

1 *House* BILL NO. *776*  
 2 INTRODUCED BY *VINCENT* \_\_\_\_\_  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA  
 5 COMMISSION FOR THE DEMONSTRATION AND DEVELOPMENT OF  
 6 RENEWABLE ENERGY RESOURCES; PROVIDING FOR ITS POWERS,  
 7 FUNCTIONS, AND DUTIES."

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 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 10 Section 1. Short title. This act may be cited as the  
 11 "Montana Renewable Energy Resource Act of 1977".

12 Section 2. Legislative findings. The legislature  
 13 hereby finds and determines as follows:

14 (1) The citizens of the state of Montana are highly  
 15 dependent upon the use of nonrenewable fossil fuel imported  
 16 from foreign sources and used for residential heating,  
 17 commercial applications, and industrial production.  
 18 Nonrenewable fuels which are distributed to Montana users  
 19 may in the future be limited and eventually curtailed.

20 (2) Technology now exists or is in the process of  
 21 being developed which provides methods by which renewable  
 22 energy sources such as solar, wind, and biomass, which are  
 23 natural resources of the state, can be designed to generate  
 24 needed fuels and energy which can be substituted for  
 25 nonrenewable fossil fuels.

1 (3) The continued exposure of Montana citizens to the  
 2 fluctuations and instability of both cost and supply of  
 3 nonrenewable fuels dictates an immediate need to demonstrate  
 4 and develop renewable energy resources as a source for  
 5 continued energy supply and local employment which could  
 6 make Montana citizens self-sufficient in energy supply.

7 Section 3. Declaration of state necessity and public  
 8 policy and purpose. (1) The general welfare of the people of  
 9 Montana, in view of the state's population growth and  
 10 expanding economy, requires that renewable energy sources be  
 11 developed and put to optimum beneficial use.

12 (2) The public policy of the state is to promote  
 13 conservation and develop the state's renewable energy  
 14 resources to secure maximum economic security, social  
 15 well-being, and environmental protection for its citizens.

16 (3) It would be beneficial for the state, acting  
 17 through the Montana commission for the demonstration and  
 18 development of renewable energy resources, created in  
 19 [section 5] to cooperate in the proper development of these  
 20 resources so as to achieve efficient utilization of the  
 21 state's renewable energy resources.

22 (4) The public interest requires the demonstrating,  
 23 financing, construction, operation, and maintenance of  
 24 renewable resources base technologies and facilities, which  
 25 feasibility, demonstration, financing, construction,

1 operation, and maintenance are in all respects for the  
2 welfare and benefit of the people of the state.

3 (5) Management demonstration and development of  
4 Montana renewable resources which will benefit the people of  
5 Montana can be best secured only through the sound  
6 coordination of demonstration and development programs  
7 throughout the state.

8 (6) It is in the public interest of the state and its  
9 inhabitants and for the public purpose that the commission  
10 be empowered to participate in the study, planning, design,  
11 acquisition, development, construction, reconstruction,  
12 improvement, extension, betterment, ownership, operation,  
13 and financing of renewable energy-based facilities as  
14 hereinafter provided in order to meet the future energy  
15 needs of the state and all of its inhabitants and to promote  
16 the efficient conservation and utilization of its renewable  
17 fuel resources.

18 (7) It is in the public interest of the state and its  
19 inhabitants and for a public purpose that the commission be  
20 empowered to participate jointly with others, both public  
21 and private, in the study, planning, design, acquisition,  
22 development, construction, reconstruction, improvement,  
23 extension, betterment, ownership, operation, and financing  
24 of renewable energy-based facilities as a means of  
25 achieving the economies and efficiencies made possible by

1 the proper planning, financing, sizing, and location of such  
2 facilities which may not be practical or advisable for the  
3 commission acting alone.

4 Section 4. Definitions. As used in this act, the  
5 following definitions apply:

6 (1) "Commission" means the Montana commission for the  
7 demonstration and development of renewable energy resources,  
8 created in [section 5], or its successor.

