

SENATE BILL NO. 487  
INTRODUCED BY PEASE, KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO WIND ENERGY TAXATION AND ECONOMIC DEVELOPMENT; ELIMINATING THE TAX CREDIT LIMITATION FOR WIND ENERGY DEVELOPMENT; INCREASING THE MAXIMUM AMOUNT OF OUTSTANDING ECONOMIC DEVELOPMENT BONDS THAT THE BOARD OF INVESTMENTS MAY ISSUE; INCREASING THE ALLOWABLE AMOUNT OF MONEY THAT THE BOARD OF INVESTMENTS MAY USE FOR FINANCING A MAJOR PROJECT; REVISING THE DEFINITION OF PROJECT; AMENDING SECTIONS 15-32-404, 17-5-1506, ~~AND 17-5-1527, 90-5-101,~~ MCA; REPEALING SECTION 15-32-403, MCA; AND PROVIDING ~~AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE~~ DATES."

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

**Section 1.** Section 15-32-404, MCA, is amended to read:

**"15-32-404. Carryover of credit.** (1) The tax credit allowed under 15-32-402 is to be deducted from that portion of the taxpayer's tax liability as set forth in 15-32-402(1) for the tax year in which the equipment invested in by the taxpayer is placed in service. If the amount of the tax credit exceeds the taxpayer's tax liability for the tax year, the amount that exceeds the tax liability may be carried over for credit against the taxpayer's tax liability in the next succeeding tax year or years until the total amount of the tax credit, ~~subject to the limitation of 15-32-403,~~ has been deducted from tax liability. However, except as provided in subsection (2), a credit may not be carried beyond the seventh tax year succeeding the tax year in which the equipment was placed in service.

(2) A credit may be extended through the 15th tax year succeeding the tax year in which the equipment was placed in service if an individual, corporation, partnership, or small business corporation, as defined in 15-30-1101:

(a) invests in a commercial system located within the exterior boundaries of a Montana Indian reservation, which commercial system is 5 megawatts or larger in size; and

(b) signs an employment agreement with the tribal government of the reservation where the commercial system would be constructed regarding the training and employment of tribal members in the construction, operation, and maintenance of the commercial system."

**Section 2.** Section 17-5-1506, MCA, is amended to read:

**"17-5-1506. Bonds and notes for projects and major projects.** (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed ~~\$75~~ ~~\$100~~ \$800 million. THE TOTAL AMOUNT OF BONDS NOT SECURED UNDER 17-5-1515 OUTSTANDING AT ANY ONE TIME, EXCEPT BONDS AS TO WHICH THE BOARD'S OBLIGATIONS HAVE BEEN SATISFIED AND DISCHARGED BY REFUNDING OR BONDS FOR WHICH RESERVES FOR PAYMENT OR OTHER MEANS OF PAYMENT HAVE BEEN PROVIDED, MAY NOT EXCEED \$800 MILLION."

**Section 3.** Section 17-5-1527, MCA, is amended to read:

**"17-5-1527. Procedure prior to financing major projects.** (1) The board may finance major projects under this part only when it finds that:

- (a) the financing is in the public interest and is consistent with legislative purposes and findings;
- (b) the financing to be provided by the board for a project does not exceed either ~~\$10~~ \$50 \$600 million or 90% of the cost or appraised value of the project, whichever is less;
- (c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;
- (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;
- (e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; "substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons;
- (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and
- (g) an applicant has submitted a statement that indicates that any contract let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under this part on or after July 1, 1993, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

- (a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by 17-5-1515.

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes."

**SECTION 4. SECTION 90-5-101, MCA, IS AMENDED TO READ:**

**"90-5-101. Definitions.** As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Electric energy generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electric power. The term includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

(4) "Family services provider" means organizations, including nonprofit corporations, that provide human services for children and adults, including but not limited to early care services for children, youth services, health

services, social services, habilitative services, rehabilitative services, preventive care, and supportive services, and training, educational, and referral activities in support of human services.

(5) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(6) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

(7) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate educational facilities; and

(b) providing a program of education beyond the high school level.

(8) "Mortgage" means a mortgage or deed of trust or other security device.

(9) "Municipality" means any incorporated city or town in the state.

(10) "Project" means:

(a) any land;

(b) any building or other improvement; ~~and~~

(c) any other real or personal properties considered necessary in connection with the improvement referred to in subsection (1)(b), whether or not now in existence, that must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;

(d) recreation or tourist facilities;

(e) local, state, and federal governmental facilities;

(f) multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities;

(g) higher education facilities;

(h) electric energy generation facilities;

(i) family services provider facilities;

(j) the production of energy using an alternative renewable energy source as defined in 90-4-102;

(k) railroads; and

(l) any combination of ~~these~~ projects listed in subsections (10)(a) through (10)(k)."

NEW SECTION. **Section 5. Repealer.** Section 15-32-403, MCA, is repealed.

NEW SECTION. Section 6. Effective date DATES. (1) ~~[This act] is [SECTIONS 2, 3, AND 6 THROUGH 4 AND THIS SECTION] ARE~~ effective on passage and approval.

(2) ~~[SECTIONS 1 AND 4 5] ARE EFFECTIVE JULY 1, 2005.~~

~~NEW SECTION. Section 6. Retroactive applicability.~~ ~~[This act] applies retroactively, within the meaning of 1-2-109, to tax years beginning after December 31, 2002.~~

- END -