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SENATE BILL NO. 503
INTRODUCED BY K. TOOLE

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE GENERAL OBLIGATION BONDS FOR ACQUISITION OF HYDROELECTRIC GENERATING FACILITIES AND ASSOCIATED WATER RIGHTS; CREATING A STATE DEBT; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES; CLARIFYING THAT ACQUISITION IS A PUBLIC USE FOR PURPOSES OF EMINENT DOMAIN; PROVIDING THAT PUBLIC ACQUISITION IS A MORE NECESSARY PUBLIC USE; PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE QUALIFIED ELECTORS OF MONTANA; AMENDING SECTIONS 17-7-502, 70-30-102, 70-30-111, 85-1-204, AND 85-1-209, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Bond authorization. (1) The board of examiners may issue and sell general obligation bonds of the state in an aggregate principal amount not to exceed \$300 million for the purpose authorized in [section 2]. The bonds are general obligations for which the full faith and credit and taxing powers of the state are pledged for payment of the principal and interest on the bonds. The bonds must be issued as provided by Title 17, chapter 5, part 8.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay the costs of issuing the bonds and to fulfill the purpose authorized in [section 2]. For the purposes of 17-5-803 and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the department of natural resources and conservation and may be used for the purposes authorized in this section without further budgetary authorization.

(3) The principal and interest payments on the bonds must be made from the sale of electrical energy produced from the hydroelectric generating facilities acquired pursuant to [section 2]. The electrical energy produced from the hydroelectric generating facilities must be offered to in-state customers who

1 use less than 1,000 kilowatts on an annual basis before the electrical energy may be offered to other
2 customers.

3

4 **NEW SECTION. Section 2. Use of bond proceeds.** (1) The department of natural resources and
5 conservation shall use the proceeds of the bonds authorized in [section 1] to purchase the hydroelectric
6 generating facilities and associated water rights for those facilities formerly owned by the Montana power
7 company. The department may not acquire a facility that is associated with a superfund project.

8 (2) If the purchase authorized in subsection (1) cannot be negotiated, then the department of
9 natural resources and conservation may exercise the powers of eminent domain authorized in 85-1-204,
10 85-1-209, 85-1-213, and 85-2-414 to take the hydroelectric generating facilities and associated water
11 rights.

12

13 **Section 3.** Section 17-7-502, MCA, is amended to read:

14 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
15 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
16 without the need for a biennial legislative appropriation or budget amendment.

17 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
18 with both of the following provisions:

19 (a) The law containing the statutory authority must be listed in subsection (3).

20 (b) The law or portion of the law making a statutory appropriation must specifically state that a
21 statutory appropriation is made as provided in this section.

22 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 3-5-901;
23 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-31-702;
24 15-34-115; 15-35-108; 15-36-324; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404;
25 16-1-406; 16-1-411; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319;
26 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107;
27 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301;
28 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703;
29 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-222; 80-4-416;
30 80-11-518; 81-5-111; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

1 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 2 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 3 pursuant to the laws of Montana. This section does not apply to bonds issued pursuant to [section 1].
 4 Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer,
 5 for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an
 6 amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 7 appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the
 8 inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant
 9 to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section
 10 is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the
 11 amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant
 12 to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; and pursuant to sec.
 13 10(2), Ch. 10, Sp. L. May 2000, the inclusion of 15-35-108 and 90-6-710 terminates June 30, 2005.)"
 14

15 **Section 4.** Section 70-30-102, MCA, is amended to read:

16 **"70-30-102. Public uses enumerated.** Subject to the provisions of this chapter, the right of
 17 eminent domain may be exercised ~~in behalf of~~ for the following public uses:

18 (1) all public uses authorized by the government of the United States;

19 (2) public buildings and grounds for the use of the state and all other public uses authorized by
 20 the legislature of the state;

21 (3) public buildings and grounds for the use of any county, city, ~~or~~ town, or school district; canals,
 22 aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any
 23 county, city, or town; ~~raising projects to raise~~ the banks of streams, removing remove obstructions
 24 ~~therefrom from streambanks, and widening, deepening, or straightening their~~ widen, deepen, or straighten
 25 stream channels; roads, streets, and alleys and all other public uses for the benefit of ~~any a~~ a county, city,
 26 or town or the inhabitants thereof, ~~which may be authorized by the legislature, but the mode of~~
 27 ~~apportioning and collecting the costs of such improvements shall be such as may be provided in the~~
 28 ~~statutes or ordinances by which the same may be authorized~~ of a county, city, or town;

29 (4) property and water rights necessary for waterworks and hydroelectric generating facilities as
 30 provided in 85-1-204, 85-1-209, and 85-7-1904;

