EXHIBIT 2
DATE 3.9.05
HB 388

HOUSE BILL NO. 388

INTRODUCED BY A. OLSON

GREY BILL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ELECTRICAL ENERGY TRANSMISSION; ESTABLISHING A MONTANA TRANSMISSION AUTHORITY; AUTHORIZING THE AUTHORITY TO ~~FACILITATE, PLAN, FINANCE, SITE, CONSTRUCT, DEVELOP, ACQUIRE, OWN, RENT, LEASE, MAINTAIN, UPGRADE, DISPOSE OF, AND OPERATE ELECTRICAL ENERGY TRANSMISSION FACILITIES AND RELATED SUPPORTING INFRASTRUCTURE; AUTHORIZING THE AUTHORITY TO ENTER INTO JOINT VENTURES; LIMITING THE AUTHORITY'S POWERS IF A PRIVATE ENTITY IS WILLING TO CONSTRUCT ELECTRICAL ENERGY TRANSMISSION FACILITIES OR PROVIDE CERTAIN SERVICES; PROVIDING A PREFERENCE FOR MONTANA LABOR~~ FACILITATE THE PLANNING AND DEVELOPMENT OF ELECTRICAL ENERGY TRANSMISSION FACILITIES AND RELATED SUPPORTING INFRASTRUCTURE WITHIN AND OUTSIDE MONTANA; REQUIRING THAT STATE AGENCIES COOPERATE WITH THE AUTHORITY; CREATING A SPECIAL REVENUE ACCOUNT; ~~AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE AUTHORITY TO DO WHAT IS NECESSARY TO FINANCE AND BUILD ELECTRICAL ENERGY TRANSMISSION FACILITIES AND RELATED SUPPORTING INFRASTRUCTURE; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS ARE PAYABLE FROM THE NET REVENUE OF THE ELECTRICAL ENERGY TRANSMISSION FACILITIES AND RELATED SUPPORTING INFRASTRUCTURE; PLEDGING THAT THE STATE WILL NOT IMPAIR THE BONDS; AUTHORIZING BOND ANTICIPATION NOTES; PROVIDING A PROCESS FOR BOND ISSUANCE; PROVIDING THAT THE BONDS MAY BE SECURED BY TRUST INDENTURE; PROVIDING THAT THE BONDS ARE NEGOTIABLE INSTRUMENTS; CLARIFYING THE VALIDITY OF BOARD OF EXAMINER MEMBERS' SIGNATURES ON BONDS; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REFUNDING BONDS; PROVIDING THAT THE REVENUE BONDS ARE EXEMPT FROM STATE TAXATION;~~ STATUTORILY APPROPRIATING MONEY FROM THE WHOLESALE ENERGY TRANSACTION TAX TO THE AUTHORITY TO SUPPORT ITS ACTIVITIES; ~~LIMITING LOCAL GOVERNING BODY POWERS TO REGULATE THE AUTHORITY; PROVIDING THAT AUTHORITY FACILITIES ARE SUBJECT TO THE PRIVILEGE TAX; AUTHORIZING THE BOARD OF INVESTMENTS TO INVEST IN AUTHORITY REVENUE BONDS; CLARIFYING THAT THE AUTHORITY IS NOT A REGULATED PUBLIC UTILITY; CLARIFYING THAT THE TERM "FACILITY" UNDER THE MONTANA MAJOR FACILITY SITING ACT DOES NOT INCLUDE AUTHORITY FACILITIES;~~ AMENDING SECTIONS ~~7-1-111, 15-24-1203,~~ 15-72-106, ~~17-5-609,~~ AND 17-7-502,

4 [redacted] MCA; AND PROVIDING AN EFFECTIVE DATE."

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

5 NEW SECTION. **Section 1. Short title.** [Sections 1 through [redacted] 7] may be cited as the "Montana Transmission Authority Act".

NEW SECTION. **Section 2. Purpose and findings.** The legislature finds and declares that:

(1) Montana has the largest coal reserves in the United States and ranks sixth nationally in terms of coal production. Montana is also endowed with significant wind energy resources, ranking fifth in the nation for overall wind energy potential.

