

SUMMARY OF SELECTED ENERGY LEGISLATION ENACTED DURING THE 2001 LEGISLATIVE SESSION

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I. ENERGY POLICY LEGISLATION

- A. **SB 19 (Ch. 584).** Revises the laws governing customer choice in electrical energy supply; extends the transition period; extends the dates requiring residential and small commercial customer participation in the selection of an electricity supplier; extends pilot program report date requirements; extends transition plan date requirements; extends the termination date of the Transition Advisory Committee.
1. Amends 69-8-103, 69-8-104, 69-8-201, 69-8-211, 69-8-301, and 69-8-501, MCA.
 2. Effective May 5, 2001.
 3. Narrative summary
 - a. **Transition period.** Extends the transition period for customer choice to July 1, 2007 (previously July 1, 1998, through June 30, 2002). 69-8-103, MCA.
 - b. **Pilot programs.** Extends the due date of the report on pilot programs that a public utility must submit to the Public Service Commission and the Transition Advisory Committee to July 1, 2005 (previously July 1, 2000). Information in the report may include the level of demand of supply choice, the development of sufficient markets and bargaining power for small customers, and electricity suppliers interest in providing services to small customers. 69-8-104, MCA.
 - c. **Customer choice.** Extends the date that small customers must have the opportunity to choose an electricity supplier from July 1, 2002, to July 1, 2007. 69-8-201, MCA.
 - d. **Defer competition.** Allows an integrated, multistate public utility operating outside the Columbia River basin to defer indefinitely the transition plan (previously July 1, 2002) and the transition period to customer choice (previously July 1, 2006). 69-8-201, MCA.
 - e. **Rate moratorium.** Clarifies language related to the rate moratorium on electric supply-related costs (limited to a maximum of 8% annual increase in revenue requirement, subject to Public Service Commission approval, through June 30, 2002). However, a public utility may propose increases to rates normally allocated to transmission and distribution

costs. 69-8-211, MCA.

- f. **Rural electric cooperative transition plan.** Extends to July 1, 2006, (previously July 1, 2001) the adoption of a transition plan by a rural electric cooperative that has elected to enter competition. 69-8-301, MCA.
 - g. **Transition Advisory Committee.** Clarifies the term of membership on the Transition Advisory Committee (2-year appointment expiring on January 1 of odd-numbered years). Removes "dated" language for reports required of the Transition Advisory Committee. Extends the termination date of the Transition Advisory Committee from December 31, 2004, to December 31, 2007. 69-8-501, MCA.
- B. **SB 269 (Ch. 175).** Revises certain dates for transition to customer choice for electricity supply.
- 1. Amends 69-8-201, MCA.
 - 2. Effective March 30, 2001.
 - 3. Narrative summary
 - a. Allows an integrated, multistate public utility operating outside the Columbia River basin to defer indefinitely the transition plan (previously July 1, 2002) and transition period to customer choice (previously July 1, 2006).
- C. **SB 398 (Ch. 588).** Provides for operation of temporary power generation units under the air quality permitting laws.
- 1. Amends 75-2-211, MCA.
 - 2. Effective May 5, 2001. Applies retroactively to applications filed after January 1, 2001. Terminates July 1, 2005.
 - 3. Narrative summary
 - a. **Operation of temporary power generation units.** If an applicant has received a written notice that its application is considered filed, the applicant may:
 - (1) For a temporary power generation unit or units with a total electrical generation capacity of not more than 125 megawatts, construct the unit or units. Operation of the unit or units may commence upon the department's issuance of a permit under this section.
 - (2) For a temporary power generation unit or units with a total electrical generating capacity of 10 megawatts or less, construct and operate the unit or units.
 - b. **Conditions.**
 - (1) The operation of the power generation unit or units may not