9 (2) "Cost" or "cost of a project" means but is not  
10 limited to:

11 (a) the cost of acquisition, construction,  
12 reconstruction, improvement, modification, enlargement,  
13 betterment, or extension of any project, including the cost  
14 of studies, plans, specifications, surveys and estimates of  
15 costs and revenues relating thereto;

16 (b) the cost of land, land rights, rights-of-way and  
17 easements, water rights, fees, permits, approvals, licenses,  
18 certificates, franchises, and the preparation and securing  
19 of applications for those rights;

20 (c) administrative, legal, engineering, appraisal,  
21 environmental study, and inspection expenses;

22 (d) financial fees, expenses, and costs;

23 (e) working capital;

24 (f) facilities for the judicious use of the output of  
25 any project;

1 (g) storage facilities for the output of any project;  
 2 (h) establishment of reserves;  
 3 (i) other expenditures of the commission incidental,  
 4 necessary, or convenient to the financing, acquisition,  
 5 construction, reconstruction, improvement, enlargement,  
 6 betterment, or extension of any project and the placing of  
 7 the same in operation; and  
 8 (j) capital expenditures required for the continued  
 9 operation of a project.

10 (3) "Output" or "output of a project" means the  
 11 capacity to produce and the energy or fuel produced by a  
 12 project.

13 (4) "Project" means any works, plants, systems, or  
 14 facilities for the development and utilization of renewable  
 15 energy resources.

16 (5) "State" means the state of Montana.

17 Section 5. Creation of the commission. There is a  
 18 Montana commission for the demonstration and development of  
 19 renewable energy resources, which is a body politic and  
 20 corporate, constituting an agency of the state.

21 Section 6. Powers and duties of the commission. The  
 22 commission has the following rights and powers:  
 23 (1) to study, make recommendations, and develop and  
 24 encourage research concerning the long-range programs  
 25 relating to renewable energy resources and technologies,

1 including but not limited to the development and  
 2 demonstration of:  
 3 (a) solar energy technologies for industrial,  
 4 nonindustrial or electrical generation applications;  
 5 (b) wind energy in individual, community, and regional  
 6 electrical energy supply; and  
 7 (c) biomass conversion for agricultural, commercial,  
 8 and fuel applications;

9 (2) to evaluate the environmental, institutional, and  
 10 economic implications of these technologies and recommend  
 11 ongoing demonstration programs for the long-range  
 12 integration and development of these resources as primary  
 13 sources for the state's future energy supply with  
 14 cooperation and assistance from:  
 15 (a) the Montana energy research and development  
 16 institute;  
 17 (b) the Montana department of natural resources and  
 18 conservation;  
 19 (c) the energy advisory council;  
 20 (d) the department of community affairs;  
 21 (e) the federal energy administration;  
 22 (f) the U.S. energy research and development  
 23 administration; and  
 24 (g) any other federal agencies or other public and  
 25 private persons, firms, and corporations interested in

1 finding solutions to energy-related problems;

2 (3) to adopt rules and establish policies in  
3 connection with the exercise and performance of its powers  
4 and duties;

5 (4) to maintain an office at such place or places as  
6 it may determine;

7 (5) to sue and be sued in its own name;

8 (6) to solicit, accept, and expend gifts, grants, or  
9 any other form of assistance from any source, including but  
10 not limited to the federal government or any agencies  
11 thereof and to comply with the conditions and requirements  
12 respecting any gift, grant, or other form of assistance;

13 (7) to acquire by purchase, lease, gift, or otherwise,  
14 or obtain options for the acquisition of, any property,  
15 real, personal, or mixed, including any rights or interests  
16 therein, less than the fee thereof;

17 (8) to sell, lease, rent, exchange, transfer, or  
18 otherwise dispose of, or grant options for any such purposes  
19 with respect to any real or personal property or interest  
20 therein;

