

1 SENATE BILL NO. 312

2 INTRODUCED BY M. PHILLIPS

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING UTILITY UNIVERSAL SYSTEM BENEFITS PROGRAMS;
5 REQUIRING LARGE CUSTOMERS TO FILE REPORTS WITH THE ENERGY AND TELECOMMUNICATIONS
6 INTERIM COMMITTEE; REQUIRING THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE
7 TO REVIEW REPORTS; CLARIFYING LARGE CUSTOMER ANNUAL REPORTING REQUIREMENTS;
8 ~~GRANTING THE DEPARTMENT OF REVENUE RULEMAKING AUTHORITY TO ADDRESS LARGE~~
9 ~~CUSTOMER CREDIT REQUESTS; REQUIRING THE DEPARTMENT OF REVENUE TO REVIEW LARGE~~
10 ~~CUSTOMER CREDIT REQUESTS; PROVIDING PENALTIES FOR UTILITIES AND LARGE CUSTOMERS THAT~~
11 ~~FAIL TO FILE UNIVERSAL SYSTEM BENEFITS REPORTS; ALLOWING THE DEPARTMENT OF REVENUE~~
12 ~~TO WORK WITH OTHER STATE AGENCIES TO EVALUATE LARGE CUSTOMER CREDITS; REQUIRING THE~~
13 ~~DEPARTMENT TO DENY OR APPROVE LARGE CUSTOMER CREDITS; ALLOWING A LARGE CUSTOMER~~
14 ~~TO CHALLENGE A DEPARTMENT'S DECISION; AMENDING SECTIONS 69-8-402, 69-8-413, AND 69-8-414,~~
15 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

18
19 **Section 1.** Section 69-8-402, MCA, is amended to read:
20 **"69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are
21 established for the state of Montana to ensure continued funding of and new expenditures for energy
22 conservation, renewable resource projects and applications, and low-income energy assistance.
23 (2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the
24 calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits
25 programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates
26 for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the
27 cooperatives.
28 (a) The recovery of all universal system benefits programs costs imposed pursuant to this section is
29 authorized through the imposition of a universal system benefits charge assessed at the meter for each local
30 utility system customer as provided in this section.

1 (b) A utility must receive credit toward annual funding requirements for the utility's internal programs or
2 activities that qualify as universal system benefits programs, including those amortized or nonamortized portions
3 of expenditures for the purchase of power that are for the acquisition or support of renewable energy,
4 conservation-related activities, or low-income energy assistance, and for large customers' programs or activities
5 as provided in subsection (7). The department of revenue shall review claimed credits of the utilities and large
6 customers pursuant to 69-8-414.

7 (c) A utility at which the sale of power for final end use occurs is the utility that receives credit for the
8 universal system benefits programs expenditure.

9 (d) A customer's utility shall collect universal system benefits funds less any allowable credits.

10 (e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place
11 in Montana.

12 (f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding
13 provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund
14 established in 69-8-412 for any difference.

15 (3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding
16 requirements for universal system benefits programs and low-income energy assistance.

17 (4) A utility's transition plan must describe how the utility proposes to provide for universal system
18 benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to
19 measure the utility's level of contribution to each program.

20 (5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance
21 is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the
22 overall universal system benefits funding level.

23 (a) A utility must receive credit toward the utility's low-income energy assistance annual funding
24 requirement for the utility's internal low-income energy assistance programs or activities.

25 (b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility
26 shall make a payment for any difference to the universal low-income energy assistance fund established in
27 69-8-412.

28 (6) An individual customer may not bear a disproportionate share of the local utility's funding
29 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program costs.

30 (7) (a) A large customer:

1 (i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying
2 load equal to the lesser of:

3 (A) \$500,000, less the large customer credits provided for in this subsection (7); or

4 (B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour
5 purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

6 (ii) ~~except as provided in 69-8-414,~~ must receive credit toward that large customer's universal system
7 benefits charge for internal expenditures and activities that qualify as a universal system benefits programs
8 expenditure, and these internal expenditures must include but not be limited to:

9 (A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's
10 facility; and

11 (B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or
12 wholesale that are for the acquisition or support of renewable energy or conservation-related activities.

13 (b) ~~Large Except as provided in 69-8-414, large~~ LARGE customers making these expenditures must
14 receive a credit against the large customer's universal system benefits charge, except that any of those amounts
15 expended in a calendar year that exceed that large customer's universal system benefits charge for the calendar
16 year must be used as a credit against those charges in future years until the total amount of those expenditures
17 has been credited against that large customer's universal system benefits charges.

