

**Unofficial Draft Copy**

As of: April 17, 2012 (8:47am)

LCet02

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the \*\*\*\*\*

A Bill for an Act entitled: "An Act generally revising the graduated renewable energy standard and related reporting requirements; clarifying the definition of 'renewable energy credit'; extending the time for filing compliance reports; requiring all electricity suppliers to file reports with the public service commission to show necessary compliance or exemption from the standard; amending sections 69-3-2003, 69-3-2004, 69-3-2005, 69-3-2007, and 90-3-1003, MCA; and providing an immediate effective date and a retroactive applicability date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 69-3-2003, MCA, is amended to read:

**"69-3-2003. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary services" means services or tariff provisions related to generation and delivery of electric power other than simple generation, transmission, or distribution. Ancillary services related to transmission services include energy losses, energy imbalances, scheduling and dispatching, load following, system protection, spinning reserves and nonspinning reserves, and reactive power.

(2) "Balancing authority" means a transmission system

control operator who balances electricity supply and load at all times to meet transmission system operating criteria and to provide reliable electric service to customers.

(3) "Common ownership" means the same or substantially similar persons or entities that maintain a controlling interest in more than one community renewable energy project even if the ownership shares differ between two community renewable energy projects. Two community renewable energy projects may not be considered to be under common ownership simply because the same entity provided debt or equity or both debt and equity to both projects.

(4) "Community renewable energy project" means an eligible renewable resource that:

(a) is interconnected on the utility side of the meter in which local owners have a controlling interest and that is less than or equal to 25 megawatts in total calculated nameplate capacity; or

(b) is owned by a public utility and has less than or equal to 25 megawatts in total calculated nameplate capacity.

(5) (a) "Competitive electricity supplier" means ~~any person, corporation, or governmental entity~~ an electricity supplier that is selling electricity to small customers ~~at retail rates in the state of Montana and that is not a public utility or cooperative.~~

(b) The term does not include governmental entities selling electricity produced only by facilities generating less than 250 kilowatts that were in operation prior to 1990.

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(6) "Compliance year" means each calendar year beginning January 1 and ending December 31, starting in 2008, for which compliance with this part must be demonstrated.

(7) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(8) "Dispatch ability" means the ability of either a balancing authority or the owner of an electric generating resource to rapidly start, stop, increase, or decrease electricity production from that generating resource in order to respond to the balancing authority's need to match supply resources to loads on the transmission system.

(9) "Electric generating resource" means any plant or equipment used to generate electricity by any means.

(10) "Electricity supplier" means any person, corporation, or governmental entity that:

(a) sells electricity to customers at retail rates in the state; and

(b) is not a public utility or a cooperative.

~~(10)~~(11) "Eligible renewable resource" means a facility either located within Montana or delivering electricity from another state into Montana that commences commercial operation after January 1, 2005, and that produces has been certified by the commission pursuant to rules adopted in accordance with 69-3-2006 as producing electricity from one or more of the following

sources:

- (a) wind;
- (b) solar;
- (c) geothermal;
- (d) water power, in the case of a hydroelectric project

that:

(i) does not require a new appropriation, diversion, or impoundment of water and that has a nameplate rating of 10 megawatts or less; or

(ii) is installed at an existing reservoir or on an existing irrigation system that does not have hydroelectric generation as of April 16, 2009, and has a nameplate capacity of 15 megawatts or less;

(e) landfill or farm-based methane gas;

(f) gas produced during the treatment of wastewater;

(g) low-emission, nontoxic biomass based on dedicated energy crops, animal wastes, or solid organic fuels from wood, forest, or field residues, except that the term does not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic;

(h) hydrogen derived from any of the sources in this subsection ~~(10)~~ (11) for use in fuel cells;

(i) the renewable energy fraction from the sources identified in subsections ~~(10)(a) through (10)(j)~~ (11)(a) through (11)(j) of electricity production from a multiple-fuel process with fossil fuels; and

(j) compressed air derived from any of the sources in this

subsection ~~(10)~~ (11) that is forced into an underground storage reservoir and later released, heated, and passed through a turbine generator.

~~(11)~~(12) "Local owners" means:

- (a) Montana residents;
- (b) general partnerships of which all partners are Montana residents;
- (c) business entities organized under the laws of Montana that:
  - (i) have less than \$50 million of gross revenue;
  - (ii) have less than \$100 million of assets; and
  - (iii) have at least 50% of the equity interests, income interests, and voting interests directly owned by Montana residents;
- (d) Montana nonprofit organizations;
- (e) Montana-based tribal councils;
- (f) Montana political subdivisions or local governments;
- (g) Montana-based cooperatives other than cooperative utilities; or

(h) any combination of the individuals or entities listed in subsections ~~(11)(a) through (11)(g)~~ (12)(a) through (12)(g).