(2) Montana's coal and wind energy resources provide a tremendous opportunity to diversify the state's economy and to stabilize and increase revenue to the state;

(3) transmission constraints impede the development of the state's coal and wind resources for energy purposes;

(4) an essential governmental function and public purpose is to assist with the removal of transmission impediments to facilitate the sustainable development of Montana's coal and wind resources for energy purposes;

(5) sustainable development of Montana's coal and wind resources will promote the public interest by increasing employment, stimulating economic activity, augmenting sources of tax revenue, fostering economic stability, and improving the state's economy; and

6 (6) it is in the public interest that the Montana transmission authority have the ability to [redacted] facilitate the planning and development of electrical energy transmission facilities and related supporting infrastructure within and outside Montana.

7 NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through [redacted] 7], unless the context requires otherwise, the following definitions apply:

8 [redacted]

~~(2) "Commence performance" means that a private entity has filed a notice with the applicable approving authority of its intention to file an application to acquire any federal, state, or local permits, certificates, or other authorizations or approvals necessary to carry out construction of facilities or to provide services originally contemplated by the authority.~~

~~(3)~~ (1) "Department" means the department of commerce established in 2-15-1801.

~~(4)~~ (2) "Facilities" means electrical energy transmission facilities and related supporting infrastructure, including any interest in those facilities.

~~(5)~~ (3) "Montana transmission authority" or "authority" means the citizen board established in [section 4].

(9)

~~(6) "Notice of intent" means the notice that a private entity delivers to the authority indicating willingness to construct facilities contemplated by the authority or to provide services fulfilling the need for those facilities.~~

~~(7) "Private entity" means an individual, trust, firm, joint-stock company, consortium, commercial entity, partnership, association, or corporation.~~

~~(8) "Public body" means any political subdivision of this state and includes but is not limited to a county, city, town, or school district.~~

~~(9) "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.~~

NEW SECTION. **Section 4. Montana transmission authority -- board composition -- procedures.**

(10)

(1) There is a Montana transmission authority consisting of a ~~seven-member~~ five-member citizen board appointed by the governor.

(2) In selecting the members, the governor shall:

(a) consider each prospective member's knowledge and understanding of the structural and financial dimensions of the electrical energy transmission and generation sectors of the state's economy;

(b) ensure that two of the members broadly represent, as evidenced by their background, experience, and livelihood, the following categories of electrical energy consumption:

(i) residential;

(ii) agricultural; or

(iii) commercial and industrial enterprise;

(c) choose a member with substantial experience in electrical energy generation issues;

(d) choose ~~two members~~ a member with substantial experience in electrical energy transmission and distribution issues; and

~~(e) choose a member with substantial experience in financial, banking, and bonding matters; and~~

~~(f)~~ (e) choose a member who is an attorney licensed to practice law in Montana.

(3) The members shall elect the presiding officer by majority vote.

(4) Members of the authority shall serve staggered 4-year terms. The governor shall designate two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(5) The authority shall meet at least twice a year and may meet more frequently as required by circumstances or at the request of any two or more members of the authority.

(6) Decisions of the authority require a simple majority of the whole membership.

(7) The authority is attached to the department for administrative purposes, and in addition to any employees hired by the authority, the department shall provide staff support to the authority. The department shall act as a liaison between the authority and other state or federal agencies.

(8) Members of the authority must receive the same daily salary, per diem, expenses, and travel allowances as members of the legislature, as provided in 5-2-302, while in actual attendance at meetings of the authority and for performance of the members' duties relative to the authority.

NEW SECTION. **Section 5. Authority powers.** ~~Except as provided in section 6, the~~ The Montana transmission authority may:

(1) facilitate ~~plan, finance, site, construct, own, lease, operate, upgrade, dispose of, and contract for the maintenance and operation~~ the planning and development of facilities within and outside Montana;

~~(a) contract with public or private entities for the construction and maintenance of facilities;~~

~~(b) enter into joint ventures with any public or private entities inside Montana for the purpose of financing the construction of facilities;~~

~~(c) establish and charge reasonable fees, rates, tolls, or other charges for the use of all facilities administered by the authority and for all services rendered by the authority and pledge funds for the execution of the purposes of the authority;~~

~~(d)~~ (2) employ officers, agents, and employees that the authority considers necessary in carrying out the

provisions of [sections 1 through ~~19~~ 7];

~~(2)~~ (3) contract for legal, financial, engineering, and other professional services necessary in carrying out the provisions of [sections 1 through ~~19~~ 7];

~~(3)~~ (4) receive by gift, grant, donation, or otherwise money, aid, or assistance from the United States, the state of Montana, any political subdivision, or any other public ~~or private~~ entity;

~~(4)~~ (5) ~~investigate, plan, prioritize, and establish~~ assist in investigating, planning, and establishing corridors for the transmission of electricity;

~~(5)~~ (6) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(10) ~~participate with any municipality in an electrical energy transmission facility project as provided in Title 90, chapter 5, part 1~~ report any findings and recommendations to the governor and the energy and telecommunications interim committee established in 2-5-230; and

~~(6)~~ (7) perform other functions necessary to carry out the provisions of [sections 1 through ~~19~~ 7].

