

HOUSE BILL NO. 60

INTRODUCED BY J. KEANE

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FINANCIAL ASSISTANCE TO ENTITIES AFFECTED BY THE CLOSING OR PENDING CLOSING OF COAL-FIRED GENERATING UNITS IN MONTANA; ESTABLISHING THE TREASURE STATE RESTORE AND REBUILD ACT; ESTABLISHING A GRANT AND LOAN PROGRAM FOR LOCAL GOVERNMENT ENTITIES AND ECONOMIC DEVELOPMENT ORGANIZATIONS; REQUIRING THE DEPARTMENT OF COMMERCE TO ADMINISTER THE GRANT AND LOAN PROGRAM; GRANTING THE DEPARTMENT RULEMAKING AUTHORITY; PROVIDING CRITERIA AND ELIGIBILITY FOR GRANTS AND LOANS; PROVIDING A STATUTORY APPROPRIATION; INCREASING THE WHOLESALE ENERGY TRANSACTION TAX TO FUND THE GRANT AND LOAN PROGRAM; AMENDING SECTIONS 15-72-104, 15-72-106, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 6] may be cited as the "Treasure State Restore and Rebuild Act".

NEW SECTION. **Section 2. Purpose.** (1) The legislature finds and declares that supporting and renewing Montana's economic base in communities impacted by the closing of coal-fired generating units is a public purpose.

(2) The purpose of the Treasure State Restore and Rebuild Act is to:

(a) promote diversification and development of the economic base within communities affected by the closing of coal-fired generating units;

(b) assist in providing economic stability to areas shattered by loss of employment, closure of businesses, and reductions in property values when coal-fired generating units close;

(c) preserve and protect the economic viability of communities impacted by the closing of coal-fired generating units; and



1 (d) mitigate the socioeconomic effects of the closing of coal-fired generating units on affected
2 communities and to provide remedies and financial resources necessary to mitigate those effects.

3
4 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 though 6], the following definitions
5 apply:

6 (1) "Closing" means the permanent shutdown of a coal-fired generating unit or units.

7 (2) "Coal-fired generating unit" means an individual unit or units of a facility located in Montana that
8 engages in the production of electrical energy in an amount of 200 megawatts or more using coal as a source
9 of fuel.

10 (3) "Department" means the department of commerce established in 2-15-1801.

11 (4) "Economic development organization" means an entity actively engaged in economic development
12 and business assistance work within 40 miles of a coal-fired generating unit that is:

13 (a) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under
14 section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6), located within 40
15 miles of a coal-fired generating unit;

16 (b) an entity certified by the department under 90-1-116 and located within 40 miles of a coal-fired
17 generating unit; or

18 (c) an entity established by a local government.

19 (5) "Local government" means a city, county, town, consolidated government, tribal government, school
20 district, or special district as defined in 2-2-102 that is located within 40 miles of a coal-fired generating unit.

21
22 **NEW SECTION. Section 4. Restore and rebuild grants and loans criteria.** (1) Beginning January
23 1, 2018, the department shall award grants and loans annually to local governments, economic development
24 organizations, or both using the account established pursuant to [section 6] to mitigate the closure of a coal-fired
25 generating unit.

26 (2) Grants and loans must be awarded to local governments to assist a local government in:

27 (a) mitigating property losses and providing housing security for those who are unemployed due to the
28 closing or planned closing of a coal-fired generating unit;

29 (b) paying for outstanding capital project bonds or other expenses incurred prior to the closing of a
30 coal-fired generating unit or planned closing of a coal-fired generating unit;

1 (c) addressing infrastructure needs, including but not limited to water supply needs and water
2 transportation costs, affected by the closing of a coal-fired generating unit;

3 (d) decreasing property tax mill levies that are caused by the elimination of activity by a coal-fired
4 generating unit or secondary business; or

5 (e) in the case of a school district, providing for educational opportunities in accordance with the
6 provisions of law.

7 (3) Grants and loans must be awarded to economic development organizations to assist in:

8 (a) promoting diversification and development of the economic base within an area affected by the
9 closing of a coal-fired generating unit through assistance to existing business, retention and expansion of existing
10 business, unemployment assistance in addition to a formerly employed individual's unemployment compensation
11 and unemployment benefits, or assistance to new business;

12 (b) attracting new industry to an area affected by the closing of a coal-fired generating unit; or

13 (c) providing cash incentives for expanding the employment base of the area affected by the closing of
14 a coal-fired generating unit.

15

16 **NEW SECTION. Section 5. Restore and rebuild loans and grants rulemaking -- loan requirements.**

17 (1) On or before January 1, 2018, the department shall adopt rules to implement the provisions of [sections 1
18 through 6].

19 (2) The rules must include but are not limited to:

20 (a) distribution procedures for loans and grants; and

21 (b) terms and conditions for loans, including repayment schedules and interest.

22 (3) The rules for grant and loan funding must include but are not limited to:

23 (a) pursuant to [section 4], eligibility requirements for local governments and economic development
24 organizations applying for grants and loans;

25 (b) criteria for awarding grants and loans;

26 (c) reporting procedures for grant and loan recipients; and

27 (d) postdisbursement activities by the department to monitor the use of funding by entities, including
28 reporting requirements and procedures for repayment of funds.

29 (4) A loan repayment may not exceed 5 years. Loans must be made at a low interest rate. The
30 department may set the interest rate at an amount that will cover its administrative costs, but the rate may not

1 be less than 1% per year.

2 (5) The department may seek recovery of the amount of principal loaned in the event of default.

3

4 **NEW SECTION. Section 6. Restore and rebuild -- special revenue account.** (1) There is a restore
5 and rebuild grant and loan account in the state special revenue fund established by 17-2-102 credited to the
6 department.