~~(12)~~(13) "Nonspinning reserve" means offline generation that can be ramped up to capacity and synchronized to the grid within 10 minutes and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(13)~~(14) "Public utility" means any electric utility

regulated by the commission pursuant to Title 69, chapter 3, on January 1, 2005, including the public utility's successors or assignees.

~~(14)~~(15) "Renewable energy credit" means ~~a tradable certificate of proof of the environmental attributes associated with~~ 1 megawatt hour of electricity generated by ~~an a certified~~ eligible renewable resource ~~that is~~ and tracked and verified ~~through a tracking system approved by the commission and includes all of the environmental attributes associated with that 1 megawatt-hour unit of electricity production pursuant to rules adopted by the commission in accordance with 69-3-2006.~~

~~(15)~~(16) "Seasonality" means the degree to which an electric generating resource is capable of producing electricity in each of the seasons of the year.

~~(16)~~(17) "Small customer" means a retail customer that has an individual load with an average monthly demand of less than 5,000 kilowatts.

~~(17)~~(18) "Spinning reserve" means the online reserve capacity that is synchronized to the grid system and immediately responsive to frequency control and that is needed to maintain system frequency stability during emergency conditions, unforeseen load swings, and generation disruptions.

~~(18)~~(19) "Total calculated nameplate capacity" means the calculation of total nameplate capacity of the community renewable energy project and other eligible renewable resources that are:

- (a) located within 5 miles of the project;

- (b) constructed within the same 12-month period; and
- (c) under common ownership."

{ Internal References to 69-3-2003:

69-3-2009x    69-5-121x    90-3-1003a    90-4-1005x  
90-4-1202x    90-4-1202x }

**Section 2.** Section 69-3-2004, MCA, is amended to read:

**"69-3-2004. Renewable resource standard -- administrative penalty -- waiver.** (1) Except as provided in ~~69-3-2007~~ and subsections (11) ~~and (12)~~ through (13) of this section, a graduated renewable energy standard is established for public utilities and competitive electricity suppliers as provided in subsections (2) through (4) of this section.

(2) In each compliance year beginning January 1, 2008, through December 31, 2009, each public utility and competitive electricity supplier shall procure a minimum of 5% of its retail sales of electrical energy in Montana from eligible renewable resources.

(3) (a) In each compliance year beginning January 1, 2010, through December 31, 2014, each public utility and competitive electricity supplier shall procure a minimum of 10% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) Beginning January 1, 2012, as part of their compliance with subsection (3)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 50 megawatts in nameplate capacity.

(c) Public utilities shall proportionately allocate the purchase required under subsection (3)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2011.

(4) (a) In the compliance year beginning January 1, 2015, and in each succeeding compliance year, each public utility and competitive electricity supplier shall procure a minimum of 15% of its retail sales of electrical energy in Montana from eligible renewable resources.

(b) (i) As part of their compliance with subsection (4)(a), public utilities shall purchase both the renewable energy credits and the electricity output from community renewable energy projects that total at least 75 megawatts in nameplate capacity.

(ii) In meeting the standard in subsection (4)(b)(i), a public utility may include purchases made under subsection (3)(b).

(c) Public utilities shall proportionately allocate the purchase required under subsection (4)(b) based on each public utility's retail sales of electrical energy in Montana in the calendar year 2014.

(5) (a) In complying with the standards required under ~~subsections (2) through (4)~~ subsections (2), (3)(a), and (4)(a), a public utility or competitive electricity supplier shall, for any given compliance year, calculate its procurement requirement based on the public utility's or competitive electricity supplier's previous year's sales of electrical energy to retail customers in Montana.



(b) The standards in subsections (2) through (4) must be calculated on a delivered-energy basis after accounting for any line losses.

(6) A public utility or competitive electricity supplier has until ~~3~~ 4 months following the end of each compliance year to ~~purchase renewable energy credits for that compliance year~~ meet the standards established in subsections (2) through (4) or to petition the commission for a short-term waiver from full or partial compliance pursuant to subsection (11).

(7) (a) In order to meet the standards established in subsections (2) through (4), a public utility or competitive electricity supplier may only use:

(i) electricity from ~~an~~ a certified eligible renewable resource ~~in which~~ and the associated renewable energy credits ~~have not been sold separately;~~

(ii) renewable energy credits ~~created by an eligible renewable resource~~ purchased separately from the associated electricity; or

(iii) any combination of subsections (7) (a) (i) and (7) (a) (ii).

(b) A public utility or competitive electricity supplier may not resell renewable energy credits and count those sold credits against the public utility's or the competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(c) Renewable energy credits sold through a voluntary service such as the one provided for in 69-8-210(2) may not be

applied against a public utility's or competitive electricity supplier's obligation to meet the standards established in subsections (2) through (4).