~~NEW SECTION. Section 6. Limitations on authority powers. (1) Except as provided in subsections (2) through (5), the Montana transmission authority may not finance and construct a facility or provide services if a private entity is constructing or owns facilities considered to be providing the service contemplated by the authority and is willing to finance and build new facilities to meet an identified need and market.~~

~~(2) Prior to constructing a facility or providing services, the authority shall publish in a newspaper of general circulation in Montana and in a newspaper in the area where the facilities or services are being contemplated a notice describing the acts, facilities, or services being contemplated by the authority.~~

~~(3) A private entity willing and able to perform the acts, finance, own, and construct the facilities or provide the services described in the notice has 120 days from the date of the last publication of the notice to deliver to the authority a notice of intent. After receipt of a notice of intent, the authority may not exercise its powers to construct a facility or provide services in the project area unless the authority determines that the private entity's proposal is not in the public interest. In making its finding, the authority shall consider factors that include economic costs and benefits, technical expertise, reliability, and the likelihood of successful completion and ongoing operations.~~

~~(4) In the absence of a notice of intent as provided for in subsection (3) from a private entity, or if a private entity having given a notice of intent pursuant to subsection (3) fails to commence performance within 180 days from the date of the last publication of the notice, the authority may proceed to perform the acts~~

~~originally contemplated.~~

~~(5) The authority may require a private entity giving notice of intent to provide a bond and to submit a plan and qualifications for construction or the facilities or commencement of services within 120 days of notification of the authority. If the private entity fails to submit adequate plans or bond as required by the authority, the authority may proceed with construction as proposed in the authority's published notice.~~

~~NEW SECTION. Section 7. Preference of Montana labor. (1) Any contract to construct or operate a facility financed pursuant to sections 1 through 8 must require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if the Montana residents have substantially equal qualifications to those of nonresidents.~~

~~(2) A contract let for a project costing more than $25,000 and financed with the proceeds of bonds issued under sections 1 through 8 on or after the effective date of this act must contain a provision that requires the contractor to pay the prevailing wage rate as found applicable to the district in which the work is being performed.~~

NEW SECTION. **Section 6. Interagency cooperation.** (1) State agencies shall cooperate with the Montana transmission authority in the planning of facilities or the permitting or constructing of those facilities.

(2) Within the limits of available resources, state agencies shall provide scientific, economic, and other relevant data requested by the authority.

NEW SECTION. **Section 7. Funding -- special revenue account.** (1) There is a Montana transmission authority special revenue account within the state special revenue fund established in 17-2-102.

(2) Revenue derived from the wholesale energy transaction tax pursuant to 15-72-106 must be deposited into this account.

(3) The revenue received under this section must be used to:

(a) meet the administrative costs of the authority; and

(b) supplement, to the extent possible, the authority's other financial offers, incentives, and endeavors pursuant to [sections 1 through ~~8~~ 7].

(4) The money in the account is statutorily appropriated, as provided in 17-7-502, to the authority.

~~NEW SECTION. Section 10. Bond authorization -- payment of principal and interest. (1) The board~~

of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed $750 million outstanding at any time for the purposes of financing facilities as enumerated in section 11. The bonds are revenue obligations in which the net revenue from facility charges is pledged for payment of the principal and interest on the bonds. Additional bonds, other than refunding bonds, may not be issued until the pledge in favor of the bonds is satisfied and discharged.

(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 purposes authorized in section 11. 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 Montana transmission authority and may be used for the purposes authorized in section 11 without further budgetary authorization.

(3) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the authority, may create separate accounts or subaccounts to provide for the payment and security of the bonds, including a debt service reserve account. The net revenue from facility charges must be pledged to these accounts.

NEW SECTION. **Section 10. Use of bond proceeds.** The Montana transmission authority shall use the proceeds of the bonds authorized in section 9 to finance new public facilities and to carry out the powers and duties enumerated in section 11, to pay capitalized interest during construction of the facilities, debt service reserve, and to pay costs associated with the sale and security of the bonds. The authority may not acquire a facility that is associated with a superfund project.