21 (9) to enter into contracts with any person, firm, or  
22 corporation, public or private, including universities,  
23 institutions, governmental agencies, and other individuals,  
24 companies, or organizations, to research, demonstrate, and  
25 develop the utilization of renewable energy resources. Such

1 contracts may be for but are not limited to the following  
2 purposes:

3 (a) the commercial implementation of renewable  
4 energy-based technologies;

5 (b) the development of technology and the initiation  
6 of demonstration projects in connection therewith which  
7 reasonably and feasibly may result in an effective feasible  
8 technology which may be developed; and

9 (c) the study, planning, design, acquisition,  
10 development, construction, modification, reconstruction,  
11 improvement, betterment, ownership, operation, and  
12 maintenance of a project and the financing thereof.

13 (10) to study, plan, design, acquire, develop,  
14 construct, reconstruct, improve, modify, extend, better,  
15 own, operate, and maintain one or more projects and to pay  
16 all or any part of the costs thereof from the proceeds of  
17 the bonds of or grants to the commission or from any other  
18 funds made available to the commission. The commission may  
19 not enter into any renewable energy development until it has  
20 proved to its satisfaction the feasibility and viability of  
21 the specific technology involved in the development,  
22 construction, reconstruction, modification, improvements,  
23 extension, betterment, ownership, operation, and maintenance  
24 of one or more projects.

25 (11) to pledge, assign, or create liens upon any money,

1 rents, rates, fees, or charges or other revenues and any  
2 proceeds derived by the commission from the sales of  
3 property, insurance, or condemnation awards;

4 (12) to seek funding and support for its various  
5 projects;

6 (13) to negotiate and enter into contracts for the sale  
7 at wholesale or retail the heat, energy, electricity, and  
8 byproducts and transmission or use of same which are  
9 produced, manufactured, or dealt in by any of the  
10 commission's projects;

11 (14) to make and execute contracts and other  
12 instruments with any person, firm, corporation, or federal  
13 and state governments, and their agencies and subdivisions,  
14 necessary or convenient in the exercise of the powers and  
15 functions of the commission under this act;

16 (15) to apply to the appropriate agencies of the state,  
17 the United States or any state thereof, and to any other  
18 agency having jurisdiction for such permits, licenses,  
19 certificates, or approvals as necessary, and to construct,  
20 maintain, and operate projects in accordance with such  
21 licenses, permits, certificates, or approvals and to  
22 obtain, hold, and use such licenses, permits, certificates,  
23 and approvals in the same manner as any other person or  
24 operating unit;

25 (16) to employ engineers, architects, attorneys, real

1 estate counselors, appraisers, financial advisors,  
2 environmental advisors and consultants, and such other  
3 consultants and employees as may be required in the judgment  
4 of the commission and to fix and pay their compensation from  
5 funds available to the commission therefor;

6 (17) to do all acts and things necessary, convenient,  
7 or desirable to carry out the purposes and to exercise the  
8 powers granted to the commission.

9 Section 7. Structure of the commission. (1) The  
10 commission shall be composed of seven members consisting of  
11 the following persons:

12 (a) the governor of the state of Montana or his  
13 designee;

14 (b) the director of the department of natural  
15 resources and conservation;

16 (c) five members appointed by the governor who  
17 represent the following areas:

18 (i) one member whose primary business is agriculture;

19 (ii) one member selected from the representatives of  
20 labor organizations within the state; and

21 (iii) three members selected from the advocates and  
22 researchers of renewable resource use in Montana, one of  
23 which shall be from the public at large and may not be  
24 employed in either agriculture or labor.

25 (2) The appointed members of the commission shall be

1 persons who have proven abilities and expertise in their  
 2 respective fields of endeavor with special interest in  
 3 renewable energy resources as a solution to Montana's energy  
 4 future and who are capable of acquiring expertise in those  
 5 subjects in which the commission is authorized to engage.  
 6 All appointments establish a conclusive presumption that the  
 7 appointee has met the qualifications prescribed by this  
 8 subsection.

