

1 HOUSE BILL NO. 585

2 INTRODUCED BY A. KNUDSEN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE BOARD OF INVESTMENTS TO MAKE LOANS TO
5 AN OWNER OF A COAL-FIRED GENERATING UNIT IN MONTANA FROM THE MONTANA PERMANENT
6 COAL TAX TRUST FUND FOR THE OPERATION AND MAINTENANCE OF A COAL-FIRED GENERATING
7 UNIT; PROVIDING LOAN CRITERIA, FEES, REQUIREMENTS, AND LIMITATIONS; REQUIRING NOTICE AND
8 STIPULATIONS IN THE EVENT OF BANKRUPTCY; AMENDING SECTIONS 17-6-302, 17-6-308, 17-6-309,
9 17-6-311, AND 17-6-317, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 WHEREAS, the Montana legislature encourages the Board of Investments to act as expeditiously as
12 possible in its consideration of potential loans to facilitate the continued operation of coal-fired generation in
13 Montana; and

14 WHEREAS, low-interest loans authorized by the Board of Investments can allow for the continued
15 operation of coal-fired generating units in Montana until a date certain, allowing the state of Montana to mitigate
16 the impacts of the units' retirement and plan for the future.

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

19
20 NEW SECTION. **Section 1. Loan recipients -- notice.** (1) If an owner of a coal-fired generating unit
21 receives a loan in accordance with this part, the owner shall provide the board of investments and the governor
22 of Montana with a minimum of 90 days' notice prior to filing for bankruptcy, reorganization, or other insolvency
23 proceeding or prior to a merger, sale, or transfer, by operation of law or otherwise.

24 (2) A successor to the owner, whether pursuant to a bankruptcy, reorganization, or other insolvency
25 proceeding or pursuant to a merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy
26 all obligations of the owner pursuant to this part in the same manner and to the same extent as the owner.

27
28 **Section 2.** Section 17-6-302, MCA, is amended to read:

29 **"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following
30 definitions apply:

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

2 (2) "Clean and healthful environment" means an environment that is relatively free from pollution that
3 threatens human health, including as a minimum, compliance with federal and state environmental and health
4 standards.

5 (3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility
6 located in Montana that has a generating capacity greater than or equal to 200 megawatts.

7 ~~(3)~~(4) "Department" means the department of commerce provided for in 2-15-1801.

8 ~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership
9 interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal
10 occupation is as an employee, officer, or partner of the enterprise.

11 ~~(5)~~(6) "Financial institution" includes but is not limited to a ~~state-~~ state-chartered or federally chartered
12 bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32,
13 chapter 4.

14 ~~(6)~~(7) "Intermediary loan" means a loan provided to a local economic development organization with a
15 revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development
16 loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but
17 not limited to programs from the economic development administration of the U.S. department of commerce and
18 the community development financial institution program from the U.S. department of the treasury.

19 ~~(7)~~(8) "Loan participation" means loans or portions of loans bought from a financial institution.

20 ~~(8)~~(9) "Local economic development organization" means:

21 (a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation
22 under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);

23 (ii) an entity certified by the department under 90-1-116; or

24 (iii) an entity established by a local government; and

25 (b) an entity actively engaged in economic development and business assistance work in the area.

26 ~~(9)~~(10) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or
27 other ownership interests is owned and controlled by residents of Montana.

28 ~~(10)~~(11) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana
29 economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana
30 tax revenue in the future to the people of Montana, either directly or indirectly.

1 ~~(11)~~(12) "Montana economy" means any business activities in the state of Montana, including those that
2 continue existing jobs or create new jobs in Montana.

3 (13) "Owner" means an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451
4 that owns a coal-fired generating unit.

5 ~~(12)~~(14) "Service fees" means the fees normally charged by a financial institution for servicing a loan,
6 including amounts charged for collecting payments and remitting amounts to the fund."

7

8 **Section 3.** Section 17-6-308, MCA, is amended to read:

9 "**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through ~~(5)~~ (6) and
10 subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
11 by rules adopted by the board.