NEW SECTION. **Section 12. Pledge.** In accordance with 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 the bonds issued by the state.

NEW SECTION. **Section 13. Bond anticipation notes -- when issued -- principal and interest.** (1) The board of examiners may, pending the issuance of bonds under sections 10 through 19, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds, 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 could be used in the event sale of bonds prior to the issuance of the bonds if it becomes necessary to be able 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 evidences of indebtedness maturing not later than 5 years after the date of issue may be issued from time to time as the proceeds of the notes are needed. The notes must be authorized by the board of examiners and have terms and provisions as may be approved 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 to be determined in the manner specified in the resolution, the denominations of the notes, and the maturity date or maximum maturity date or dates of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board of examiners, 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 that may be considered appropriate by the board or, if there has been a delegation, by 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 of notes and until the board revokes the authority to refund; and

(d) other terms and documents as the board determines are appropriate.

NEW SECTION. Section 14. Form -- principal and interest -- fiscal agent. (1) Each series of facility revenue bonds may be issued by the board of examiners at public or private sale, in denominations and form, whether payable to the bearer or registered as to principal or both principal and interest, and provisions for the conversion or exchange of any interest rate or rates or of the method of determining the rate or rates

maturing at times not more than 10 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 agent of the state as the board shall determine, subject to the limitations contained in Sections 10 through 19. Any action taken by the board under Sections 10 through 19 must be approved by at least a majority vote of its members.

(2) In all other respects, the board of examiners 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 shall be signed by the members of the board of examiners. The bonds may be executed with facsimile signatures.

(4) The board of examiners may employ a fiscal agent and a bond registrar and transfer agent to assist in the performance of its duties under Sections 10 through 19.

(5) In connection with the issuance and sale of bonds, the board of examiners 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 10 through 19. Amounts drawn on lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing terms and conditions that the board may authorize in the resolution authorizing the notes.

NEW SECTION. **Section 15. Trust indenture.** In the discretion of the board of examiners, bonds issued under Sections 10 through 19 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.

NEW SECTION. **Section 16. Negotiability of bonds.** Bonds issued under Sections 10 through 19 are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of bonds.

NEW SECTION. **Section 17. Signatures of board members.** If any member of the board of examiners whose signature appears on bonds or coupons issued under Sections 10 through 19 ceases to be a member before the delivery of the bonds, the member's signature is valid and sufficient for all purposes as if the member had remained in office until delivery.

NEW SECTION. **Section 18. Refunding bonds.** (1) The board of examiners may provide for the

issuance of refunding bonds for refunding any bonds then outstanding that have been issued under [sections 10 through 19], 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 bonds, 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 10 through 19] that relate to the issuance of the bonds.

(2) Refunding bonds issued as provided in subsection (1) may be sold or exchanged for outstanding bonds issued under [sections 10 through 19]. The proceeds may be applied to the purchase, redemption, or payment of the outstanding bonds. Pending the application of the proceeds of refunding bonds, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the bonds being refunded and, if permitted in the resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the payment of interest on refunding bonds and expenses in connection with refunding, the proceeds may be invested as provided in Title 17, chapter 6.

NEW SECTION. **Section 19. Tax exemption of bonds -- legal investments.** (1) All bonds issued under [sections 10 through 19], 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 10 through 19] 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.

Section 20. Section 7-1-111, MCA, is amended to read:

"7-1-111. **Powers denied.** A local government unit with self-government powers is prohibited from exercising the following:

(1) any power that applies to or affects any private or civil relationship, except as an incident to the exercise of an independent self-government power;

(2) any power that applies to or affects the provisions of 7-33-4128 or Title 39 (labor, collective bargaining for public employees, unemployment compensation, or workers' compensation), except that subject to those provisions, it may exercise any power of a public employer with regard to its employees;

(3) any power that applies to or affects the public school system, except that a local unit may impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and shall exercise any power that it is required by law to exercise regarding the public school system;

(4) any power that prohibits the grant or denial of a certificate of public convenience and necessity;

(5) any power that establishes a rate or price otherwise determined by a state agency;

(6) any power that applies to or affects any determination of the department of environmental quality with regard to any mining plan, permit, or contract;

(7) any power that applies to or affects any determination by the department of environmental quality with regard to a certificate of compliance;

