



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 SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE 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 and Indian tribal governments to participate as qualified issuers or qualified borrowers under the Federal Act and to enable governmental bodies and Indian tribal governments 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:

**Section 1. Short title.** [Sections 1 through 18] may be cited as the "Montana Clean Renewable Energy Bond Act".

**Section 2. Definitions.** Unless the context requires otherwise, in [sections 1 through 18], the following definitions apply:

- (1) "Ancillary services" has the meaning provided in 69-8-1003.
- (2) "Bond" means bond, note, or other obligation.
- (3) "Clean renewable energy bonds" means one or more bonds issued by a governmental body pursuant to [sections 1 through 18] and section 54 of the Internal Revenue Code, 26 U.S.C. 54.
- (4) "Commission" means the public service commission provided for in 69-1-102.
- (5) "Governing authority" means a council, board, or other body governing the affairs of the governmental body.
- (6) "Governmental body" means a city, town, county, school district, consolidated city-county, Indian tribal government, or any other political subdivision of the state, however organized.
- (7) "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.
- (8) "Internal Revenue Code" has the meaning provided in 15-30-101.

(9) "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.

**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, sell the production to:
  - (a) a party allowed to choose an electricity supplier under 69-8-201;
  - (b) a public utility or cooperative;
  - (c) through June 30, 2009, a public utility under a qualifying contract governed by Title 69, chapter 3, part 6, if:
    - (i) the commission determines that adequate ancillary services are available for increases in the amount of intermittent generation resources connected to the transmission grid;
    - (ii) the cost of any ancillary services provided to the generator by the public utility can be adjusted to reflect actual costs, the costs are deductible by the public utility from the price of electricity paid to the generator, and adjustments may be made as frequently as every 12 months; and
    - (iii) the public utility can refuse acceptance of electricity from the generator when the loss of ancillary services threatens system reliability or the public utility is unable to purchase sufficient ancillary services to meet its obligations, subject to 90 days' written notice to the generator;
  - (d) a competitive electricity supplier; or
  - (e) an out-of-state purchaser;
- (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) 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.

**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.

**Section 5. Authority to issue revenue bonds.** (1) Except as provided in [section 16], 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.

**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.

**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.

**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
- (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.

**Section 9. Use of revenue from project.** (1) A governmental body issuing bonds or entering into a

contract pursuant to [sections 1 through 18] 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 18], 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.

**Section 10. Covenants in resolution of authorizing issuance of bonds.** (1) A resolution authorizing the issuance of bonds under [sections 1 through 18] or a contract entered into under [sections 1 through 18] 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.

**Section 11. Remedies.** The provisions of [sections 1 through 18] 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.

**Section 12. Presumptions of validity of bonds.** (1) Bonds issued under [sections 1 through 18] 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 18] and that the recital is conclusive evidence of the bonds' validity and of the regularity of the bonds' issuance.

**Section 13. 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 18].

**Section 14. Sale of bonds.** Bonds issued under [sections 1 through 18] may be incurred or sold at public or private sale on terms and at prices that the governing authority determines to be advantageous.

**Section 15. 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 18]. The bonds and interim receipts or certificates are fully negotiable, as provided in the Uniform Commercial Code.

**Section 16. Requirements prior to project construction.** Prior to starting construction under [sections 1 through 18], 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 as required by the control area operator are available to regulate the generation of electricity from the project;
- (3) for the sale of electricity from the project; and
- (4) with a tribal government for projects being constructed within the exterior boundaries of that tribal government's Indian reservation.

**Section 17. Prohibition on construction, ownership, and operation of powerlines.** (1) [Sections 1 through 18] do not authorize a governmental body to:

- (a) construct, own, or operate electricity distribution or transmission facilities; or
- (b) use the proceeds from bonds under [sections 1 through 18] to construct, own, or operate electricity distribution or transmission facilities.

(2) Subsections (1)(a) and (1)(b) do not apply to electrical lines connecting component parts within the perimeter of an electric generation facility or to a dedicated tie line between an electric generation facility and the transmission grid or the point of use by the governmental body.



**Section 18. Interpretation.** (1) The powers conferred in [sections 1 through 18] 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 18] are inconsistent with the provisions of any other general, special, or local law, the provisions of [sections 1 through 18] are controlling.

**Section 19.** Section 17-5-1604, MCA, is amended to read:

**"17-5-1604. Definitions.** As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1808.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Eligible government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, authority as defined in 75-6-304, or other special taxing district or assessment or service district authorized by law to borrow money; ~~or~~

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money; or

(c) for the purposes of [sections 1 through 18] only, an Indian tribal government.

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in 17-5-1630."

**Section 20.** Section 17-5-1608, MCA, is amended to read:

**"17-5-1608. Limitations on amounts.** The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~\$120~~ \$190 million."

**Section 21. Appropriation.** There is appropriated \$10 from the general fund to the office of the governor for the biennium beginning July 1, 2007, for administrative costs.

**Section 22. Codification instruction.** [Sections 1 through 18] 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 18].

**Section 23. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 21] is effective July 1, 2007.

- END -

I hereby certify that the within bill,  
HB 0330, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2019.

HOUSE BILL NO. 330

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

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 SOME POWERLINES; INCREASING THE AMOUNT OF BONDS ALLOWED UNDER THE MUNICIPAL FINANCE CONSOLIDATION ACT; PROVIDING AN APPROPRIATION; AMENDING SECTIONS 17-5-1604 AND 17-5-1608, MCA; AND PROVIDING EFFECTIVE DATES.