1 ~~(4)~~(5) wharves, docks, piers, chutes, booms, ferries, bridges, ~~of all kinds,~~ private roads, plank and
2 turnpike roads, and railroads; ~~;~~ canals, ditches, flumes, aqueducts, and pipes for ~~public transportation;~~
3 ~~(a)~~ (a) supplying mines, mills, and smelters for the reduction of ores; ~~and~~
4 ~~(b)~~ (b) supplying farming neighborhoods with water and drainage; ~~and~~
5 ~~(c)~~ (c) reclaiming lands; ~~and for~~
6 ~~(d)~~ (d) floating logs and lumber on streams not navigable; ~~and~~
7 ~~(6)~~ (6) sites for reservoirs necessary for collecting and storing water. However, ~~such~~ reservoir sites
8 must possess a public use demonstrable to the district court as the highest and best use of the land.
9 ~~(5)~~(7) roads, tunnels, ~~ditches, flumes, pipes,~~ and dumping places for working mines, mills, or
10 smelters for the reduction of ores; ~~also~~ outlets, natural or otherwise, for the flow, deposit, or conduct of
11 tailings or refuse matter from mines, mills, and smelters for the reduction of ores; ~~also~~ an occupancy in
12 common by the owners or the possessors of different mines of any place for the flow, deposit, or conduct
13 of tailings or refuse matter from their several mines, mills, or smelters for reduction of ores and sites for
14 reservoirs necessary for collecting and storing water for the mines, mill, or smelters. However, ~~such~~ the
15 reservoir sites must possess a public use demonstrable to the district court as the highest and best use
16 of the land.
17 ~~(6)~~(8) private roads leading from highways to residences or farms;
18 ~~(7)~~(9) telephone or ~~electric light~~ electrical energy lines;
19 ~~(8)~~(10) telegraph lines;
20 ~~(9)~~(11) sewerage of any county, city, county, or town or any subdivision ~~thereof~~ of a county, city,
21 or town, whether incorporated or unincorporated, ~~or of~~ any settlement consisting of not less than 10
22 families, ~~or of any~~ public buildings belonging to the state or to any college or university;
23 ~~(10)~~(12) tramway lines;
24 ~~(11)~~ (11) electric power lines;
25 ~~(12)~~(13) logging railways;
26 ~~(13)~~(14) temporary logging roads and banking grounds for the transportation of logs and timber
27 products to public streams, lakes, mills, railroads, or highways for ~~such a time as that~~ that the court or judge
28 may determine; ~~provided~~ However, the grounds of state institutions ~~be excepted,~~ may not be used for
29 this purpose.
30 ~~(14)~~(15) underground reservoirs suitable for storage of natural gas;

1 ~~(15)~~(16) projects to mine and extract ores, metals, or minerals owned by the ~~plaintiff~~ condemnor
 2 located beneath or upon the surface of property where the title to ~~said~~ the surface vests in others.
 3 However, the use of the surface of property for strip mining or open-pit mining of coal (i.e., any mining
 4 method or process in which the strata or overburden is removed or displaced in order to extract the coal)
 5 is not a public use, and eminent domain may not be exercised for this purpose;_

6 ~~(16)~~(17) projects to restore and reclaim lands ~~strip or underground-mined~~ that were strip-mined
 7 or underground-mined for coal and not reclaimed in accordance with Title 82, chapter 4, part 2, and to
 8 abate or control adverse affects of strip or underground mining on those lands."
 9

10 **Section 5.** Section 70-30-111, MCA, is amended to read:

11 **"70-30-111. Facts necessary to be found before condemnation.** (1) Before property can be taken,
 12 the ~~plaintiff must~~ condemnor shall show by a preponderance of the evidence that the public interest
 13 requires the taking based on the following findings:

14 ~~(1)(a) that~~ the use to which ~~it~~ the property is to be applied is a use authorized by law;

15 ~~(2)(b) that~~ the taking is necessary to ~~such~~ the use;

16 ~~(3)(c) if already appropriated to some~~ being used for a public use, that the public use ~~to~~ for which
 17 ~~it~~ the property is proposed to be ~~applied~~ used is a more necessary public use;

18 ~~(4)(d) that~~ an effort to obtain the property interest sought to be ~~condemned~~ taken was made by
 19 submission of a written offer and ~~that such~~ the offer was rejected.