- violate ambient air quality standards.
 - (2) The permit applicant is required to cease operation if, after notification by the department, the applicant has failed to submit requested information that is necessary to process the permit application.
 - (3) A permit issued pursuant to this legislation must expire no later than 2 years from the date of issuance and the temporary power generation unit or units must be removed unless an air quality permit for a permanent operation has been issued.
 - c. **Nonviolation.** The construction or operation of a temporary power generation unit or units is not in violation of this part unless the operation of the temporary power generation unit or units continues after a department decision to deny the permit application becomes final as provided in this section.
- D. **SB 521 (Ch. 593).** Generally revises the emergency powers of the governor; revises the definition of "energy emergency"; clarifies the energy emergency powers of the governor; extends the duration of an energy emergency; and clarifies that proceedings undertaken during an energy emergency may be completed.
- 1. Amends 90-4-302, 90-4-310, and 90-4-313, MCA.
 - 2. Effective May 5, 2001.
 - 3. Narrative summary
 - a. **Expands scope of emergency powers.** Allows the Governor to declare an energy supply alert or invoke the Governor's energy emergency powers based on the price of energy by amending the definitions of an energy emergency and energy supply alert.
 - b. **Extends duration of emergency.** Extends the duration of a gubernatorial declaration of an energy emergency from 45 to 90 days.
 - c. **Projects started during the emergency may be completed.** Clarifies that a proceeding or project that is commenced under an energy emergency may proceed to completion even if the completion occurs after the termination of the emergency.
- E. **HB 474 (Ch. 577).** Revises laws relating to electrical energy; allows customers who elected an alternative electrical energy supplier an opportunity to receive electrical energy from the default supplier; provides that electrical energy purchased from the default supplier by a default customer must be used for a consumptive purpose and may not be remarketed; authorizes the Board of Investments to invest in new generation projects that meet certain criteria; provides eligibility criteria for the projects; includes long-term contracts with the default supplier or a Montana industry for the purchase of the electrical energy generated by the projects; requires a pledge of the contract proceeds as a repayment option for the investments; makes the state a party to the contract in the

event of default in payment by default supplier; extends the duration of the universal system benefits charge; modifies the default supplier licensing rules; creates a consumer electricity support program; provides that an electricity buying cooperative may serve as a supplier or promoter of alternative energy and conservation programs; defines "electricity supply costs"; clarifies the definition of "universal system benefits programs" to include irrigated agriculture; provides for procedures for a transition to customer choice; provides for the default supplier's recovery of electricity supply costs; revises the universal system benefits programs funding level to include irrigated agriculture; establishes a Montana Power Authority; allows the Authority to purchase, construct, and operate electrical generation facilities or electrical energy transmission or distribution systems and to enter into joint ventures for these purposes; authorizes the Board of Examiners to issue revenue bonds for the Montana Power Authority to acquire electrical generation facilities and to build electrical energy transmission or distribution systems; and provides that the principal and interest on the bonds is payable from the sale of electrical energy from the facilities and from electrical energy transmission and distribution charges.

1. Amends 17-7-502, 35-19-104, 69-8-103, 69-8-104, 69-8-201, 69-8-203, 69-8-210, 69-8-211, 69-8-402, 69-8-403, 69-8-412, and 69-8-414, MCA.
2. Repeals 35-19-103, 69-8-416, and 69-8-417, MCA.
3. Enacts Title 17, chapter 6, part 7; Title 69, chapter 8, part 7; and Title 69, chapter 9, part 1, MCA.
4. Effective July 1, 2001. Sections 29 and 31 related to Public Service Commission and Department of Administration rulemaking effective May 5, 2001.
4. Narrative summary
 - a. **Incentives through low- interest loans.** Sets up a program through the Montana In-State Investment Act (17-6-301 through 17-6-331, MCA) to provide low-interest loans to facilitate up to 450 megawatts from the construction of new generation projects in Montana and allows the purchase of 120 megawatts from existing qualifying facilities. Conditions for participating in this program include the following:
 - (1) A new generation facility must be constructed before July 1, 2003, or be an existing qualified facility choosing to participate in the contract provisions provided in this legislation.
 - (2) The owner or operator of a new generation facility or an existing qualifying facility must sign a contract for a term of not less than 15 years or more than 25 years.
 - (3) A new generation facility or an existing qualifying facility must:
 - (a) promote economic development in the state;
 - (b) provide stable electrical energy rates for Montanans who rely on a default supplier;
 - (c) maintain environmental quality; and
 - (d) possess long-term economic prospects to provide the energy required in the long-term contracts.
 - (4) Projects must be collateralized by the sale of electricity by payments for the sale of electricity produced by the project to the

