

HOUSE BILL NO. 203

INTRODUCED BY R. GARCIA

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA ENERGY SECURITY ACT;
5 GENERALLY REVISING LAWS RELATED TO ELECTRICAL ENERGY; ESTABLISHING THE MONTANA
6 PUBLIC POWER COMMISSION; PROVIDING THE COMMISSION WITH POWERS AND DUTIES; CLARIFYING
7 THAT A PERSON EMPLOYED BY A COAL-FIRED GENERATING FACILITY ACQUIRED BY THE STATE OF
8 MONTANA IS ENTITLED TO ALL RIGHTS THAT THE PERSON POSSESSED AS AN EMPLOYEE BEFORE
9 THE OWNERSHIP OF THE FACILITY WAS TRANSFERRED TO THE STATE; CREATING A SPECIAL
10 REVENUE ACCOUNT; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE
11 FINANCING AND PURCHASE OF COAL-FIRED GENERATION FACILITIES; ESTABLISHING PROCEDURES
12 AND REQUIREMENTS RELATED TO ISSUANCE OF THE BONDS; STATUTORILY APPROPRIATING MONEY
13 FROM THE WHOLESALE ENERGY TRANSACTION TAX TO THE COMMISSION TO SUPPORT ITS
14 ACTIVITIES; AMENDING SECTIONS 15-72-106 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
15 DATE."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Montana Energy
20 Security Act".

21
22 NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 16] is to acquire coal-fired
23 generation facilities for which their acquisition by the state would be in the public interest and to operate them for
24 the benefit of the people of the state.

25
26 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 16], the following definitions
27 apply:

28 (1) "Bonds" means revenue bonds, notes, or other evidences of indebtedness issued pursuant to
29 [sections 8 through 16] as coal-fired generation facility revenue bonds.

30 (2) "Coal-fired generation facilities" means any combination of a physically connected generator or

1 generators, associated prime movers, and other associated property, including appurtenant land and
2 improvements and personal property, that are located in Montana and normally operated together to produce
3 electricity from coal-fired steam turbines.

4 (3) "Commission" means the Montana public power commission created in [section 4].

5

6 **NEW SECTION. Section 4. Montana public power commission -- composition -- compensation.**

7 (1) (a) There is a Montana public power commission that consists of five members.

8 (b) Each commission member must be elected and must be a qualified elector of the district from which
9 the member is elected. Each member must be from a separate district of the state. The districts must correspond
10 to the districts for members of the public service commission as provided in 69-1-104.

11 (c) (i) Each newly elected commission member shall take office on the first Monday of January after the
12 election and, subject to the exception in subsection (1)(c)(ii), commission member shall serve a 4-year term.

13 (ii) Terms must be staggered, with two of the initial members serving a term of 2 years. The initial
14 members elected shall draw by lot to determine their terms of office.

15 (2) For each day that a member is engaged in the business of the commission, the member is entitled
16 to:

17 (a) a salary commensurate to that of an entry grade 18 state employee;

18 (b) the mileage allowance as provided in 2-18-503; and

19 (c) expenses as provided in 2-18-501 and 2-18-502.

20 (3) Members of the commission may participate in the state employees benefits group plan and public
21 retirement system under the same conditions as a member of the legislature as provided in 5-2-303 and 5-2-304.

22 (4) The commission is attached to the department of natural resources and conservation for
23 administrative purposes, and the department shall provide staff support and a liaison between the commission
24 and other state or federal agencies.

25

26 **NEW SECTION. Section 5. Powers and duties.** (1) The commission shall conduct an assessment of
27 existing coal-fired generation facilities and determine those for which their acquisition by the state would be in
28 the public interest. In determining the public interest, the commission shall consider:

29 (a) the condition of the facility;

30 (b) the estimated cost of the facility;

1 (c) the estimated cost of maintaining, repairing, and operating the facility;

2 (d) the debt burden to be serviced;

3 (e) the revenue expected to be derived; and

4 (f) the value of avoided risk in power markets.

5 (2) For a coal-fired generation facility for which the commission determines that its acquisition would be
6 in the public interest, the commission shall:

7 (a) purchase the coal-fired generation facility at fair market value;

8 (b) enter contracts to lease, manage, operate, or both manage and operate the coal-fired generation
9 facility, to provide marketing services, or to provide other services;

10 (c) sell electrical energy at a retail or wholesale level, provided that large and small customers who were
11 previously served by the coal-fired generating facility have priority;

12 (d) utilize proceeds from the issuance and sale of revenue bonds by the board of examiners in order to
13 purchase or otherwise acquire investments in the coal-fired generation facility and to implement this section;

14 (e) reimburse any loss of revenue to any taxing unit, as defined in 15-1-101, associated with the
15 acquisition of the coal-fired generation facility. Reimbursement of local governments must be implemented as
16 provided by law.

17 (f) if necessary, use the power of eminent domain to acquire the coal-fired generation facility at fair market
18 value.

19 (3) The commission has all powers necessary to carry out the duties provided for in [sections 1 through
20 16].