20 (2) If the property sought to be taken pursuant to subsection (1)(c) is a hydroelectric generating
 21 facility and associated water rights as provided in 85-1-204, then the taking by the department of natural
 22 resources and conservation is a more necessary public use."
 23

24 **Section 6.** Section 85-1-204, MCA, is amended to read:

25 **"85-1-204. Department powers over state water and hydroelectric generating facilities.** (1) The
 26 department may sell, lease, and otherwise dispose of water impounded under this chapter. The water may
 27 be sold for the purpose of irrigation, development of power, watering of stock, or other purposes. The
 28 department may also lease water under the state water leasing program established under the provisions
 29 of 85-2-141. To the extent that it may be necessary to carry out this chapter and subject to compliance
 30 with the other provisions of this chapter, the department has full control of all the water of the state not

1 under the exclusive control of the United States and not vested in private ownership, and it shall take the
2 necessary actions to appropriate and conserve the water for the use of the people. The authority of the
3 department conferred by this chapter extends and applies to rights to the natural flow of the water of this
4 state that it may acquire by condemnation, purchase, exchange, appropriation, or agreement and to any
5 hydroelectric generating facilities acquired by the department in conjunction with the acquisition of the
6 water. The department may contract for the operation and maintenance of the hydroelectric generating
7 facilities.

8 (2) For the purpose of regulating the diversion of water, the department may enter upon the
9 means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

10 (3) The department may take into consideration the decrees of the courts of this state having
11 jurisdiction that purport to adjudicate the water of a stream or its tributaries. A fair, reasonable, and
12 equitable reconciliation must be made between the claimants asserting rights under different decrees and
13 between decreed rights and asserted rights of appropriation not adjudicated by a court.

14 (4) The department may hold hearings relating to the rights of respective claimants after first
15 giving the notice that it considers appropriate. The department shall make findings of the date and quantity
16 of appropriation and use of all claimants that the department recognizes and observes in diverting the
17 water that the department owns. The department may measure and distribute the water to the owner of
18 the recognized appropriation under agreed-upon terms.

19 (5) The department, when engaged in controlling and dividing the natural flow of a stream under
20 the authority granted by this chapter, is exercising a police power of the state, and water commissioners
21 appointed by any court may not deprive the department of any of the water owned or administered under
22 agreement with respective owners. The owner of a prior right who contends that the department is not
23 recognizing and respecting the appropriation may resort to a court for the purpose of determining whether
24 or not the rights of the claimant have been invaded, and the department shall observe the terms of the
25 final decree.

26 (6) When the department impounds or acquires the right of appropriation of the water of a stream,
27 it may divert or authorize the diversion at a point on the stream or a portion of the stream when it is done
28 without injury to a prior appropriator."

29

30 **Section 7.** Section 85-1-209, MCA, is amended to read:

1 **"85-1-209. Acquisition of property by department.** (1) The department may acquire by purchase
 2 or exchange, upon terms and conditions and in a manner it considers proper, and may acquire by
 3 condemnation, in accordance with laws applicable to the condemnation of property for public use, any
 4 land, rights, water rights, easements, franchises, and other property considered necessary for the
 5 construction, operation, and maintenance of works. Title to property purchased or condemned must be
 6 taken in the name of the department. The department is under no obligation to accept and pay for any
 7 property condemned under this chapter except from the funds provided by this chapter or [section 1]. In
 8 any proceedings to condemn, orders may be made by the court that has jurisdiction of the suit, action,
 9 or proceeding as may be warranted by law and the facts.

10 (2) In a condemnation proceeding brought under the powers of eminent domain for the purpose
 11 of carrying out this chapter, all persons interested in the title of or holding liens upon the property sought
 12 to be acquired, as disclosed by the public records, must be made parties and the court in the action shall
 13 partition and distribute the damages awarded, if any, among those persons as their rights appear. If there
 14 is controversy between them, the court may direct the amount of the damage awarded to be paid into
 15 court to abide the result of further appropriate proceedings either at law or in equity.

16 (3) Taking possession of the property sought to be condemned may not be delayed by reason of
 17 any dispute between the rival claimants or the failure to join any of them as a party to the proceedings in
 18 condemnation.

19 (4) If water rights are acquired or exercised by the department in connection with two or more
 20 works or projects, the department by order shall apportion or allocate to each of the works or projects the
 21 part of the water rights that the department determines is necessary. Upon the adoption of the order, the
 22 water rights are considered a part of each of the works or projects to the extent that the water rights have
 23 been apportioned or allocated to the works or projects."

24

25 NEW SECTION. **Section 8. Effective date.** [This act] is effective upon approval by the electorate.

26

27 NEW SECTION. **Section 9. Submission to electorate.** The question of whether sections 1 through
 28 7 of this act will become effective shall be submitted to the qualified electors of Montana at the general
 29 election to be held in November 2002 by printing on the ballot the full title of this act and the following:

30 [] FOR authorizing the creation of state debt to be used to acquire hydroelectric generating

1 facilities and associated water rights.
2 [] AGAINST authorizing the creation of state debt to be used to acquire hydroelectric
3 generating facilities and associated water rights.
4 - END -