default supplier or a Montana industry not in excess of 5 cents per kilowatt hour.

- b. **Transition period extended.** Extends the transition period to July 1, 2007.
- c. **Default supply.** Designates the default supplier as the customers' distribution supplier and requires that the distribution services provider has an ongoing regulated default supply obligation beyond the end of the transition period. Allows customers who elected an alternative electrical energy supplier an opportunity to receive electrical energy from the default supplier. Provides that electrical energy purchased from the default supplier by a default customer must be used for a consumptive purpose and may not be remarketed. An electricity buying cooperative may no longer serve as a default supplier but may serve as a supplier or promoter of alternative energy and conservation programs
- d. **Transition to customer choice.** The Public Service Commission is required to establish procedures and terms under which customers may choose an electricity supplier other than the default supplier or may choose to be served by the default supplier. The choice must be available for the period beginning July 1, 2002. The procedures must provide for an orderly process of choice during the transition period and provide conditions for leaving and returning to the default supplier. The procedures must take into account electricity supply contracts for supplying customers during the transition period. The procedures must provide for the recovery of costs associated with those customers who choose an alternative electricity supplier and who wish to return to the default supplier.
- e. **Creation of a Montana Power Authority.** The Montana Power Authority is authorized to purchase, construct, and operate electrical generation facilities or electrical energy transmission or distribution systems and to enter into joint ventures for these purposes. The Board of Examiners is authorized to issue revenue bonds for the Montana Power Authority (not to exceed \$500 million), acquire electrical generation facilities, and build electrical energy transmission or distribution systems. The principal and interest on the bonds is payable from the sale of electrical energy from the facilities and from electrical energy transmission and distribution charges.
- f. **Universal system benefits programs.** Extends the duration of the universal systems benefits programs (USBP) and requires that 6% of the USBP funds be spent on irrigated agriculture energy conservation and efficiency programs. Clarifies that the definition of "universal system

benefits programs" to include irrigated agriculture. Requires a public utility to offer a separately marketed renewable resource product.

- g. **Creates a consumer electricity support program.** Provides for a consumer electricity support program that consists of financial support or the assignment of electricity supply. In the event that an excess revenue tax is imposed, up to \$100 million could be used to provide an affordable and reliable electricity supply to customers of the default supplier.
 - h. **Recovery of electricity supply costs.** The default supplier recovers all statutorily defined electricity supply costs subject to a prudence test by the Public Service Commission. These amendments do not require preapproval of electricity supply costs by the Public Service Commission. The term "electricity supply costs" means actual costs of the electricity. Actual costs include fuel, ancillary service costs, transmission costs, including congestion and losses, and any other costs directly related to the purchase of electricity and management of electricity costs or a related service. Revenue from the sale of surplus electricity must be deducted from the costs. Total transmission costs are recoverable only once in electricity supply costs. The terms used in the definition of "electricity supply costs" must be construed according to industry standards.
 - i. **Procurement of electricity supply.** The default supplier must provide for the full electricity supply requirements of all default supply customers. To meet these requirements, the default supplier must procure a portfolio of electricity supply using industry-accepted procurement practices, which may include negotiated contracts or competitive bidding. The Public Service Commission may develop reasonable requirements for the use of competitive bidding in the procurement process. A default supplier may submit material related to proposed bids or contracts concerning electricity supply to the Public Service Commission before the default supplier enters into the contract. The Commission may comment on the material. In reviewing electricity supply contracts, the Commission must consider only those facts that were known or should reasonably have been known by the default supplier at the time the contract was entered into and that would have materially affected the cost or reliability of the electricity supply to be procured.
- F. **HB 645 (Ch. 582).** Implements an electrical energy pool; authorizes the Public Service Commission to require a default supplier, a distribution services provider, and a public utility serving Montana customers to participate in the electrical energy pool; provides exceptions; requires the default supplier, the distribution services provider, and the public utility to allow customers to participate in the electrical energy pool; and authorizes the