9 (3) The terms of the governor and director of the  
 10 department of natural resources and conservation shall  
 11 coincide with the terms of their respective offices. The  
 12 terms of the appointed members of the commission shall be  
 13 for 6 years provided that the terms shall be staggered as  
 14 prescribed in subsection (4).

15 (4) After the governor makes his appointments and the  
 16 appointees are confirmed as provided by law, the commission  
 17 shall draw by lot the names of two members to serve a 6-year  
 18 term beginning with the initial existence of the commission,  
 19 two members to serve a 4-year term, and one member to serve  
 20 a 2-year term. All subsequent terms shall be for 6 years.  
 21 Subsequent members shall be chosen from the sector of the  
 22 public from which the original member was chosen.

23 (5) The members of the commission may receive  
 24 reimbursement, as provided by 59-538, 59-539, and 59-801,  
 25 for expenses incurred by them, plus reasonable compensation

1 for attendance at meetings or functions of the commission,  
 2 as the commission in the exercise of its sound discretion  
 3 may determine, but no other salary or compensation may be  
 4 paid.

5 (6) No member of the commission or person or persons  
 6 acting in its behalf, while acting within the scope of his  
 7 authority, is subject to any personal liability by reason of  
 8 his carrying out any of the powers expressly or impliedly  
 9 given in this act.

10 (7) The members may elect among themselves the  
 11 officers of the commission, provided, however, that the  
 12 treasurer or chief financial officer of the commission may  
 13 be appointed by the commission from the commission's  
 14 professional staff.

15 (8) A majority of the members of the commission shall  
 16 constitute a quorum.

17 (9) Requirements as to notice and place of meetings,  
 18 order of business, procedures, and rules of conduct of  
 19 meetings, the duties of the officers, and other procedural  
 20 rules regarding the conduct of the affairs of the  
 21 commission's meetings and deliberations shall be determined  
 22 by the commission which it, in its sound discretion, may  
 23 adopt, modify, repeal, or amend. Nothing herein limits the  
 24 appropriate applicability of pertinent constitutional  
 25 provisions or statutes relating to the public's right of

1 participation in or the right to know or observe, the  
2 deliberations of public bodies. This subsection does not  
3 limit the appropriate applicability of the Montana  
4 Administrative Procedure Act.

5 (10) The commission shall make an annual report of all  
6 of its activities to the legislature and an accounting of  
7 its expenditures and receipts for the calendar year  
8 encompassed by the report. Receipts include in-kind  
9 contributions of all activities of other state, federal, or  
10 municipal agencies and private firms which are contributed  
11 to the commission as input into its research, development,  
12 and study.

13 (11) The commission is a temporary commission under  
14 Article VI, section 7, of the Montana constitution until  
15 March 31, 1979, by which time the legislature, after having  
16 first considered the commission's annual reports, shall  
17 assign and allocate the commission to one of the principal  
18 departments of state government.

19 Section 8. Professional staff. The commission is  
20 governed by the following in the hiring and appointing of  
21 employees of the commission or its projects:

22 (1) The commission shall appoint professional  
23 managers, administrators, and directors and shall staff its  
24 projects with managers, administrators, directors, and  
25 employees who have proven expertise and professional ability

1 in the area of activity in which they are to participate or  
2 direct.

3 Section 9. Issuance of contracts and grants. (1) The  
4 commission may issue requests for proposals, procurement,  
5 and bids to study, plan, finance, develop, construct,  
6 reconstruct, acquire, improve, enlarge, better, own,  
7 operate, and maintain a project and the evaluation of such  
8 proposals shall be made on the basis of innovative approach,  
9 established expertise, and overall cost in that order.

10 (2) The commission is severally liable for its own  
11 acts and not jointly or severally liable for the acts,  
12 omissions, or obligations of others, and no money, property,  
13 or other consideration supplied by the commission may be  
14 credited or otherwise applied to the account of any other  
15 party. The undivided ownership share of the commission in a  
16 project may not be charged directly or indirectly with any  
17 debt or obligation of any other party or be subject to any  
18 lien as a result thereof. The commission may furnish money  
19 and provide property, both real and personal, services, and  
20 other considerations in connection with grants or contracts  
21 awarded by this process.