(8) Nothing in this part limits a public utility or competitive electricity supplier from exceeding the standards established in subsections (2) through (4).

(9) If a public utility or competitive electricity supplier exceeds a standard established in subsections (2) through (4) in any compliance year, the public utility or competitive electricity supplier may carry forward the amount by which the standard was exceeded to comply with the standard in either or both of the 2 subsequent compliance years. The carryforward may not be double-counted.

(10) Except as provided in subsections (11) ~~and (12)~~ through (13), if a public utility or competitive electricity supplier is unable to meet the standards established in subsections (2) through (4) in any compliance year, that public utility or competitive electricity supplier shall pay an administrative penalty, assessed by the commission, of \$10 for each megawatt hour of renewable energy credits that the public utility or competitive electricity supplier failed to procure. A public utility may not recover this penalty in electricity rates. Money generated from these penalties must be deposited in the universal low-income energy assistance fund established in 69-8-412(1)(b).

(11) ~~A~~ Within 4 months following the end of each compliance year, a public utility or competitive electricity supplier may petition the commission for a short-term waiver from full or

partial compliance with the standards in subsections (2) through (4) and the penalties levied under subsection (10).

(12) The petition filed pursuant to subsection (11) must demonstrate that the:

~~—~~(a) public utility or competitive electricity supplier has undertaken all reasonable steps to procure renewable energy credits under long-term contract, but full compliance cannot be achieved ~~either~~ because:

(a) renewable energy credits cannot be procured;

(b) full compliance would cause the public utility or competitive electricity supplier to exceed the cost caps established in 69-3-2007;

(c) or for the public utility or competitive electricity supplier demonstrates that other legitimate reasons ~~that are~~ outside the control of the public utility or competitive electricity supplier have caused the public utility or competitive electricity supplier not to comply; or

~~(b)~~(d) integration of additional eligible renewable resources into the electrical grid will clearly and demonstrably jeopardize the reliability of the electrical system and that the public utility or competitive electricity supplier has undertaken all reasonable steps to mitigate the reliability concerns.

~~(12)~~(13) (a) Retail sales made by a competitive electricity supplier according to prices, terms, and conditions of a written contract executed prior to April 25, 2007, are exempt from the standards in subsections (2) through (4).

(b) The exemption provided for in subsection ~~(12)~~(a)

(13)(a) is terminated upon modification after April 25, 2007, of the prices, terms, or conditions in a written contract."

{ Internal References to 69-3-2004:  
69-3-2005a      69-3-2005a      69-3-2008x }

**Section 3.** Section 69-3-2005, MCA, is amended to read:

**"69-3-2005. Procurement -- cost recovery -- reporting.** (1)

In meeting the requirements of this part, a public utility shall:

(a) conduct renewable energy solicitations under which the public utility offers to purchase renewable energy credits, either with or without the associated electricity, under contracts of at least 10 years in duration;

(b) consider the importance of geographically diverse rural economic development when procuring renewable energy credits; and

(c) consider the importance of dispatch ability, seasonality, and other attributes of the eligible renewable resource contained in the commission's supply procurement rules when considering the procurement of renewable energy or renewable energy credits.

(2) A public utility that intends to enter into contracts of less than 10 years in duration shall demonstrate to the commission that these contracts will provide a lower long-term cost of meeting the standard established in 69-3-2004.

(3) (a) Contracts signed for projects located in Montana must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents

have substantially equal qualifications to those of nonresidents.

(b) Contracts signed for projects located in Montana must require all contractors to pay the standard prevailing rate of wages for heavy construction, as provided in 18-2-414, during the construction phase of the project.

(4) All contracts signed by a public utility to meet the requirements of this part are eligible for advanced approval under procedures established by the commission. Upon advanced approval by the commission, these contracts are eligible for cost recovery from ratepayers, except that nothing in this part limits the commission's ability to subsequently, in any future cost-recovery proceeding, inquire into the manner in which the public utility has managed the contract and to disallow cost recovery if the contract was not reasonably administered.

(5) A public utility or competitive electricity supplier shall submit renewable energy procurement plans to the commission in accordance with rules adopted by the commission. The plans must be submitted to the commission on or before:

(a) June 1, 2013, for the standard required in 69-3-2004(4); and

(b) any additional future dates as required by the commission.

(6) A public utility or competitive electricity supplier shall submit annual reports, in a format to be determined by the commission, demonstrating compliance with this part for each compliance year. An electricity supplier that is not subject to the graduated renewable energy standard established in 69-3-2004

shall submit annual reports, in a format to be determined by the commission, stating that the electricity supplier is not required to demonstrate compliance with this part. The reports must be filed by ~~March~~ May 1 of the year following the compliance year.