21
22 **NEW SECTION. Section 6. Rights of employees of coal-fired generating facilities.** Each person
23 employed by a coal-fired generating facility acquired by the state under [section 5] is entitled to all rights that the
24 person possessed as an employee before the ownership of the facility was transferred to the state.

25
26 **NEW SECTION. Section 7. Funding -- special revenue account.** (1) There is a Montana public power
27 commission special revenue account within the state special revenue fund established in 17-2-102.

28 (2) A portion of the revenue derived from the wholesale energy transaction tax must be deposited into
29 this account pursuant to 15-72-106.

30 (3) The revenue received under this section must be used to:

- 1 (a) meet the administrative costs of the commission; and
2 (b) supplement, to the extent possible, the commission's other financial offers, incentives, and endeavors
3 pursuant to [sections 1 through 16].

4 (4) The money in the account is statutorily appropriated, as provided in 17-7-502, to the commission.
5

6 **NEW SECTION. Section 8. Bond authorization -- payment of principal and interest.** (1) The board
7 of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed \$500 million
8 outstanding at any time for the purposes of financing coal-fired generating facilities as provided in [section 5]. The
9 bonds are revenue obligations in which the net revenue from facility charges is pledged for payment of the
10 principal and interest on the bonds. Additional bonds, other than refunding bonds, may not be issued until the
11 pledge in favor of the bonds is satisfied and discharged.

12 (2) The proceeds of the bonds, other than any premiums and accrued interest received, must be
13 deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in
14 the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay
15 the costs of issuing the bonds and to fulfill the purposes authorized in [section 5]. For the purposes of 17-5-803
16 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the
17 Montana public power commission and may be used for the purposes authorized in [section 5] without further
18 budgetary authorization.

19 (3) In authorizing the sale and issuance of the bonds, the board of examiners, on request of the
20 commission, may create separate accounts or subaccounts to provide for the payment and security of the bonds,
21 including a debt service reserve account. The net revenue from facility charges must be pledged to these
22 accounts.
23

24 **NEW SECTION. Section 9. Use of bond proceeds.** The Montana public power commission shall use
25 the proceeds of the bonds authorized in [section 8] to finance coal-fired generating facilities, to carry out the
26 powers and duties enumerated in [section 5], to pay capitalized interest, to fund a debt service reserve, and to
27 pay costs associated with the sale and security of the bonds.
28

29 **NEW SECTION. Section 10. Bond anticipation notes -- when issued -- principal and interest.** (1)
30 The board of examiners may, pending the issuance of bonds under [sections 1 through 16], issue temporary

1 notes in anticipation of the proceeds to be derived from the sale of the bonds, designated as "bond anticipation
 2 notes". The proceeds of the sale of the bond anticipation notes may be used only for the purpose for which the
 3 proceeds of the bonds may be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes
 4 necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem
 5 the outstanding notes. A renewal of any note may not be issued after the sale of bonds in anticipation of which
 6 the original notes were issued.

7 (2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3
 8 years after the date of issue may be issued from time to time as the proceeds of the notes are needed. The notes
 9 must be authorized by the board of examiners and have terms and provisions as may be provided by resolution
 10 of the board. However, each resolution of the board authorizing notes must:

11 (a) describe the need for the proceeds of the notes to be issued; and

12 (b) specify the principal amount of the notes or the maximum principal amount of the notes that may be
 13 outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula of
 14 the notes to be determined in the manner specified in the resolution authorizing the notes, and the maturity date
 15 or maximum maturity date of the notes.

16 (3) Subject to the limitations contained in this section and the standards and limitations prescribed in the
 17 authorizing resolution, the board of examiners, in its discretion, may provide for the notes described in subsection
 18 (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power
 19 to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of
 20 interest, and other terms and details of the notes that may be considered appropriate by the board or, if there has
 21 been a delegation, by the state treasurer. The board, in its discretion but subject to the limitations contained in
 22 this section, may in the resolution authorizing the issuance of notes provide for:

23 (a) the employment of one or more persons or firms to assist the board in the sale of the notes;

24 (b) the appointment of one or more banks or trust companies, either inside or outside the state, as
 25 depository for safekeeping and as agent for the delivery and payment of the notes;

26 (c) the refunding of the notes, from time to time, without further action by the board, unless and until the
 27 board revokes the authority to refund; and

28 (d) other terms and conditions as the board may consider appropriate.

29

30 NEW SECTION. **Section 11. Form -- principal and interest -- fiscal agent.** (1) Each series of

1 coal-fired generating facility revenue bonds may be issued by the board of examiners at public or private sale,
2 in denominations and form, whether payable to the bearer or registered as to principal or both principal and
3 interest, with provisions for the conversion or exchange, bearing interest at a rate or rates or the method of
4 determining the rate or rates, maturing at times, not more than 40 years from the date of issue, subject to
5 redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state
6 as the board shall determine, subject to the limitations contained in [sections 1 through 16]. Any action taken by
7 the board under [sections 1 through 16] must be approved by a majority vote of its members.

8 (2) In all other respects, the board of examiners is authorized to prescribe the form and terms of the
9 bonds and shall do whatever is lawful and necessary for their issuance and payment.

