

HOUSE BILL NO. 330

INTRODUCED BY B. BERGREN, CAMPBELL, JOPEK, NOONAN, PHILLIPS, SESSO, VILLA

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA CLEAN RENEWABLE ENERGY BOND ACT; AUTHORIZING GOVERNMENTAL BODIES TO OWN AND OPERATE QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ISSUE CLEAN RENEWABLE ENERGY BONDS TO FINANCE THE ACQUISITION OR CONSTRUCTION OF QUALIFIED ENERGY PROJECTS; AUTHORIZING GOVERNMENTAL BODIES TO ENTER INTO CONTRACTS NECESSARY TO ACQUIRE AND CONSTRUCT QUALIFIED ENERGY PROJECTS; PROVIDING TERMS AND CONDITIONS FOR THE ISSUANCE OF THE BONDS; PROVIDING THAT CERTAIN REQUIREMENTS BE MET PRIOR TO PROJECT FINANCING; CLARIFYING THAT THE PROVISIONS OF THIS ACT DO NOT AUTHORIZE A LOCAL GOVERNING BODY TO CONSTRUCT, OWN, OR OPERATE POWERLINES; REQUIRING THE OFFICE OF THE GOVERNOR TO STUDY WIND ENERGY INTEGRATION AND TO PROVIDE MARKETING ASSISTANCE; PROVIDING AN APPROPRIATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE DATES."

WHEREAS, the Montana Legislature has previously determined that Montana is blessed with an abundance of diverse renewable resources, that renewable energy production promotes and sustains economic development activity in local communities across the state, that increased use of renewable resources will enhance Montana's energy self-sufficiency, that economic and environmental benefits from renewable energy production accrue to the public at large, and that the expanded development of these resources to meet Montana's electricity demand and stabilize electricity prices should be encouraged and promoted; and

WHEREAS, Congress, pursuant to the Energy Tax Incentives Act of 2005, codified in part as section 54 of the Internal Revenue Code and referred to as the Federal Act, has created a federal tax credit program that would enable qualified issuers to issue clean renewable energy bonds for which the holder would receive a federal tax credit, in lieu of interest, to finance the capital costs of qualified projects as described in the Federal Act; and

WHEREAS, qualified issuers and qualified borrowers under the Federal Act include governmental bodies, which are defined as any state, territory, or possession of the United States, the District of Columbia, an Indian tribal government, or any political subdivision of those entities; and

WHEREAS, the Legislature, in enacting the Montana Renewable Power Production and Rural Economic Development Act, has required Montana public utilities to establish graduated renewable energy standards and

to purchase renewable energy from the community renewable energy projects and has allowed Montana political subdivisions or governmental bodies to be owners of community renewable energy projects; and

WHEREAS, several Montana cities, towns, and counties have expressed a desire to issue clean renewable energy bonds and to acquire and construct qualified projects under the Federal Act that would provide the energy for their own needs at a stable price and have applied to the Internal Revenue Service for allocations under the Federal Act; and

WHEREAS, the purpose of this legislation is to authorize Montana local governmental bodies to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies to better access financial investments for community renewable energy projects or alternative renewable energy sources.

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

NEW SECTION. Section 1. Short title. [Sections 1 through ~~47 21~~] may be cited as the "Montana Clean Renewable Energy Bond Act".

NEW SECTION. Section 2. Definitions. Unless the context requires otherwise, in [sections 1 through ~~47 21~~], the following definitions apply:

~~(1)~~ "ANCILLARY SERVICES" HAS THE MEANING PROVIDED IN 69-8-1003.

~~(1)(2)~~ "Bond" means bond, note, or other obligation.

~~(2)(3)~~ "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to [sections 1 through ~~47 21~~] and section 54 of the Internal Revenue Code, 26 U.S.C. 54.

~~(3)(4)~~ "Governing authority" means a council, board, or other body governing the affairs of the governmental body.

~~(4)(5)~~ "Governmental body" means a city, town, county, school district, consolidated city-county, or any other political subdivision of the state, however organized.

~~(6)~~ "INTERMITTENT GENERATION RESOURCE" MEANS A GENERATOR THAT OPERATES ON A LIMITED AND IRREGULAR BASIS DUE TO THE INCONSISTENT NATURE OF ITS FUEL SUPPLY, WHICH IS PRIMARILY WIND OR SOLAR POWER.

~~(5)(7)~~ "Internal Revenue Code" has the meaning provided in 15-30-101.