22 (3) Any contracts entered into by the commission shall  
23 contain such terms, conditions, and provisions not  
24 inconsistent with the provisions hereof as the commission  
25 considers in its best interests and the best interests of

1 the state. Any contracts shall include but are not limited  
2 to the following:

- 3 (a) the purpose or purposes of the contract;
- 4 (b) the duration of the contract;
- 5 (c) the manner of appointing or employing the  
6 personnel necessary in connection with the project;
- 7 (d) the method of financing the project, including the  
8 apportionment of costs and revenues;
- 9 (e) provisions, which may be altered with the express  
10 consent of all parties, outlining the scope of work of the  
11 contractor and the deadlines, milestones, and completion  
12 date of the contract;
- 13 (f) provisions which clearly define the property  
14 interests and enforceable rights to its respective project  
15 interests;
- 16 (g) methods for amending the contract;
- 17 (h) methods for terminating the contract; and
- 18 (i) any other necessary or proper matter.

19 Section 10. Government grants and loans. (1) The  
20 commission may enter into contracts for and accept  
21 grants-in-aid, loans, and loan guarantees from the federal  
22 and state governments and their agencies for planning,  
23 acquiring, constructing, expanding, maintaining, and  
24 operating any project or facility or participating in any  
25 research or development program or performing any function

1 which the commission may be authorized to provide or  
2 perform.

3 (2) In order to exercise the authority granted by this  
4 section, the commission may:

- 5 (a) enter into and carry out contracts with the state  
6 or federal government or any agency or institution thereof  
7 under which such government, agency, or institution grants  
8 financial or other assistance to the municipality or joint  
9 agency;
- 10 (b) accept such assistance or funds as may be granted  
11 or loaned by the state or federal government with or without  
12 such a contract;
- 13 (c) agree to and comply with any reasonable conditions  
14 which are imposed upon such grants or loans; and
- 15 (d) make expenditures from any funds so granted.

16 Section 11. Environmental and other considerations.  
17 The commission and its projects shall be governed and  
18 regulated by all laws and rules of the state relating to:

- 19 (1) utility facility sites;
- 20 (2) air, water, and solid wastes emission controls;
- 21 (3) environmental quality standards;
- 22 (4) zoning standards;
- 23 (5) energy conservation laws;
- 24 (6) laws and regulations governing utilities; and
- 25 (7) competitive bidding statutes; provided, however,



1 that competitive bidding is not required for property or  
 2 services which the commission, in its sound discretion,  
 3 determines not conducive to competition or for which it is  
 4 impracticable to secure competition, including contracts  
 5 involving new technology and demonstration projects in  
 6 connection therewith, contracts for other experimental  
 7 development or research work, or contracts relating to  
 8 design or construction of processes or technology which are  
 9 so unique in character that it would be impractical to  
 10 secure competition therefor, and for the manufacturing or  
 11 furnishing of property in connection therewith.

12 Section 12. Construction. This act provides a complete  
 13 method for the productive functioning of the commission,  
 14 and, in exercising and performing its powers, duties, and  
 15 functions the commission is governed solely by the  
 16 provisions of this act except as otherwise expressly  
 17 provided herein. Insofar as the provisions of this act are  
 18 inconsistent with the provisions of any other general,  
 19 special, or local law, the provisions of this act are  
 20 controlling. Since the object of this act is to promote  
 21 energy supply stability through the use of renewable  
 22 resources and thereby to promote the prosperity and welfare  
 23 of the citizens of Montana, its provisions shall be  
 24 liberally construed.

25 Section 13. Severability. If a part of this act is

1 invalid, all valid parts that are severable from the invalid  
 2 part remain in effect. If a part of this act is invalid in  
 3 one or more of its applications, the part remains in effect  
 4 in all valid applications that are severable from the  
 5 invalid applications.

-End-