18 (8) (a) A public utility shall prepare and submit an annual summary report of the public utility's activities
19 relating to all universal system benefits programs to the commission, the department of revenue, and the energy
20 and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit
21 annual summary reports of activities to the cooperative utility's respective local governing body, the statewide
22 cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative
23 utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities,
24 including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of
25 revenue and the energy and telecommunications interim committee. The annual report of a public utility or of the
26 statewide cooperative utility office must include but is not limited to:

27 (i) the types of internal utility and customer programs being used to satisfy the provisions of this chapter;

28 (ii) the level of funding for those programs relative to the annual funding requirements prescribed in
29 subsection (2); ~~and~~

30 (iii) any payments made to the statewide funds in the event that internal funding was below the prescribed

1 annual funding requirements; and

2 (iv) information on all large customers who received a reimbursement for universal system benefits
3 related to expenditures from the utility during the previous reporting year.

4 (b) Before September 15 of the year preceding a legislative session, the energy and telecommunications
5 interim committee shall:

6 (i) review the universal system benefits programs and, if necessary, submit recommendations regarding
7 these programs to the legislature; and

8 (ii) review annual universal system benefits reports provided by utilities in accordance with subsection
9 (8)(a) and compare those reports with reports provided by large customers to the department of revenue in
10 accordance with subsection (10)(a) and identify large customers, if any, who are not in compliance with reporting
11 requirements in accordance with this subsection (8) and subsection (10).

12 (9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation
13 to support the utility's or the large customer's claim for the credit.

14 (10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report of
15 its universal system benefits programs activities and expenditures to the department of revenue and to the large
16 customer's utility. A report must be filed with the department even if a large customer is being reimbursed for a
17 prior year's project. The annual report of a large customer must identify each qualifying project or expenditure
18 for which it has claimed a credit and the amount of the credit. Prior approval by ~~the department of revenue or the~~
19 utility is not required, except as provided in subsection ~~(10)(b) (10)(c) (10)(B).~~

20 (b) If a large customer claims a credit that the department of revenue ~~disallows denies~~ DISALLOWS in
21 whole or in part ~~in accordance with 69-8-414,~~ the large customer is financially responsible for the ~~disallowance~~
22 denial ALLOWANCE DISALLOWANCE.

23 ~~(c)~~ A large customer and the large customer's utility may mutually agree that credits claimed by the large
24 customer be first approved by the utility. If the utility approves the large customer credit, the utility may be
25 financially responsible for any subsequent ~~disallowance denial~~ DISALLOWANCE. "

26

27 ~~Section 2.~~ Section 69-8-413, MCA, is amended to read:

28 ~~"69-8-413. Department rulemaking authority. (1) The department of revenue shall adopt rules on or~~
29 ~~before September 1, 1999;~~

30 ~~(a) specifying acceptable universal system benefits programs credits and expenditures and adopting~~

1 ~~procedures for challenged credits;~~
 2 ~~—— (b) defining qualifying standards to be used by large customers to meet the requirements of~~
 3 ~~69-8-402(7)(a)(ii);~~
 4 ~~—— (c) specifying methods the department will use to evaluate and, if necessary, deny credits provided by~~
 5 ~~large customers in accordance with subsection (1)(b); and~~
 6 ~~—— (d) outlining procedures a large customer may use to challenge decisions by the department to deny~~
 7 ~~credits;~~
 8 ~~—— (2) Rules adopted pursuant to this part must be adopted in accordance with the Montana Negotiated~~
 9 ~~Rulemaking Act, Title 2, chapter 5, part 1.~~
 10 ~~—— (3) Universal system benefits programs credits claimed or expenditures made prior to the adoption of~~
 11 ~~the rules under subsection (1) subsections (1)(b) through (1)(d) or prior to September 1, 1999, must be allowed~~
 12 ~~and are not subject to the requirements of 69-8-414."~~

13
 14 **Section 2.** Section 69-8-414, MCA, is amended to read:

15 **"69-8-414. Universal system benefits programs credit review process -- penalties.** (1) (a) All annual
 16 reports required pursuant to 69-8-402(8) and (10) must be filed with the department of revenue on March 1 of
 17 each year.

18 ~~(b) A EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A utility or large customer who fails to file a report in~~
 19 ~~accordance with subsection (1)(a) is subject to an administrative penalty of not less than \$1,000 or more than~~
 20 ~~\$5,000.~~

21 ~~(C) THE DEPARTMENT MAY NOT IMPOSE A PENALTY PURSUANT TO THIS SUBSECTION (1) UNLESS THE~~
 22 ~~DEPARTMENT:~~

23 ~~(i) PROVIDES NOTICE TO A UTILITY OR A LARGE CUSTOMER OF THE FAILURE TO FILE A TIMELY REPORT IN~~
 24 ~~ACCORDANCE WITH 69-8-402(8) OR (10); AND~~