~~(6)(8)~~ "Project" means:

- (a) a facility qualifying as a "qualified project" within the meaning of section 54(d)(2) of the Internal Revenue Code, 26 U.S.C. 54(d)(2);
- (b) a community renewable energy project as defined in 69-8-1003; or
- (c) an alternative renewable energy source as defined in 15-6-225.

NEW SECTION. Section 3. Authority to acquire, construct, and operate projects. A governmental body may:

- (1) acquire, construct, reconstruct, extend, or improve a project within or outside of the boundaries of the governmental body or partially within or partially outside the boundaries of the governmental body;
- (2) acquire any interest in or any right to capacity of a project and acquire by gift, purchase, or lease land or rights in land or other real or personal property that is necessary for the ownership, operation, or maintenance of a project;
- (3) operate and maintain a project to provide electricity for its own use and, to the extent that production is in excess of its own requirements, ~~for the use of public and private consumers within or outside of the boundaries of the governmental body~~ SELL THE PRODUCTION TO:

(A) A PARTY ALLOWED TO CHOOSE AN ELECTRICITY SUPPLIER UNDER 69-8-201;

(B) A PUBLIC UTILITY OR COOPERATIVE UNDER VOLUNTARY CONTRACTS THAT ARE NOT GOVERNED BY TITLE 69, CHAPTER 3, PART 6;

(C) A COMPETITIVE ELECTRICITY SUPPLIER; OR

(D) AN OUT-OF-STATE CONSUMER;

- (4) prescribe and collect rates, fees, and charges for the services and facilities furnished by a project;
- (5) enter into and perform contracts and agreements that are necessary for the planning, construction, lease, operation, and maintenance of a project and the sale, transmission, distribution, or exchange of the electricity generated from the project on terms and for a period of time that its governing authority may determine;
- ~~———(6) enter into a contract or other arrangement with a third party agreeing for a specific term that it will use a project as a source of all or a portion of its energy requirements or that it will pay for all electricity generated by a project if the project is capable of producing electricity. Any agreement of this type may not constitute a debt of the governmental body for purposes of any statutory debt limit.~~

~~(7)~~(6) with or without advertising for bids, contract with a person or entity, within or outside the state, for the construction of a project, for the sale or transmission of electricity generated by a project, or for any interest

in the project or any right to capacity of the project on terms and conditions that its governing authority may determine.

NEW SECTION. Section 4. Cooperation among governmental bodies. (1) Two or more governmental bodies through their respective governing authorities may enter into interlocal or joint power agreements in accordance with Title 7, chapter 11, part 1, to facilitate project financing, acquisition, construction, operation, and maintenance and to provide related services including the sale and purchase of electricity.

(2) Governmental bodies that enter into agreements pursuant to subsection (1) may:

(a) authorize a board, commission, or other body to supervise, manage, or operate a project and may prescribe its powers and duties and fix the compensation of the members of the body supervising, managing, or operating the project; or

(b) hire a private party to supervise, manage, and operate the project on behalf of the governmental bodies.

NEW SECTION. Section 5. Authority to issue revenue bonds. (1) ~~A~~ EXCEPT AS PROVIDED IN [SECTION 17], A governmental body may:

(a) issue revenue bonds to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, or extension of any project;

(b) pledge to the punctual payment of its revenue bonds issued under this section and interest on the bonds all or a portion of the gross or net revenue of the project; and

(c) create and maintain reasonable reserves.

(2) The revenue bonds provided for in subsection (1) may be authorized by a resolution adopted by the governing authority of the governmental body. The resolution must establish the terms, covenants, and conditions of the revenue bonds. It is not necessary to submit the question of issuing the revenue bonds to the electors of the governmental body. The revenue bonds do not constitute indebtedness for the purpose of statutory debt limitations.

(3) The revenue of the project must include the charges for energy used or reserved for use by the governmental body, which may be made payable from its general fund or other available revenue, and the revenue generated from the sale of energy or capacity to third parties.

NEW SECTION. Section 6. Determination of cost. The governing authority of a governmental body,

in determining the cost of a project to be financed by the issuance of revenue bonds pursuant to [section 5], may include:

- (1) engineering, inspection, fiscal, and legal expenses;
- (2) interest estimated to accrue during the construction period of the project and for up to 6 months after the construction period on borrowed funds; and
- (3) costs of issuance of the revenue bonds and the funding of a debt service reserve to secure the revenue bonds.

