29 by generation and transmission cooperatives with regional generation and transmission cooperatives or federal
30 power marketing administrations or their successors.

1 (7) At least 60 days before a vote required pursuant to subsection (2), a generation and transmission
2 cooperative must provide each distribution cooperative that is a member of the generation and transmission
3 cooperative with load forecasts completed within the previous 12-month period for the generation and
4 transmission cooperative.

5 (8) A member of a distribution cooperative may inspect a summary of the annual load forecasts provided
6 pursuant to subsection (7). The summary is not required to include projected growth of industrial loads.

7 (9) A generation and transmission cooperative must:

8 (a) give member distribution cooperatives the right to determine who serves as its representative on a
9 generation and transmission cooperative's board of trustees;

10 (b) in accordance with 35-18-311, give member distribution cooperatives the authority to certify the
11 replacement of a trustee to fill a distribution cooperative's seat on a generation and transmission cooperative's
12 board of trustees in the event of a vacancy;

13 (c) permit all members of a distribution cooperative's board of trustees and all distribution cooperative
14 managers to be present at all generation and transmission cooperative board of trustees meetings, including
15 teleconferences. Board members must be allowed to speak on any item on the meeting agenda.

16 (d) limit executive sessions of the generation and transmission cooperative's board of trustees to
17 confidential matters and matters of individual privacy; and

18 (e) make available to members of a distribution cooperative's board of trustees and managers:

19 (i) financial reports of the generation and transmission cooperative; and

20 (ii) minutes of generation and transmission cooperative board meetings.

21 (10) As used in this section, the following definitions apply:

22 (a) "Distribution cooperative" means a cooperative organized in accordance with this chapter that is
23 directly responsible for supplying electricity to and billing its members who are the ultimate consumers of the
24 electricity.

25 (b) "Generation and transmission cooperative" means a Montana-based cooperative organized in
26 accordance with this chapter that files articles of incorporation pursuant to 35-18-203 that either generates power
27 or enters into contracts for power, or both. It enters into contracts for the sale of wholesale electricity to two or
28 more distribution cooperative members and may or may not own transmission services.

29 (c) "Load forecast" means an estimate or projection of end-use electricity consumption based on
30 projected changes in future end use, taking into account residential, commercial, industrial, and irrigation loads,

1 populations, business cycles, appliance saturation, and efficiencies. It may be forecasted by sector or consumer
2 class.

3 (d) "Regional generation and transmission cooperative" means a cooperative serving more than 400
4 megawatts of load with multiple generating facilities. Its members are in multiple states and are distribution
5 cooperatives, generation and transmission cooperatives, or both."

6
7 NEW SECTION. Section 3. Notification to tribal governments. The secretary of state shall send a
8 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
9 Chippewa tribe.

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11 NEW SECTION. Section 4. Saving clause. [This act] does not affect rights and duties that matured,
12 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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14 NEW SECTION. Section 5. Severability. If a part of [this act] is invalid, all valid parts that are severable
15 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
16 remains in effect in all valid applications that are severable from the invalid applications.

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18 NEW SECTION. Section 6. Effective date. [This act] is effective July 1, 2013.

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20 NEW SECTION. Section 7. Applicability. [This act] applies to contracts, agreements, and forecasts
21 begun after July 1, 2013.

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