25 ~~(ii) DOES NOT RECEIVE A REPORT FROM THE UTILITY OR A LARGE CUSTOMER WITHIN 20 BUSINESS DAYS OF THE~~
 26 ~~NOTICE REQUIRED PURSUANT TO SUBSECTION (1)(C)(i).~~

27 ~~(c)(D) Any penalties recovered by the department must be deposited in the universal low-income energy~~
 28 ~~assistance fund established in 69-8-412(1)(b).~~

29 (2) Except as provided in ~~69-8-413~~ ~~69-8-413(3)~~ 69-8-413, upon a challenge by an interested person, the
 30 department of revenue shall ensure that the credit claimed is consistent with this chapter. An interested person

1 may file comments challenging the claim, including supporting documentation, with the department of revenue.
 2 A challenge of any claimed credit must be filed within 60 days of the department of revenue's receipt of the credit
 3 claimant's annual reports required pursuant to 69-8-402(8) and (10).

4 ~~(3) (a) Claimed~~ ~~Except as provided in subsection (3)(b), claimed~~ CLAIMED credits are presumed to be
 5 correct unless challenged by an interested person. If a challenge is filed by an interested person, the department
 6 of revenue shall conduct an initial review of a challenged credit and shall make a determination as to the
 7 likelihood that the challenged credit qualifies for universal system benefits programs. If the department of revenue
 8 finds that the challenged credit is not likely to qualify for universal system benefits programs, the department of
 9 revenue shall formally review the challenge; otherwise, the department of revenue shall dismiss the challenge
 10 and provide a statement of the reasons supporting dismissal of the challenge. The department of revenue may
 11 request additional information from the credit claimant or interested person. The department of revenue shall
 12 complete the initial review within 30 days of the challenge.

13 ~~(b) The department of revenue shall review large customer credits in accordance with rules adopted~~
 14 ~~pursuant to 69-8-413 to determine if those credits qualify for universal system benefits programs. The department~~
 15 ~~may request the assistance of the department of environmental quality, the public service commission, or any~~
 16 ~~other state agency in evaluating credits submitted by large customers.~~

17 ~~(c) By September 1 of each year, the department of revenue shall deny a large customer credit if:~~
 18 ~~(i) the large customer fails to file a report in accordance with 69-8-402(10); or~~
 19 ~~(ii) the department determines after a review conducted in accordance with subsection (3)(b) that a large~~
 20 ~~customer credit does not meet qualifying standards adopted by department rule in accordance with 69-8-413 to~~
 21 ~~be used by large customers to meet the requirements of 69-8-402(7)(a)(ii).~~

22 ~~(d) Unless the department denies a credit in accordance with subsection (3)(c), the claimed credit is~~
 23 ~~presumed to be in compliance with 69-8-402.~~

24 ~~(e) A large customer may challenge a decision by the department to deny a credit in accordance with~~
 25 ~~rules adopted by the department in accordance with 69-8-413(1)(d).~~

26 (4) If the department of revenue determines that a formal review of a ~~challenged~~ CHALLENGED credit
 27 ~~challenged in accordance with subsection (2)~~ is necessary, the department of revenue shall provide public notice
 28 of the opportunity to comment to the credit claimant and interested persons. The department of revenue may also
 29 schedule an oral hearing. If a hearing is scheduled, the department of revenue shall provide public notice of the
 30 hearing to the credit claimant and interested persons.

1 (5) For a formal credit review challenge ~~in accordance with subsection (2)~~, the following procedures
2 apply:

3 (a) The credit claimant shall provide documentation supporting the credit claimed to the department of
4 revenue and to all interested persons, subject to department of revenue protective orders for confidential or
5 sensitive materials, upon a showing of a privacy interest by the credit claimant.

6 (b) The department of revenue shall make all materials related to the claim, the challenge, and the
7 submitted comments available to the credit claimant and for public inspection and photocopying, subject to any
8 department of revenue protective orders.

9 (c) The credit claimant may respond in writing to any comments and other documents filed by an
10 interested person.

11 (d) The department of revenue may ask for additional detailed information to implement this section.

12 (6) Upon completing a formal review of a ~~challenged~~ CHALLENGED credit ~~challenged in accordance with~~
13 ~~subsection (2)~~, the department of revenue shall make a decision to certify or to deny the credit claimed, providing
14 a statement of the reasons supporting the department of revenue's decision. The formal review of a challenged
15 credit, including the department of revenue's final decision, must be completed within 60 days of the department
16 of revenue's public notice of the opportunity to comment on the challenged credit."
17

18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

19
20 NEW SECTION. Section 4. Applicability. [This act] applies to:

21 ~~— (1) credits claimed by large customers on or after January 1, 2016; and~~

22 ~~— (2) annual reports filed with the department of revenue and the energy and telecommunications interim~~
23 ~~committee on or after March 1, 2016.~~

24 - END -