10 (3) Bonds must be signed by the members of the board of examiners. The bonds may be executed with
11 facsimile signatures.

12 (4) The board of examiners may employ a fiscal agent and a bond registrar and transfer agent to assist
13 in the performance of its duties under [sections 1 through 16].

14 (5) In connection with the issuance and sale of bonds, the board of examiners may arrange for lines of
15 credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of
16 repayment for bonds issued pursuant to [sections 1 through 16]. Amounts drawn on lines of credit may be
17 evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing terms and
18 conditions that the board may authorize in the resolution approving the notes.

19
20 **NEW SECTION. Section 12. Trust indenture.** In the discretion of the board of examiners, bonds issued
21 under [sections 1 through 16] may be secured by a trust indenture by and between the board and a trustee, which
22 may be any trust company or bank having the powers of a trust company inside or outside of the state.

23
24 **NEW SECTION. Section 13. Negotiability of bonds.** Bonds issued under [sections 1 through 16] are
25 negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of
26 bonds.

27
28 **NEW SECTION. Section 14. Signatures of board members.** If a member of the board of examiners
29 whose signature appears on bonds or coupons issued under [sections 1 through 16] ceases to be a member
30 before the delivery of the bonds, the member's signature is valid and sufficient for all purposes as if the member

1 had remained in office until delivery.

2

3 **NEW SECTION. Section 15. Refunding bonds.** (1) The board of examiners may provide for the
4 issuance of refunding bonds for refunding any bonds then outstanding that have been issued under [sections 1
5 through 16], including the payment of any redemption premium and any interest accrued or to accrue to the date
6 of redemption of the obligations. The issuance of refunding bonds, the maturities and other details, the rights of
7 the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of
8 [sections 1 through 16] that relate to the issuance of the bonds.

9 (2) Refunding bonds issued as provided in subsection (1) may be sold or exchanged for outstanding
10 bonds issued under [sections 1 through 16]. The proceeds may be applied to the purchase, redemption, or
11 payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with other
12 available funds, to the payment of principal, accrued interest, and any redemption premium on the bonds being
13 refunded and, if permitted in the resolution authorizing the issuance of the refunding bonds or in the trust
14 agreement securing them, to the payment of interest on refunding bonds and expenses in connection with
15 refunding, the proceeds may be invested as provided in Title 17, chapter 6.

16

17 **NEW SECTION. Section 16. Tax exemption of bonds -- legal investments.** (1) All bonds issued
18 under [sections 1 through 16], their transfer, and their income, including any profits made on their sale, are
19 exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for estate
20 taxes.

21 (2) Bonds issued under [sections 1 through 16] are legal investments for any person or board charged
22 with investment of public funds and are acceptable as security for any deposit of public money.

23

24 **Section 17.** Section 15-72-106, MCA, is amended to read:

25 **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
26 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax
27 collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by
28 15-72-104, both the tax and the excess must be remitted to the department.

29 (2) A self-assessing distribution services provider is subject to the provisions of this part.

30 (3) ~~The~~ Except as provided in subsection (4), the wholesale energy transaction tax collected under this

1 part must, in accordance with the provisions of 17-2-124, be deposited in the general fund.

2 (4) Beginning January 1, 2020, an amount of the wholesale energy transaction tax collected under this
 3 part that is sufficient to fund the activities of the Montana public power commission established in [section 4], as
 4 determined by the commission but not to exceed \$200,000 a year, must be deposited annually in the state special
 5 revenue account provided for in [section 7]. "

6

7 **Section 18.** Section 17-7-502, MCA, is amended to read:

8 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 9 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
 10 need for a biennial legislative appropriation or budget amendment.

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

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

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

16 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
 17 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310;
 18 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110;
 19 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222;
 20 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604;
 21 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622;
 22 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409;
 23 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503; 41-5-2011;
 24 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108;
 25 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; [section 7]; 75-1-1101; 75-5-1108; 75-6-214;
 26 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
 27 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505;
 28 [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

29 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 30 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued

1 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
2 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
3 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
4 appropriation authority for the payments.(In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
5 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
6 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
7 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
8 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
9 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion
10 of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112
11 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015,
12 the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of
13 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates
14 June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of
15 contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant
16 to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec.
17 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457,
18 L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the
19 inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304
20 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates
21 June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant
22 to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023;
23 pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2,
24 Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10,
25 Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

26
27 **NEW SECTION. Section 19. Notification to tribal governments.** The secretary of state shall send
28 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
29 Chippewa tribe.

30

1 NEW SECTION. **Section 20. Codification instruction.** [Sections 1 through 16] are intended to be
2 codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 16].

3
4 NEW SECTION. **Section 21. Saving clause.** [This act] does not affect rights and duties that matured,
5 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

6
7 NEW SECTION. **Section 22. Severability.** If a part of [this act] is invalid, all valid parts that are
8 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
9 the part remains in effect in all valid applications that are severable from the invalid applications.

10

11 NEW SECTION. **Section 23. Effective date.** [This act] is effective July 1, 2019.

12

- END -