EXHIBIT 9
DATE 3/23/05
HB 757

Amendments to House Bill No. 757
2nd Reading Copy

Requested by Representative Llew Jones

For the House Appropriations Committee

Prepared by Greg Petesch
March 14, 2005 (1:29pm)

1. Title, line 9.
Following: "ACCOUNT;"
Insert: "AUTHORIZING THE ISSUANCE OF REVENUE BONDS FOR FUNDING THE ACCOUNT;"

2. Page 2, line 1.
Following: "program."
Insert: "The department may request the board of examiners to issue revenue bonds, as provided in [sections 7 through 21] for the purpose of providing funds for a loan."

3. Page 2, line 13.
Following: "million"
Insert: "each year"

4. Page 4, line 29.
Insert: "NEW SECTION. **Section 7. Definitions.** As used in [sections 7 through 21], the following definitions apply:

(1) "Board" means the board of examiners created under 2-15-1007.

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [sections 7 through 21] as essential freight rail revenue bonds.

(3) "Cost", as applied to any project, means any cost of any part of the project pursuant to 60-11-120.

(4) "Outstanding bonds" means bonds issued and outstanding at any particular time but does not include bonds owned by the state, bonds that have been refunded, or bonds for the payment of which an irrevocable deposit of cash and United States government securities has been made in an amount sufficient to pay principal, interest, and redemption premium, if any, when due.

(5) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

(6) "Revenue" means the revenue from the operation of a rail line credited to the department in the state special revenue fund."

Insert: "NEW SECTION. **Section 8. Revenue bond debt service**

account -- deposit of bond proceeds. (1) There is in the debt service fund an essential freight rail revenue bond debt service account. Subject only to the prior pledge and appropriation made by 17-5-507, the state treasurer shall deposit revenue as may be pledged to the payment of particular bonds to the credit of the essential freight rail revenue bond debt service account as required by resolution or indenture.

(2) All proceeds of an issue of bonds must be deposited in a separate account in the state special revenue fund, except that any premiums and accrued interest received may be deposited in a separate account in the debt service fund established for that bond issue by resolution or indenture. No more than the principal and interest on the bonds due in any year may be retained in the essential freight rail revenue bond debt service account for the payment of bonds. The remainder of pledged revenue is available for authorized purposes of the department. Money deposited in the separate accounts in the state special revenue fund until spent for project purposes may be pledged and appropriated for the payment of bonds, which are a first lien and prior charge upon the funds, and the funds may be used for payment of bonds to the extent that revenue deposited in the essential freight rail revenue bond debt service account are not sufficient for those purpose.

(3) Interest and investment earnings on the separate accounts in subsections (1) and (2) must be retained in the separate accounts referred to in subsection (2)."

Insert: "NEW SECTION. **Section 9. Pledge of revenue.** All or any portion of revenue may be pledged to the payment of the principal, interest, and redemption premium, if any, on particular issues of essential freight rail revenue bonds, and the pledge is and remains at all times a first lien and prior charge upon the pledged revenue credited to the essential freight rail revenue bond debt service account, subject to a first lien and charge in favor of certain essential freight rail revenue bonds as provided in 17-5-507 and subject to the pledge of particular revenue to secure particular issues of essential freight rail revenue bonds."

Insert: "NEW SECTION. **Section 10. Authority to issue revenue bonds.** The board may issue and sell essential freight rail revenue bonds to finance the cost of projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The state reserves the right to issue additional bonds secured equally and ratably by the pledge and appropriation of the revenue or separately secured by a portion of revenue subject only to the pledge of particular revenue to secure particular bonds."

Insert: "NEW SECTION. **Section 11. Collection of revenue -- restriction on additional bonds.** The legislature shall provide for the continued collection and deposit of revenue into the state special revenue fund for the credit of the department in

amounts sufficient to pay, when due, the annual debt service charges on all outstanding bonds. The board is authorized to include a contractual undertaking for the benefit of bondholders to this effect in the resolution or indenture under which the bonds are issued."

Insert: "NEW SECTION. **Section 12. Bond anticipation notes -- issued when -- payment of principal and interest.** (1) The board may, pending the issuance of essential freight rail revenue bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, which notes are designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes may be used only for the purpose for which the proceeds of the bonds are to be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary or desirable to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. A renewal of any note may not be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds are needed. The notes must be authorized by the board and have terms and provisions as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes that may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula of the notes as determined in the manner specified in the resolution authorizing the notes, and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time, and may delegate to the state treasurer the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and other terms and details of the notes as may be considered appropriate by the board or, if there has been a delegation, the state treasurer. The board may, in its discretion but subject to the limitations contained in this section, provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes, from time to time, without further action by the board, unless and until the board revokes the authority to refund; and

(d) other terms and conditions that the board may consider appropriate."