7 (2) There must be deposited in the account:

8 (a) money received from legislative allocations;

9 (b) money from the wholesale energy transaction tax as provided in 15-72-106(3)(b);

10 (c) a gift, donation, grant, legacy, bequest, or devise made for the purposes of [sections 1 through 6];

11 and

12 (d) interest, including any interest that is generated from a loan repayment, and other income earned
13 on the money in the account.

14 (3) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department and
15 must be used:

16 (a) to provide grants and loans to local governments or economic development organizations to mitigate
17 the impacts of the closing of a coal-fired generating unit in accordance with [sections 1 through 6]; and

18 (b) for the department's costs of administering [sections 1 through 6].

19

20 **Section 7.** Section 15-72-104, MCA, is amended to read:

21 **"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery.** (1) (a)

22 Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted
23 within the state as provided in this section. The tax is imposed at a rate of ~~0.045~~ 0.030 cent per kilowatt hour of
24 electricity transmitted by a transmission services provider in the state.

25 (b) For electricity produced in the state for delivery outside the state, the taxpayer is the person owning
26 or operating the electrical generation facility producing the electricity. The transmission services provider shall
27 collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the
28 electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate
29 for transmission line losses.

30 (c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution

1 services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt
2 hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for
3 overpayment of taxes pursuant to 15-72-116.

4 (d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution
5 services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt
6 hours of electricity delivered to the distribution services provider.

7 (e) For electricity delivered to a distribution services provider that is a rural electric cooperative for
8 delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the
9 taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on
10 the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to
11 customers that have opted for customer choice.

12 (f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by
13 a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The
14 transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered
15 to the distribution services provider.

16 (2) (a) If more than one transmission services provider transmits electricity, the last transmission services
17 provider transmitting or delivering the electricity shall collect the tax.

18 (b) If the transmission services provider is an agency of the United States government, the distribution
19 services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

20 (c) If an electrical generation facility located within the state produces electricity for sale inside and
21 outside the state, sales within the state are considered to have come from electricity produced within the state
22 for purposes of the tax imposed by this section.

23 (3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt
24 from the tax imposed by this section.

25 (b) Electricity produced in the state by an agency of the United States government or electricity produced
26 from an electric energy generation facility, as defined in 90-5-101(3), constructed after May 1, 2001, that is within
27 the exterior boundaries of a Montana Indian reservation for delivery outside the state is exempt from the tax
28 imposed by this section.

29 (c) Electricity produced by wind turbines erected on state land for which annual lease payments are
30 made to the permanent school trust fund is exempt from the tax imposed by this section.

1 (d) Electricity delivered to a distribution services provider that is a municipal utility described in
 2 69-8-103(4)(b) or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt
 3 from the tax imposed by this section.

4 (e) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution
 5 facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is
 6 transmitted exclusively on transmission or distribution facilities owned by an entity of the United States
 7 government on or before May 2, 1997, is exempt from the tax imposed by this section.

8 (4) A distribution services provider is allowed to recover the tax imposed by this section and the
 9 administrative costs to comply with this part in its rates."

10

11 **Section 8.** Section 15-72-106, MCA, is amended to read:

12 **"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue.** (1) A
 13 transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax
 14 collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by
 15 15-72-104, both the tax and the excess must be remitted to the department.

16 (2) A self-assessing distribution services provider is subject to the provisions of this part.

17 (3) The wholesale energy transaction tax collected under this part must, in accordance with the
 18 provisions of 17-2-124, be deposited as follows:

19 (a) 50% in the general fund; and

20 (b) 50% in the restore and rebuild grant and loan account established in [section 6]."

21

22 **Section 9.** Section 17-7-502, MCA, is amended to read:

23 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 24 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
 25 need for a biennial legislative appropriation or budget amendment.

26 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
 27 of the following provisions:

28 (a) The law containing the statutory authority must be listed in subsection (3).

29 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
 30 appropriation is made as provided in this section.

1 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120;
2 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-3-203; 10-3-310; 10-3-312;
3 10-3-314; 10-4-301; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101;
4 15-70-433; 15-70-601; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215;
5 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506;
6 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-517; 20-9-520; 20-9-534; 20-9-622; 20-9-905; 20-26-617;
7 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301;
8 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213;
9 44-13-102; 50-1-115; 53-1-109; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870;
10 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-13-150; 76-13-416; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
11 80-11-518; 81-1-112; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115;
12 90-1-205; 90-1-504; 90-3-1003; 90-6-331; [section 6]; and 90-9-306.

13 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
14 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
15 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
16 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
17 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
18 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
19 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
20 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
21 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.
22 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
23 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 5, Ch. 442, L. 2009, the inclusion
24 of 90-6-331 terminates June 30, 2019; pursuant to sec. 16, Ch. 58, L. 2011, the inclusion of 30-10-1004
25 terminates June 30, 2017; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30,
26 2019; pursuant to sec. 13, Ch. 339, L. 2011, the inclusion of 81-1-112 and 81-7-106 terminates June 30, 2017;
27 pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency;
28 pursuant to sec. 5, Ch. 244, L. 2013, the inclusion of 22-1-327 terminates July 1, 2017; pursuant to sec. 27, Ch.
29 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec.
30 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015,

1 the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of
2 85-25-102 is effective on occurrence of contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of
3 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
4 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates
5 September 30, 2019; and pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December
6 31, 2023.)"

7
8 **NEW SECTION. Section 10. Notification to tribal governments.** The secretary of state shall send
9 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
10 Chippewa tribe.

11
12 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 6] are intended to be
13 codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 6].

14
15 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2017.

16
17 **NEW SECTION. Section 13. Termination.** [This act] terminates June 30, 2028.

18 - END -