NEW SECTION. Section 7. Nature of revenue bonds. (1) A holder of a revenue bond issued pursuant to [section 5] does not have the right to compel the governmental body to exercise its taxing power to pay off the bonds or the interest on those bonds.

- (2) Each revenue bond issued pursuant to [section 5] must state that:
 - (a) the bond, including interest on the bond, is payable from the revenue pledged to the payment of the bond; and
 - (b) the bond does not constitute a debt of the governmental body within the meaning of any constitutional or statutory limitation or provision.

NEW SECTION. Section 8. Authority to issue other bonds. If the principal amount of clean renewable energy bonds, as limited by the Internal Revenue Code, is insufficient to finance all costs of a project as determined pursuant to [section 6], the governmental body may issue bonds to finance those costs and the costs of issuance of those bonds either as:

- (1) additional revenue bonds pursuant to [section 5];
- (2) obligations under 7-7-4104 or [section 9], as applicable, of a governmental body that is a city, town, or county; or
- (3) general obligations of a governmental body, provided that the issuance of the bonds are submitted to the electors of the governmental body as required by law.

NEW SECTION. Section 9. Issuance by county of certain general obligations. (1) A county may issue bonds to finance certain costs of a project described in [section 8] as provided in this section. The bonds constitute general obligations of the county but are not secured by a pledge of the taxing power of the county.

- (2) The bonds provided for in subsection (1) may be authorized by a resolution adopted by the governing

authority of the county. The resolution must establish the terms, covenants, and conditions of the bonds. It is not necessary to submit the question of issuing the bonds to the electors of the county. The bonds do not constitute indebtedness of the county for the purpose of statutory debt limitations.

(3) Bonds may be issued only if:

(a) the principal amount of the bonds does not exceed 10% of the general fund budget of the county in each of the 2 immediately preceding fiscal years;

(b) at the time the bonds are to be issued, the debt service in the current or in any future fiscal year on the bonds and any other outstanding bonds issued pursuant to this section do not exceed 2% of the revenue deposited in the general fund of the county in each of the 2 immediately preceding fiscal years; and

(c) the term of the bonds does not exceed 20 years.

(4) The bonds must clearly state that they are not secured by a pledge of the county's taxing power but that they are payable solely from revenue of the project and revenue in the general fund in any fiscal year that are pledged to the payment of the bonds.

(5) In order to secure the payment of principal of or interest on the bonds and related charges, the county may grant a first lien on all revenue collected and deposited in the general fund subject to or on a parity with any prior pledges. The county may establish other funds and accounts for bonds issued under this section that may be necessary to provide for the priority and segregation of revenue deposited in the general fund and pledged to the payment of obligations.

(6) All bonds incurred under this section are legal and valid obligations of the county issuing the obligations, and the general credit of the county is irrevocably pledged for the prompt payment of both the principal of and interest on the bonds as they become due. However, the county may not be obligated to levy taxes for the payment of any obligation or interest on the bonds.

(7) For purposes of this section, the term "related charges" includes the fees and expenses of registrars and paying agents and the amounts, if any, that must be rebated to the federal government under section 148 of the Internal Revenue Code, 26 U.S.C. 148.

NEW SECTION. Section 10. Use of revenue from project. (1) A governmental body issuing bonds or entering into a contract pursuant to [sections 1 through 47 21] with respect to a project may appropriate, apply, or expend the revenue of the project for the following purposes:

(a) to pay when due all bonds and interest on the bonds or amounts owing under contracts for the payment of the revenue that is or has been pledged, charged, or otherwise encumbered, including reserves;

(b) to provide for all expenses of operation and maintenance of the project, including reserves;

(c) to pay and discharge bonds and interest on the bonds or amounts under contracts not issued or entered into under [sections 1 through 47 21], for which the revenue of the project is or has been pledged, charged, or encumbered;

(d) to pay and discharge bonds and interest on the bonds that do not constitute a lien, charge, or encumbrance on the revenue of the project and that have been issued for the purpose of financing the acquisition, purchase, construction, reconstruction, improvement, or extension of the project; and

(e) to provide a reserve for improvements to the project.

(2) A governing authority shall fulfill the requirements of subsection (1) before the governing authority may transfer any of the revenue of the project to its general fund.

