

Unofficial Draft Copy

As of: May 31, 2012 (10:09am)

LCet01

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring a vote of individual rural electric cooperative boards of trustees when entering into agreements for construction of electric generating facilities or entering into certain contracts; establishing vote requirements; requiring disclosure of a load forecast information; establishing requirements for generation and transmission cooperatives; amending sections 35-18-317, and 35-18-318, MCA; and providing an effective date and an applicability date."

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

Section 1. Section 35-18-317, MCA, is amended to read:

"35-18-317. Disposition or encumbrance of property. (1)

Except as provided in subsection (2), a cooperative may not sell, mortgage, lease, or otherwise dispose of or encumber all or any substantial portion of its property unless ~~such~~ the sale, mortgage, lease, or other disposition or encumbrance is:

(a) authorized at a duly held meeting of cooperative members thereof

(b) approved by ~~the affirmative vote of not less than~~ two-thirds of all the members of the cooperative; and ~~unless the notice of such proposed sale, mortgage, lease, or other disposition or encumbrance shall have been contained~~

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(c) described in the notice of the meeting.

(2) ~~The Except as provided in 35-18-318(1) through (3), the board of trustees of a cooperative, without authorization by the cooperative members, thereof, shall have full power and authority to may:~~

(a) authorize the execution and delivery of a mortgage or mortgages or a deed or deeds of trust upon or the pledging or encumbrancing of any or all of:

(i) the property, assets, rights, privileges, licenses, franchises, and permits of the cooperative, whether acquired or to be acquired and wherever situated, ~~as well as, ; and~~

(ii) the revenues and income ~~therefrom~~ from property, assets, rights, privileges, licenses, franchises, and permits; or all upon such

(b) ~~determine the~~ terms and conditions ~~as the board of trustees shall determine,~~ necessary to secure any indebtedness of the cooperative to the:

(i) the United States of America or

(ii) any instrumentality or agency thereof of the United States; or to

(iii) any other financing sources within the United States.

(3) Before a meeting is held to vote on authorization of disposition of cooperative property, the board of trustees shall:

(a) have the property appraised by three appraisers chosen by the board and not associated with the cooperative or a proposed buyer of cooperative property;

(b) notify all cooperative members, at least 90 days in

advance, of a meeting to vote on disposition of cooperative property. Detailed proposals for disposition of ~~such~~ the property must accompany the notice.

(c) at least 30 days before the meeting, notify all other cooperatives situated and operating in the state that the property is available for disposition and include with the notice one copy of each appraisal on the cooperative property; and

(d) at least 30 days before the meeting, mail to all members any alternative proposal made by cooperative members if it has been submitted to the board and signed by 50 or more members.

(4) The vote on property disposition may take place at an annual meeting if the board notifies the members as provided in this section.

(5) This section does not apply to the transfer of cooperative property in a merger or consolidation of cooperatives."

{*Internal References to 35-18-317: None.*}

Section 2. Section 35-18-318, MCA, is amended to read:

"35-18-318. Long-term indebtedness -- membership approval and review -- cooperative requirements. (1) Before a cooperative ~~may create~~ creates or ~~enter~~ enters into an agreement that results in any direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction, maintenance, or operation of nuclear power generating facilities that may result in a rate increase to

the cooperative's members for repayment of the obligation, the cooperative must receive approval from a majority of those members present and voting at the meeting. The approval must be obtained at a special meeting held for that purpose.

(2) Except as provided in subsection (5) and in accordance with subsections (3) and (4), a generation and transmission cooperative must receive approval from a two-thirds majority of the distribution cooperative members of the generation and transmission cooperative before the generation and transmission cooperative:

(a) creates or enters into an agreement that results in direct or indirect obligation for the repayment of long-term bonded indebtedness for financing directly or indirectly the construction of electric generating facilities with a nameplate capacity exceeding 10 percent of a generation and transmission cooperative's maximum one-hour demand for the prior year; or

(b) enters into an energy contract allowing for the purchase of electricity that exceeds the generation and transmission cooperative's load levels after factoring in existing supply contracts, and generation, if any, for the period to be contracted.