electrical energy pool to market the electrical energy made available by the customers participating in the pool to other Montana customers.

1. Enacts 69-8-110, MCA.
2. Effective May 5, 2001. Terminates June 30, 2002.
3. Narrative summary
 - a. **Creation and implementation of an electrical energy pool.**
 - (1) Creates an electrical energy pool to make electrical energy available for resale through the conservation efforts of the contracting customers.
 - (2) The Public Service Commission may require a default supplier, a distribution services provider, and a public utility to participate in the electrical energy pool. Rural electric cooperatives and municipal utilities are exempt.
 - (3) An electrical energy supplier providing electrical energy to customers who are being served by a default supplier and who are participating in the electrical energy pool are required to allow the electrical energy that is curtailed or conserved by those customers to be assigned to or sold to the electrical energy pool.
 - (4) Authorizes the Public Service Commission to determine whether to accept generator or supplier offers to sell or assign electrical energy to the electrical energy pool for distribution to Montana customers who are paying market rates and to place conditions upon the sale or assignment.
 - (5) If a customer receiving electrical energy at or below regulated rates reduces the customer's electrical energy use from the customer's base period consumption, the distribution services provider is required to assign the electrical energy pool, as required by the Public Service Commission.
 - (6) Base period consumption is equal to the customer's weather-normalized electrical energy consumption during the same month in the prior base year. A customer receives a credit on the customer's electrical energy bill for the month equal to the amount of reduction in electrical energy use multiplied by a rate established by the Public Service Commission. The rate established by the Commission must be established to provide a sufficient incentive to the customer while maintaining an electrical energy pool rate beneficial to the Montana customer purchasing the electrical energy.
 - (7) A default supplier, a distribution services provider, or a public utility that provides services to administer the electrical energy pool must be allowed to recover its costs for providing the services in the manner determined by the Public Service Commission.
 - (8) All electrical energy purchased from the electrical energy pool must be used by the customer for its facilities or operations in

Montana. Electrical energy purchased from the electrical energy pool may not be resold by a customer for a profit.

- (9) The Public Service Commission is directed to adopt rules to implement the electrical energy pool. The rules or tariffs to administer the electrical energy pool must be developed before July 1, 2001.