Insert: "NEW SECTION. **Section 13. Form -- principal and interest -- fiscal agent -- bonds authorized.** (1) Each series of essential freight rail revenue bonds may be issued by the board at public or private sale, in denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with provisions for the conversion or exchange, bearing interest at a rate or rates or the method of determining the rate or rates, maturing at times, not more than 40 years from the date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of a fiscal agency of the state that the board shall determine, subject to the limitations contained in [sections 7 through 21]. Any action taken by the board under [sections 7 through 21] must be approved by at least a majority vote of its members.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment.

(3) Bonds and any interest coupons appurtenant to the bonds must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all bonds issued and sold.

(4) The board may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under [sections 7 through 21].

(5) In connection with the issuance and sale of bonds, the board may arrange for lines of credit or letters of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for bonds issued pursuant to [sections 7 through 21]. Amounts drawn on lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing the terms and conditions that the board may authorize in the resolution approving the same.

(6) No more than $150 million of bonds issued under [sections 7 through 21] may be outstanding at any time. Additional bonds, other than refunding bonds, may not be issued until the pledge in favor of the bonds is satisfied and discharged."

Insert: "NEW SECTION. **Section 14. Trust indenture.** In the discretion of the board, essential freight rail revenue bonds issued under [sections 7 through 21] may be secured by a trust indenture by and between the board and a trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Each trust indenture or an

executed counterpart of the indenture must be filed in the office of the secretary of state. The filing of a trust indenture or an executed counterpart of the indenture in the office of the county clerk and recorder of the county in which the property covered by the trust indenture is located is constructive notice of its content to all persons from the time of filing, and the recording of the trust indenture or its content is not necessary."

Insert: "NEW SECTION. **Section 15. Provisions for protecting bondholders.** The resolution of the board providing for the issuance of essential freight rail revenue bonds or the trust indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the state, the board, and the department in relation to the projects financed with the proceeds of the bonds and the custody, safeguarding, and application of all money. The trust indenture may set forth the rights and remedies of the bondholders customary in trust indentures, deeds of trusts, and mortgages securing bonds or debentures of corporations. The enumeration of particular powers granted by this section may not impair any general grant of power contained in [sections 7 through 21]."

Insert: "NEW SECTION. **Section 16. Personal liability -- suit to compel performance.** (1) The members of the board and officers and employees of the department are not personally liable or accountable by reason of the issuance of or on any essential freight rail revenue bond issued by the board under [sections 7 through 21].

(2) Any holder of bonds issued under [sections 7 through 21] or any person or officer who is a party in interest, subject to any applicable agreements or trust indentures, may sue to enforce and compel the performance of the bond provisions as set out in [sections 7 through 21]."

Insert: "NEW SECTION. **Section 17. Negotiability of bonds.** Essential freight rail revenue bonds issued under [sections 7 through 21] are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds."

Insert: "NEW SECTION. **Section 18. Signatures of board members.** If any member of the board whose signature appears on essential freight rail revenue bonds or coupons issued under [sections 7 through 21] ceases to be a member before the delivery of the bonds, the member's signature is nevertheless valid and sufficient for all purposes as if the member had remained in office until delivery."

Insert: "NEW SECTION. **Section 19. Refunding obligations.** (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 7 through 21], including the payment of any redemption premium and any interest accrued or to accrue to

the date of redemption of the obligations. The issuance of refunding obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the state are governed by the appropriate provisions of [sections 7 through 21] that relate to the issuance of the obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under [sections 7 through 21]. The proceeds may be applied to the purchase, redemption, or payment of the outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6."

Insert: "NEW SECTION. **Section 20. Pledge of state.** In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the state and the holders of notes and essential freight rail revenue bonds issued by the state under [sections 7 through 21]."

Insert: "NEW SECTION. **Section 21. Tax exemption of bonds -- legal investment.** (1) All essential freight rail revenue bonds issued under [sections 7 through 21], their transfer, and their income, including any profits made on their sale, are exempt from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes.

(2) Bonds issued under [sections 7 through 21] are legal investments for any person or board charged with investment of public funds and are acceptable as security for any deposit of public money."

Renumber: subsequent sections

5. Page 4, line 30.
Following: "4"
Insert: "and 7 through 21"

6. Page 5, line 2.
Following: "4"
Insert: "and 7 through 21"

- END -