NEW SECTION. Section 11. Covenants in resolution of authorizing issuance of bonds. (1) A resolution authorizing the issuance of bonds under [sections 1 through 47 21] or a contract entered into under [sections 1 through 47 21] may contain covenants as to:

(a) the purpose or purposes to which the proceeds of sale of the bonds or amounts payable under the contract may be applied and the disposition of the proceeds or amounts;

(b) the use and disposition of the revenue of the project, including the creation and maintenance of reserves;

(c) the transfer, from the general fund of the governmental body to the account or accounts of the project, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the project;

(d) the issuance of other bonds or the incurrence of other contractual obligations payable from the revenue of the project;

(e) the operation and maintenance of the project;

(f) the insurance to be carried on the project and the use and disposition of insurance proceeds;

(g) books of account and the inspection and audit of the books; and

(h) the terms and conditions upon which the holders or trustees of the bonds or any portion of the bonds or the contracting party are entitled to the appointment of a receiver by the district court having jurisdiction.

(2) If a receiver is appointed, the receiver may:

(a) enter and take possession of the project;

(b) operate and maintain the project;

(c) prescribe rates, fees, or charges, subject to any required approval of the public service commission;
and

(d) collect, receive, and apply all revenue arising from the project in the same manner as the governmental body itself might do.

NEW SECTION. Section 12. Remedies. The provisions of [sections 1 through 47 21] and any resolution or contract are enforceable by a bondholder or contracting party in a court of competent jurisdiction by mandamus or other appropriate suit, action, or proceeding.

NEW SECTION. Section 13. Presumptions of validity of bonds. (1) Bonds issued under [sections 1 through 47 21] bearing the signatures of officers in office on the date of the signing of the bonds are valid and binding obligations even if, before bond delivery and payment, the persons whose signatures appear on the bonds are no longer officers of the governmental body issuing the bonds.

(2) The validity of the bonds is not dependent on or affected by the validity or regularity of any proceedings relating to the acquisition, purchase, construction, reconstruction, improvement, or extension of the project for which the bonds are issued.

(3) The resolution authorizing the bonds may provide that the bonds must contain a recital that they are issued pursuant to [sections 1 through 47 21] and that the recital is conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

NEW SECTION. Section 14. Liens arising from bonds or contracts -- mortgages. (1) A resolution or contract must specify and define the revenue or portion of the revenue that is appropriated and pledged for the security and payment of the bonds or amounts payable under the contract and the relative security of liens on the revenue in favor of bonds of one or more series or issues, whether issued concurrently or at different times, or in favor of different contracts, whether entered into concurrently or at different times.

(2) A governmental body may mortgage, pledge, and assign any or all of the real and personal property comprising a project to secure payment of bonds, contracts, or other obligations issued or incurred under [sections 1 through 47 21].

NEW SECTION. Section 15. Sale of bonds. Bonds issued under [sections 1 through 47 21] may be incurred or sold at public or private sale on terms and at prices that the governing authority determines to be

advantageous.

NEW SECTION. Section 16. Interim receipts or certificates. Pending the preparation of the definitive bonds, interim receipts or certificates, in a form and with provisions as the governing authority may determine, may be issued to the purchaser or purchasers of bonds sold pursuant to [sections 1 through 47 21]. The bonds and interim receipts or certificates are fully negotiable, as provided in the Uniform Commercial Code.

NEW SECTION. SECTION 17. REQUIREMENTS PRIOR TO PROJECT FINANCING. PRIOR TO SELLING BONDS OR UNDERTAKING ANY OTHER FORM OF FINANCING UNDER [SECTIONS 1 THROUGH 21], THE GOVERNMENTAL BODY SHALL ENTER INTO A CONTRACT OR CONTRACTS:

(1) WITH A TRANSMISSION SERVICES PROVIDER TO INTERCONNECT WITH THE TRANSMISSION OR DISTRIBUTION FACILITIES OF A UTILITY OR COOPERATIVE;

(2) THAT ENSURE THAT ALL ANCILLARY SERVICES ARE AVAILABLE TO REGULATE THE GENERATION OF ELECTRICITY FROM THE PROJECT AS REQUIRED BY THE CONTROL AREA OPERATOR; AND

(3) FOR THE SALE OF ELECTRICITY FROM THE PROJECT.

NEW SECTION. SECTION 18. PROHIBITION ON CONSTRUCTION, OWNERSHIP, AND OPERATION OF POWERLINES. [SECTIONS 1 THROUGH 21] DO NOT AUTHORIZE A GOVERNMENTAL BODY TO:

(1) CONSTRUCT, OWN, OR OPERATE ELECTRICITY DISTRIBUTION OR TRANSMISSION FACILITIES; OR

(2) USE THE PROCEEDS FROM BONDS UNDER [SECTIONS 1 THROUGH 21] TO CONSTRUCT, OWN, OR OPERATE ELECTRICITY DISTRIBUTION OR TRANSMISSION FACILITIES.