12 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve account
13 created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree
14 in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must
15 be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise
16 of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior
17 pledge of the revenue to the bonds and notes.

18 (3) The board shall manage the seed capital and research and development loan portfolios created by
19 the former Montana board of science and technology development. The board shall establish an appropriate
20 repayment schedule for all outstanding research and development loans made to the university system. The
21 board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by
22 the Montana board of science and technology development as part of the seed capital and research and
23 development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal
24 tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other
25 instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science
26 and technology development are repaid, the board shall deposit the proceeds or loans made from the coal
27 severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7%
28 interest.

29 (4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent
30 coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90,

1 chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of
 2 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest
 3 payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest
 4 have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan
 5 amounts may not exceed 10% of the amount administered under this subsection.

6 (5) The board shall allow the board of housing to administer \$40 million of the permanent coal tax trust
 7 fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6,
 8 part 6.

9 (6) (a) Subject to subsections (6)(b) through (6)(d), the board may make working capital loans from the
 10 permanent coal tax trust fund to an owner of a coal-fired generating unit.

11 (b) Loans may be provided in accordance with subsection (6)(a) only to finance the everyday operations
 12 and required maintenance of a coal-fired generating unit of which an owner has a shared interest.

13 (c) Loans may not be provided to operate or maintain a coal-fired generating unit beyond July 1, 2022.

14 (d) The board may charge a working capital loan application fee of up to \$500.

15 ~~(6)(7)~~ The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The
 16 rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
 17 corporations.

18 ~~(7)(8)~~ All repayments of proceeds pursuant to subsection (3) of investments made from the coal
 19 severance tax trust fund must be deposited in the coal severance tax permanent fund."
 20

21 **Section 4.** Section 17-6-309, MCA, is amended to read:

22 **"17-6-309. Investment preferences.** (1) Subject to the provisions of subsection (2), in deciding which
 23 of several investments of equal or comparable security and return are to be made when sufficient funds are not
 24 available to fund all possible investments, the board shall give preference to the business investments that:

25 (a) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana
 26 residents or in otherwise contributing to the long-term benefit of the Montana economy, including raising the per
 27 capita income of Montana jobholders;

28 (b) are for locally owned enterprises that are either expanding or establishing new operations;

29 (c) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs
 30 that will be filled by nonresidents coming into the state to fill ~~such~~ the jobs;

1 (d) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;

2 (e) encourage or benefit the processing, refining, marketing, and innovative use and promotion of
3 Montana's agricultural products; or

4 (f) benefit small- and medium-sized businesses as defined in rules adopted by the board.

5 (2) The board may make a loan to enhance economic development and create jobs in the basic sector
6 of the economy, as defined by the board by rule, if the loan will result in the creation of a business estimated to
7 employ at least 15 people in Montana on a permanent, full-time basis or result in the expansion of a business
8 estimated to employ at least an additional 15 people in Montana on a permanent, full-time basis or raise salaries,
9 wages, and business incomes of existing employees and employers.

10 (3) The board may make a working capital loan to an owner of a coal-fired generating unit if the loan will
11 prevent the elimination of jobs and provide stability in a community impacted by the operation of a coal-fired
12 generating unit."

13
14 **Section 5.** Section 17-6-311, MCA, is amended to read:

15 **"17-6-311. Limitation on size of investments.** (1) Except as provided in subsection (2) and this
16 subsection, an investment may not be made that will result in any one business enterprise or person receiving
17 a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of
18 which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise
19 or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred
20 for the project or enterprise for the coal tax investment that was made to the business enterprise or person must
21 be held by a commercial lender. This subsection does not:

22 (a) apply to a loan made pursuant to 17-6-317; or

23 (b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

24 (2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount
25 of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than
26 \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is
27 estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

28 (a) the estimated number of jobs to be created by the project within a 4-year period from the time that
29 the loan is made and the impact of the jobs on the state and the community where the project will be located;

30 (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business

1 and its employees;

2 (c) the current and projected ability of the community to provide necessary infrastructure for economic
3 and community development purposes;

4 (d) the amount of increased salaries, wages, and business incomes of existing jobholders and
5 businesses; and

6 (e) other matters that the board considers necessary.