II. TAX AND OTHER FINANCIAL INCENTIVES FOR ELECTRICAL GENERATION

- A. **SB 506 (Ch. 591).** Amends the laws relating to alternative energy and other energy systems; provides a revolving loan fund to finance alternative energy systems; provides that air quality noncompliance penalty fees be deposited in the revolving fund; eliminates business property taxes on certain generating equipment; provides a 5-year abatement of business property taxes on small generating equipment; amends various tax and bonding incentive laws to encourage production of energy by using alternative renewable energy sources; allows a conditional tax credit for wind energy produced on state land; and allows an electricity buying cooperative to supply or promote alternative energy.
 1. Amends 7-12-4102, 15-6-156, 15-24-1401, 15-31-124, 15-32-102, 15-32-109, 15-32-115, 15-32-201, 15-32-401, 15-32-402, 15-32-403, 15-72-104, 17-6-403, 17-6-503, 30-16-103, 35-19-104, 75-2-401, 75-2-413, 80-12-201, 90-4-102, 90-5-101, and 90-8-104, MCA.
 2. Enacts sections 15-6-225, 75-25-101, 75-25-102, and 75-25-103, MCA.
 3. Effective July 1, 2001. Sections 1 through 3, 21, and 22, related to alternative energy revolving loan account, effective May 5, 2001.
 4. Sections 6 through 12 and 14, related to tax incentives, apply to tax years beginning after December 31, 2001.
 5. Narrative summary
 - a. **Revolving loan account.** SB 506 establishes a revolving loan account administered by the Department of Environmental Quality and funded primarily by air quality violation penalties. The loans are available to individuals and small businesses to finance wind, solar, fuel cell, geothermal, hydroelectric, or low emission wood or biomass systems that will generate power for homes and businesses as well as small surpluses (the gains from which are realized through "net metering"). The Department is granted the authority to adopt rules governing loan eligibility criteria and to measure outcomes. The agency is mandated to issue loans "at a low interest rate" that may not be less than 1% to ensure that loan administration costs are covered.
 - b. **Special improvement districts.** Cities, towns, and counties (by reference to 7-12-4102, MCA, in 7-12-2102, MCA) may create special improvement districts for the purchase, installation, maintenance, and management of "alternative energy production facilities".
 - c. **Property tax incentives.**

- (1) Machinery and equipment used in a qualifying electrical generation facility that produces energy from solar energy, water, the conversion of biomass, geothermal energy, fuel cells, or wind energy and with a nameplate capacity of 1 megawatt or more are exempt from the business equipment tax.
- (2) Machinery and equipment used in a qualifying electrical generation facility with a nameplate capacity of less than 1 megawatt are exempt from property taxation for 5 years after the generation of electricity begins.
- (3) Improvements related to a qualifying electrical generation facility may qualify for a reduced property tax rate as new industry for a period of 10 years under 15-24-1402, MCA.

d. **Individual income tax and corporate license tax incentives.**

- (1) The owner of an electrical generation facility that produces energy from an alternative renewable energy source, as defined in 90-4-102, MCA, is allowed a new or expanding tax credit under 15-31-125, MCA, based on wages paid to new employees.
- (2) A resident individual taxpayer is allowed a credit for 25% of the expenditure, not to exceed \$500, for the investment in a building or the installation of a water, heating, or cooling system for an energy conservation purpose (15-32-109, MCA). The credit may be carried forward for 7 years.
- (3) A resident individual taxpayer is allowed a credit of up to \$1,500 for the expense of installing a geothermal system (15-32-115, MCA). A similar credit of up to \$500 is allowed for a "nonfossil fuel" system or for a low emission wood or biomass combustion device (e.g., a pellet stove) (15-32-201, MCA).
- (4) An individual, corporation, partnership, or small business corporation that invests up to \$5,000 for a commercial system or a net metering system that generates energy by means of an alternative renewable energy source (previously limited to wind power) is allowed a tax credit equal to 35% of the eligible costs (15-32-402, MCA). The restriction on the amount of the credit that may be claimed for a system that generates electricity from wind is eliminated for a commercial system located on state trust land for which annual lease payments are made. At least 33% of the systems net generating output must be offered for a duration of 5 years at the cost of production plus a rate of return not to exceed 12%. In addition, electricity produced by wind turbines located on state land is exempt from the wholesale energy

transaction tax.

- (5) Electrical generation facilities that use renewable energy resources are included in the list of "qualified investments" that certain capital companies can invest for the purposes of qualifying for a tax credit under the Montana Capital Company Act (Title 90, chapter 8).

e. **Loan and bonding provisions.**

- (1) The Department of Commerce may provide loans, under the Microbusiness Development Act (Title 17, chapter 6, part 4, MCA) or the Job Investment Act (Title 17, chapter 6, part 5, MCA), to a qualified in-state business engaged in producing energy from an alternative renewable energy source.
- (2) Electrical generation facilities that use alternative renewable energy resources are eligible for loans under the Montana Agricultural Loan Authority Act (Title 80, chapter 12, MCA). Hydroelectric facilities with a capacity of 50 megawatts or less as well as other alternative renewable energy resource projects are eligible for municipal and county bonds (Title 90, chapter 5, part 1, MCA).