NEW SECTION. SECTION 19. WIND INTEGRATION STUDY. BEFORE MARCH 30, 2008, THE OFFICE OF THE GOVERNOR SHALL:

(1) STUDY WIND ENERGY INTEGRATION IN MONTANA TO DETERMINE THE ANCILLARY SERVICES EXPECTED TO BE NEEDED BY CONTROL AREAS INTEGRATING WIND ENERGY IN MONTANA, INCLUDING THE IMPACT OF LOCATION DIVERSITY ON THE NEED FOR ANCILLARY SERVICES; AND

(2) PRESENT THE FINDINGS OF THE STUDY TO THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE.

NEW SECTION. SECTION 20. MARKETING ASSISTANCE. (1) THE OFFICE OF THE GOVERNOR SHALL CONTRACT WITH A QUALIFIED CONSULTANT TO PROVIDE ELECTRICITY MARKETING ASSISTANCE TO GOVERNMENTAL BODIES

DEVELOPING PROJECTS UNDER [SECTIONS 1 THROUGH 21]. THE PREFERRED MARKET FOR EXCESS ELECTRICITY FROM THE PROJECTS DEVELOPED PURSUANT TO [SECTIONS 1 THROUGH 21] IS OUTSIDE MONTANA.

(2) THE CONSULTANT THAT IS HIRED UNDER SUBSECTION (1):

(A) MUST HAVE THOROUGH KNOWLEDGE OF THE ELECTRICITY MARKETS IN THE WESTERN UNITED STATES;

(B) MUST BE FAMILIAR WITH TRANSMISSION RESERVATION AND SCHEDULING PROCESSES RELATED TO A TRANSMISSION SERVICES PROVIDER'S OBLIGATION UNDER FEDERAL ENERGY REGULATORY COMMISSION RULES;

(C) MUST BE WELL-VERSED REGARDING THE EFFECTS OF INTERMITTENT GENERATION RESOURCES ON THE TRANSMISSION GRID; AND

(D) MAY NOT BE INVOLVED IN ANY EXISTING OR PROPOSED ENERGY DEVELOPMENT PROJECTS IN THE STATE THAT COULD AFFECT THE CONSULTANT'S IMPARTIALITY OR HAVE OTHER POTENTIAL CONFLICTS OF INTEREST THAT COULD AFFECT THE CONSULTANT'S ABILITY TO PROVIDE NONDISCRIMINATORY ELECTRICITY MARKETING ASSISTANCE SERVICES.

NEW SECTION. Section 21. Interpretation. (1) The powers conferred in [sections 1 through 47 21] are in addition and supplemental to the powers conferred by any other general, special, or local law.

(2) If the provisions of [sections 1 through 47 21] are inconsistent with the provisions of any other general, special, or local law, the provisions of [sections 1 through 47 21] are controlling.

NEW SECTION. SECTION 22. APPROPRIATION. THERE IS APPROPRIATED \$300,000 FROM THE GENERAL FUND TO THE OFFICE OF THE GOVERNOR FOR THE BIENNIUM BEGINNING JULY 1, 2007, TO CONDUCT THE WIND ENERGY INTEGRATION STUDY PURSUANT TO [SECTION 19] AND TO PROVIDE ELECTRICITY MARKETING ASSISTANCE PURSUANT TO [SECTION 20]. A TOTAL OF \$150,000 MAY BE USED FOR CONDUCTING THE WIND ENERGY INTEGRATION STUDY AND A TOTAL OF \$150,000 MAY BE USED TO PROVIDE ELECTRICITY MARKETING ASSISTANCE.

NEW SECTION. Section 23. Codification instruction. [Sections 1 through 47 21] are intended to be codified as an integral part of Title 90, chapter 4, and the provisions of Title 90, chapter 4, apply to [sections 1 through 47 21].

~~NEW SECTION. Section 19. Effective date.~~ [This act] is effective on passage and approval.

NEW SECTION. SECTION 24. EFFECTIVE DATES. (1) [SECTIONS 1 THROUGH 18, 21, 23, AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

(2) [SECTIONS 19, 20, AND 22] ARE EFFECTIVE JULY 1, 2007.

- END -