7 (3) The total amount of loans made annually pursuant to 17-6-309(3) may not exceed \$10 million. In
8 determining the size of a loan, the board shall consider:

9 (a) the direct and indirect tax implications to the state if a coal-fired generating unit is retired prematurely;

10 (b) the current and projected ability of an owner to operate and maintain a coal-fired generating unit; and

11 (c) other matters that the board considers necessary."

12

13 **Section 6.** Section 17-6-317, MCA, is amended to read:

14 **"17-6-317. Participation by private financial institutions -- rulemaking.** (1) (a) The board may jointly
15 participate with private financial institutions in making loans to a business enterprise if the loan will:

16 (i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent,
17 full-time basis;

18 (ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana
19 on a permanent, full-time basis; or

20 (iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time
21 employees of the business.

22 (b) Loans under this section may be made only to:

23 (i) business enterprises that are producing or will produce value-added products or commodities; or

24 (ii) owners of coal-fired generating units to provide for the continued operation and maintenance of a
25 coal-fired generating unit until July 1, 2022.

26 (c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under
27 17-6-318.

28 (2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund
29 and must comply with each of the following requirements:

30 (a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25%

1 of the total loan amount.

2 (ii) A participating private financial institution may not require the business to have an equity position
3 greater than 50% of the total loan amount.

4 (iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a
5 participating private financial institution, then the additional security or guarantees must be proportional to the
6 amount loaned by all participants, including the board of investments.

7 (b) The board shall provide 75% of the total loan amount.

8 (c) The term of the loan may not exceed 15 years.

9 (d) The board shall charge interest at the following annual rate:

10 (i) 2% for the first 5 years if 15 or more jobs are created or retained;

11 (ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

12 (iii) 6% for the second 5 years; and

13 (iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

14 (e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives
15 certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board
16 disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted
17 rate.

18 (ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination
19 of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and
20 interest rate will in fact prevent the elimination of jobs.

21 (f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of
22 required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's
23 posted rate.

24 (g) For purposes of calculating job creation or retention requirements, the board shall use the state's
25 average weekly wage, as defined in 39-71-116, multiplied by the number of jobs required. This calculated number
26 is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual
27 jobs created pay less than the state's average weekly wage, the borrower shall create more jobs to meet the
28 minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i)
29 or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the
30 reduced interest rate. A job paying less than the minimum wage, provided for in 39-3-409, may not be included

1 in the required number of jobs.

2 (h) (i) A participating private financial institution may charge interest in an amount equal to the national
3 prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater
4 than 12%.

5 (ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to
6 an adjustable or fixed rate on terms acceptable to the borrower and lender.

7 (iii) A participating private financial institution, or lead private financial institution if more than one is
8 participating, may charge a 0.5% annual service fee.

9 (i) The business enterprise may not be charged a loan prepayment penalty.

10 (j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation
11 provisions based ~~upon~~ on the loan percentage of the board and each participating private lender.

12 (3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion
13 of the loan must be made based ~~upon~~ on the percentage of completion to ensure that the construction portion
14 of the loan is advanced prior to completion of the project.

15 (4) A private financial institution shall participate in a loan made pursuant to this section to the extent of
16 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must
17 be 75% of the loan amount.

18 (5) (a) Except as provided in subsection (5)(b), a business enterprise receiving a loan under the
19 provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except
20 that incentives may be paid to employees for achieving performance standards or goals.

21 (b) A business enterprise for the production of ethanol to be used as provided in Title 15, chapter 70,
22 part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan
23 payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

24 (6) The board may adopt rules that it considers necessary to implement this section."
25

26 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
27 integral part of Title 17, chapter 6, part 3, and the provisions of Title 17, chapter 6, part 3, apply to [section 1].
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29 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.
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