(3) Approval required pursuant to subsection (2) is granted using a simple majority of the board of trustees of each distribution cooperative that is a member of the generation and transmission cooperative.

(4) (a) Approval of each distribution cooperative's board of trustees pursuant to subsection (3) must be obtained at a special

meeting held for that purpose.

(b) Notice of the need for a vote by each distribution cooperative's board of trustees must be provided at least 60 days in advance of the vote.

(c) A member distribution cooperative may provide a study of rate impact and comparative costs of production of projects similar to those proposed by a generation and transmission cooperative by an independent entity.

(i) In accordance with subsection (4)(c)(ii), if the study is provided pursuant to this subsection, the generation and transmission cooperative must reimburse up to 50 percent of the cost of the study to the distribution cooperative that provides the study.

(ii) The study must be conducted in the most cost-effective manner practicable.

(d) If the study is provided pursuant to subsection (4)(c), it must be considered by the generation and transmission cooperative's board of trustees prior to the vote required in subsection (2).

(5) Vote requirements pursuant to subsection (2) are not required for agreements created or entered into by generation and transmission cooperatives with regional generation and transmission cooperatives or federal power marketing administrations or their successors.

(6) At least 60 days before a vote required pursuant to subsection (2), a generation and transmission cooperative must provide each distribution cooperative that is a member of the

generation and transmission cooperative with load forecasts completed within the previous 12-month period for the generation and transmission cooperative.

(7) (a) Except as provided in subsection (7) (b), a member of a distribution cooperative may inspect a summary of the annual load forecasts provided pursuant to subsection (6).

(b) The summary is not required to include projected growth of industrial loads.

(8) A generation and transmission cooperative must:

(a) provide member distribution cooperatives the right to determine who serves as its representative on a generation and transmission cooperative's board of trustees;

(b) in accordance with 35-18-311, provide member distribution cooperatives the authority to certify the replacement of a trustee to fill a distribution cooperative's seat on a generation and transmission cooperative's board of trustees in the event of a vacancy;

(c) permit all members of a distribution cooperative's board of trustees and distribution cooperative managers to be present at all generation and transmission cooperative board of trustee's meetings, including teleconferences. Board members must be allowed to speak on any item on the meeting agenda;

(d) limit executive sessions of the generation and transmission cooperative's board of trustees to confidential matters and matters of individual privacy; and

(e) make available to members of a distribution cooperative's board of trustees and managers:

(i) financial reports of the generation and transmission cooperative; and

(ii) minutes of generation and transmission cooperative board meetings.

(9) As used in this section, the following definitions apply:

(a) "Distribution cooperative" means a cooperative organized in accordance with this chapter that is directly responsible for supplying electricity to and billing its members who are the ultimate consumers of the electricity.

(b) "Generation and transmission cooperative" means a Montana-based cooperative organized in accordance with this chapter that files articles of incorporation pursuant to 35-18-203, that either generates power, enters into contracts for power, or both. It enters into contracts for the sale of wholesale electricity to two or more distribution cooperatives and may or may not own transmission services.

(c) "Load forecast" means an estimate or projection of end-use electricity consumption based on projected changes in future end-use, taking into account residential, commercial, industrial, and irrigation loads, populations, business cycles, appliance saturation, and efficiencies. It may be forecasted by sector or consumer class.

(d) "Regional generation and transmission cooperative" means a cooperative serving more than 400 megawatts of load with multiple generating facilities. Its members are in multiple states and are distribution cooperatives, generation and

transmission cooperatives, or both."

{Internal References to 35-18-318: None.}

NEW SECTION. **Section 3. {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 4. {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.

NEW SECTION. **Section 5. {standard} Effective date.** [This act] is effective July 1, 2013.

NEW SECTION. **Section 6. {standard} Applicability.** [This act] applies to contracts, agreements, and forecasts begun after July 1, 2013.

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