

HOUSE BILL NO. 476

INTRODUCED BY J. KEANE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING BOARD OF INVESTMENT LOANS FOR  
5 COAL-FIRED GENERATION AND ASSOCIATED TRANSMISSION; ALLOWING THE BOARD OF  
6 INVESTMENTS TO MAKE LOANS FROM THE MONTANA PERMANENT COAL TAX TRUST TO A PUBLIC  
7 UTILITY; ALLOWING THE USE OF LOANS FOR COAL, COAL IMPROVEMENTS, ADDITIONAL COAL  
8 INTERESTS, AND ASSOCIATED TRANSMISSION; REVISING LOAN REQUIREMENTS; REVISING LOAN  
9 LIMITATIONS; AMENDING SECTIONS 17-6-302, 17-6-308, 17-6-311, AND 17-6-317, MCA; AND PROVIDING  
10 AN IMMEDIATE EFFECTIVE DATE."

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

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14 **Section 1.** Section 17-6-302, MCA, is amended to read:

15 **"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following  
16 definitions apply:

- 17 (1) "Board" means the board of investments created in 2-15-1808.
- 18 (2) "Clean and healthful environment" means an environment that is relatively free from pollution that  
19 threatens human health, including as a minimum, compliance with federal and state environmental and health  
20 standards.
- 21 (3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility  
22 located in Montana that has a generating capacity greater than or equal to 200 megawatts.
- 23 (4) "Department" means the department of commerce provided for in 2-15-1801.
- 24 (5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership  
25 interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal  
26 occupation is as an employee, officer, or partner of the enterprise.
- 27 (6) "Existing infrastructure" means public improvements, including but not limited to:  
28 (a) drinking water systems;  
29 (b) wastewater treatment;  
30 (c) sanitary sewer or storm sewer systems;

1 (d) solid waste disposal and separation systems;  
2 (e) roads;  
3 (f) bridges; or  
4 (g) any public improvements authorized by Title 7, chapter 11, part 10; Title 7, chapter 12, parts 41  
5 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47.

6 (7) "Financial institution" includes but is not limited to a state-chartered or federally chartered bank or  
7 a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter  
8 4.

9 (8) "Intermediary loan" means a loan provided to a local economic development organization with a  
10 revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development  
11 loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but  
12 not limited to programs from the economic development administration of the U.S. department of commerce and  
13 the community development financial institution program from the U.S. department of the treasury.

14 (9) "Loan participation" means loans or portions of loans bought from a financial institution.

15 (10) "Local economic development organization" means:

16 (a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation  
17 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);

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

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

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

21 (11) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other  
22 ownership interests is owned and controlled by residents of Montana.

23 (12) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana  
24 economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana  
25 tax revenue in the future to the people of Montana, either directly or indirectly.

26 (13) "Montana economy" means any business activities in the state of Montana, including those that  
27 continue existing jobs or create new jobs in Montana.

28 (14) "Owner" means an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451  
29 or a public utility regulated by the public service commission in accordance with Title 69 that owns a coal-fired  
30 generating unit.

1 (15) "Service fees" means the fees normally charged by a financial institution for servicing a loan,  
2 including amounts charged for collecting payments and remitting amounts to the fund."

3

4 **Section 2.** Section 17-6-308, MCA, is amended to read:

5 **"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (7) and subject  
6 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules  
7 adopted by the board.

8 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve account  
9 created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree  
10 in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must  
11 be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise  
12 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  
13 pledge of the revenue to the bonds and notes.

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

25 (4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent  
26 coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90,  
27 chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of  
28 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest  
29 payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest  
30 have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan

1 amounts may not exceed 10% of the amount administered under this subsection.

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

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

7 (b) Loans may be provided in accordance with subsection (6)(a) ~~only to an owner to finance~~;

8 (i) the everyday operations and required maintenance of a coal-fired generating unit of which an owner  
9 has a shared interest;

10 (ii) the purchase of an additional interest in a coal-fired generating unit of which an owner has a shared  
11 interest;

12 (iii) the purchase of coal to use at a coal-fired generating unit or improvements necessary to utilize coal  
13 from a different source at a coal-fired generating unit;

14 (iv) the purchase of electric transmission lines and associated facilities of a design capacity of 500  
15 kilovolts or more primarily used to transmit electricity generated by a coal-fired resource; or

16 (v) any combination of subsections (6)(b)(i) through (6)(b)(iv).

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

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

19 (7) The board may make loans from the permanent coal tax trust fund to a city, town, county, or  
20 consolidated city-county government impacted by the closure of a coal-fired generating unit to secure and  
21 maintain existing infrastructure.

22 (8) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The  
23 rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit  
24 corporations.

25 (9) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance  
26 tax trust fund must be deposited in the coal severance tax permanent fund."  
27

28 **Section 3.** Section 17-6-311, MCA, is amended to read:

29 **"17-6-311. Limitation on size of investments.** (1) Except as provided in subsection (2) and this  
30 subsection, an investment may not be made that will result in any one business enterprise or person receiving

1 a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of  
 2 which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise  
 3 or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred  
 4 for the project or enterprise for the coal tax investment that was made to the business enterprise or person must  
 5 be held by a commercial lender. This subsection does not:

6 (a) apply to a loan made pursuant to 17-6-317; or  
 7 (b) limit the board's authority to make loans to the capital reserve account as provided in 17-6-308(2).

8 (2) The total amount of loans made pursuant to 17-6-309(2) may not exceed \$80 million, the total amount  
 9 of loans made pursuant to 17-6-317 may not exceed \$70 million, and a single loan may not be less than  
 10 \$250,000. Except for a loan made pursuant to 17-6-317, a loan may not exceed \$16,666 for each job that is  
 11 estimated to be created. In determining the size of a loan made pursuant to 17-6-309(2), the board shall consider:

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

14 (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business  
 15 and its employees;

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

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

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

21 (3) The total amount of loans made annually pursuant to 17-6-309(3) may not exceed ~~\$10~~ \$50 million.

22 In determining the size of a loan, the board shall consider:

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

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

25 (c) other matters that the board considers necessary."  
 26

27 **Section 4.** Section 17-6-317, MCA, is amended to read:

28 **"17-6-317. Participation by private financial institutions -- rulemaking.** (1) (a) The board may jointly  
 29 participate with private financial institutions in making loans to a business enterprise if the loan will:

30 (i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent,

1 full-time basis;

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

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

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

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

8 (ii) owners of coal-fired generating units ~~to provide for the continued operation and maintenance of a~~  
9 ~~coal-fired generating unit until July 1, 2022~~ for the purposes established in 17-6-308(6).

10 (c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under  
11 17-6-318.

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

14 (a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25%  
15 of the total loan amount.

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

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

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

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

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

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

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

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

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

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

1 rate.

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

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

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

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

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

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

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

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

26 (3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion  
27 of the loan must be made based on the percentage of completion to ensure that the construction portion of the  
28 loan is advanced prior to completion of the project.

29 (4) A private financial institution shall participate in a loan made pursuant to this section to the extent of  
30 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must

1 be 75% of the loan amount.

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

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

9 (c) A public utility may pay dividends to investors and bonuses to employees if the public utility is current  
10 on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the  
11 loan.

12 (6) The board may adopt rules that it considers necessary to implement this section."  
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14 NEW SECTION. Section 5. Notification to tribal governments. The secretary of state shall send a  
15 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
16 Chippewa tribe.

17  
18 NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable  
19 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
20 remains in effect in all valid applications that are severable from the invalid applications.

21  
22 NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

23 - END -