(7) For the purpose of implementing this part, the commission has regulatory authority over competitive electricity suppliers."

{*Internal References to 69-3-2005: None.*}

**Section 4.** Section 69-3-2007, MCA, is amended to read:

**"69-3-2007. Cost caps.** (1) A public utility that has restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource ~~unless the eligible renewable resource~~ unless the public utility has demonstrated through a competitive bidding process that the total cost of electricity from that eligible resource, including the associated cost of ancillary services necessary to manage the transmission grid and firm the resource, is less than or equal to bids for the equivalent quantity of power over the equivalent contract term from other electricity suppliers.

(2) A public utility that has not restructured pursuant to Title 69, chapter 8, is not obligated to take electricity from an eligible renewable resource unless the cost per kilowatt hour of the generation from the renewable resource does not exceed by more than 15% the cost of power from any other alternate generating resource available to the public utility.

(3) A competitive electricity supplier is not obligated to

take electricity from an eligible renewable resource unless the total cost of the electricity from that eligible renewable resource, including ancillary services, is less than or equal to a cost cap determined by the commission based on:

(a) the cost of alternate power supplies available to the competitive electricity supplier; and

(b) the cost caps applicable to other utilities under this section."

{ Internal References to 69-3-2007:  
69-3-2004a }

**Section 5.** Section 90-3-1003, MCA, is amended to read:

**"90-3-1003. Research and commercialization account -- use.**

(1) The research and commercialization account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the board of research and commercialization technology, provided for in 2-15-1819, for the purposes provided in this section.

(2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth opportunities for Montana and constitute a public purpose.

(3) The account may be used only for:

(a) loans that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(b) grants that are to be used for production agriculture research, development, and commercialization projects, clean coal

research and development projects, or renewable resource research and development projects to be conducted at research and commercialization centers located in Montana;

(c) matching funds for grants from nonstate sources that are to be used for research and commercialization projects to be conducted at research and commercialization centers located in Montana;

(d) the Montana food and agricultural development program provided for in 80-11-901; or

(e) administrative costs that are incurred by the board in carrying out the provisions of this part.

(4) At least \$195,000 of the account funds must be distributed on an annual basis to the department of agriculture to support and administer the Montana food and agricultural development program provided for in 80-11-901.

(5) (a) At least 30% of the account funds approved for research and commercialization projects must be directed toward projects that enhance clean coal research and development or renewable resource research and development.

(b) If the board is not in receipt of a qualified application for a project to enhance clean coal research and development or renewable resource research and development, subsection (5) (a) does not apply.

(6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.



(7) The board shall establish policies, procedures, and criteria that achieve the objectives in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must include:

(a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

(b) whether the project shows promise for enhancing technology-based sectors of Montana's economy or promise for commercial development of discoveries;

(c) whether the project employs or otherwise takes advantage of existing research and commercialization strengths within the state's public university and private research establishment;

(d) whether the project involves a realistic and achievable research project design;

(e) whether the project develops or employs an innovative technology;

(f) verification that the project activity is located within the state;

(g) whether the project's research team possesses sufficient expertise in the appropriate technology area to complete the research objective of the project;

(h) verification that the project was awarded based on its scientific merits, following review by a recognized federal agency, philanthropic foundation, or other private funding source; and

(i) whether the project includes research opportunities for

students.

(8) The board shall direct the state treasurer to distribute funds for approved projects. Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and any agreements authorizing the board to take a financial right to licensing or royalty fees paid in connection with the transfer of technology from a research and commercialization center to another nonstate organization or ownership of corporate stock in a private sector organization must be deposited in the account.

(9) The board shall refer grant applications to external peer review groups. The board shall compile a list of persons willing to serve on peer review groups for purposes of this section. The peer review group shall review the application and make a recommendation to the board as to whether the application for a grant should be approved. The board shall review the recommendation of the peer review group and either approve or deny a grant application.

(10) The board shall identify whether a grant or loan is to be used for basic research, applied research, or some combination of both. For the purposes of this section, "applied research" means research that is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that is conducted to uncover the basic function or mechanism of a scientific question.

(11) For the purposes of this section:

(a) "clean coal research and development" means research

and development of projects that would advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source well beyond the current level of technology used in commercial service;

(b) "renewable resource research and development" means research and development that would advance:

(i) the use of any of the sources of energy listed in ~~69-3-2003(10)~~ 69-3-2003(11) to produce electricity; and

(ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources as an energy source well beyond the current level of technology used in commercial service."

{ *Internal References to 90-3-1003:*  
17-7-502      90-3-1001      90-3-1001      90-3-1001  
90-3-1002      90-3-1002 }

NEW SECTION. **Section 6. {standard} Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 7. {standard} Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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NEW SECTION. **Section 8. {standard} Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 9. {standard} Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to the compliance year beginning January 1, 2013.

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