B. **SB 508 (Ch. 592).** Revises property tax laws related to electrical generation facilities; exempts electrical generation facilities and related delivery facilities that offer 50% of their net generating output at a cost-based rate from property taxation for a specific period of time; authorizes a local governmental unit to assess an impact fee for local governmental units and school districts that are impacted by a facility exempted from property taxation; provides for interlocal impact agreements.

1. Enacts Title 15, chapter 24, part 30, MCA.
2. Effective May 5, 2001.
3. Narrative summary
 - a. **Property tax exemption.** An electrical generation facility and related facilities constructed after May 5, 2001, may be exempt from property taxation. In order to qualify for the exemption, the owner of the facility must offer contracts to sell at least 50% of the facility's net generating output to customers at a cost-based rate plus a rate of return not to exceed 12% for a 20-year period from the date of the completion of the facility. The property tax exemption is limited to 5 years for a generation facility powered by oil or natural gas turbines.
 - b. **Limitation.** The property tax exemption applies to generation facilities that produce 20 average megawatts or more of electric power from coal-fired steam turbines, oil or gas turbines, or turbine generators that are

driven by falling water.

- c. **Rollback tax.** If an owner or operator of property exempt from taxation signs a contract to sell power as required and then fails to perform the contract (except for mitigating circumstances--e.g., acts of God or equipment failure) during the period that the property tax exemption is in effect, the exemption is void and the property is subject to a rollback tax.
 - d. **Impact fees.** A generation facility is subject to an annual impact fee of 0.75% of the total cost of construction during the first 2 years of construction. The property is subject to lesser impact fees during the remainder of the exemption period. The impact fees are distributed to the local government in which the facility is located and to impacted school districts. The impact fees may also be distributed under an interlocal agreement.
- C. **HB 643 (Ch. 541).** Revises laws related to electrical energy; clarifies the definition of "project" under the economic development bond laws to allow electrical generation facilities and transmission lines to be financed under the laws; modifies the credit limitation and carryover provisions for wind-generated electricity on Montana reservation lands; and exempts electricity generated on Montana reservation lands from the wholesale energy tax for out-of-state distribution.
- 1. Amends 15-32-403, 15-32-404, 15-72-104, and 90-5-101, MCA.
 - 2. Sections 1 through 3, related to wind energy credit and exemption from wholesale energy transaction tax, effective January 1, 2002. Section 4, related to bonds issued for economic development projects, effective May 1, 2001.
 - 3. Narrative summary
 - a. **Expansion of credit.** The restriction on the amount of the credit (total state and federal credit may not exceed 60% of eligible costs) that may be claimed for a system that generates electricity from wind is eliminated for a commercial system located within the exterior boundaries of a Montana Indian reservation. The system must be 5 megawatts or larger and at least 33% of the net generating output must be offered for a duration of 5 years to Montana customers at the cost of production plus a reasonable rate of return. Carryover of the credit is extended from 7 years to 15 years.
 - b. **Wholesale energy transaction tax exemption.** Electricity, for delivery outside the state, that is produced by an electric generation facility, as defined in 90-5-101, MCA, (including but not limited to generation facilities that produce electricity from fossil fuels, wind turbines, solar power, fuel cells, or water) located within the exterior boundaries of a Montana Indian reservation is exempt from the wholesale energy transaction tax. 15-72-104, MCA.

- c. **Revenue bonds.** Electrical energy generation facilities, regardless of size or fuel source, are eligible for county or municipal revenue bonds issued to finance economic development projects (Title 90, chapter 5, part 1, MCA) .

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