(8) any power that defines as an offense conduct made criminal by state statute, that defines an offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of $500 /6 months' imprisonment, or both, except as specifically authorized by statute;

(9) any power that applies to or affects the right to keep or bear arms, except that a local government has the power to regulate the carrying of concealed weapons;

(10) any power that applies to or affects a public employee's pension or retirement rights as established by state law, except that a local government may establish additional pension or retirement systems;

(11) any power that applies to or affects the standards of professional or occupational competence established pursuant to Title 37 (professions and occupations) as prerequisites to the carrying on of a profession or occupation;

(12) except as provided in 7-3-1105, 7-3-1222, or 7-31-4110, any power that applies to or affects Title 75, chapter 7, part 1 (streambeds), or Title 87 (fish and wildlife);

(13) any power that applies to or affects landlords, as defined in 70-24-103, when that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is provided in Title 70, chapters 24 and 25. This subsection is not intended to restrict a local government's ability to require landlords to comply with ordinances or provisions that are applicable to all other businesses or residences within the local government's jurisdiction;

(14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

(15) any power that applies to or affects Montana transmission authority activities when that power is intended to restrict or regulate the activities of the Montana transmission authority as provided for in [sections 1 through 19]."

Section 21. Section 15-24-1203, MCA, is amended to read:

"**15-24-1203. Privilege tax on industrial, trade, or other business use of tax-exempt property -- exceptions.** (1) There is imposed and must be collected a tax upon the possession or other beneficial use for

~~industrial, trade, or other business purposes enjoyed by any private individual, association, or corporation of any property, real or personal, that for any reason is exempt from taxation. The tax is imposed upon:~~

~~(a) the possession or other beneficial use of an electric transmission line and associated facilities, except that lines and facilities of a design capacity of less than 500 kilovolts are not subject to the tax; and~~

~~(b) the pro rata Montana transmission authority ownership interest in facilities defined in [section 3].~~

~~(2) The tax may not be imposed upon:~~

~~(a) the possession or other beneficial use of railroad right-of-way or track owned by the United States or acquired by the state pursuant to Title 60, chapter 11, part 1, as long as the state or the United States retains ownership and the right-of-way or track is used exclusively for rail transportation;~~

~~(b) the beneficial use by a person of property held by a port authority created under Title 7, chapter 14, part 11, or by a port authority owned by the United States or an agency of the United States unless the port authority provides for the exclusive use of the property by the person;~~

~~(c) the possession or other beneficial use of public lands occupied under the terms of recreational, mineral, timber, or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit, or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit, or easement relates; or~~

~~(d) the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on public airport property are subject to taxation."~~

Section 22. Section 15-72-106, MCA, is amended to read:

"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) ~~The~~ Except as provided in subsection (4), the wholesale energy transaction tax collected under this part must be deposited in the general fund.

(4) Beginning July 1, 2005, an amount sufficient to fund the activities of the Montana transmission authority established in [section 4], as determined by the authority, but not to exceed ~~$700,000~~ $350,000 of the wholesale energy transaction tax collected under this part, must be deposited annually in the state special revenue account provided for in [section ~~9~~ 7]."

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~~**Section 23.** Section 17-5-609, MCA, is amended to read:~~

~~"17-5-609. Purchase of bonds. The board of investments is authorized to purchase the bonds provided for by 17-5-601 through 17-5-610 and [sections 10 through 19] with moneys money from the investment funds.~~

Section 24. Section 17-7-502, MCA, is amended to read:

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

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

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

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

(3) The following laws are the only laws containing statutory appropriations: 2-15-151; 2-17-105; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-11-404; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-5-306; 23-5-409; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 42-2-105; 44-12-206; 44-13-102; 50-4-623;

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53-1-109; 53-6-703; 53-24-108; 53-24-206; 61-3-415; 69-3-870; [section 7]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-3-1003; 90-6-710; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates

July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 2 and 5, Ch. 481, L. 2003, the inclusion of 90-6-710 terminates June 30, 2005; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; and pursuant to sec. 135, Ch. 114, L. 2003, the inclusion of 2-15-151 terminates June 30, 2005.)"

(30)

[redacted]

69-8-404.

(3) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(4) The commission shall establish just and reasonable rates through established ratemaking principles for public utility default supply, distribution, and transmission services and shall regulate these services. The commission may approve rates and charges for those services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(5) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(6) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(7) (a) After July 1, 2010, the commission shall continuously monitor whether or not workable competition has developed for small customers.

(b) If the commission determines that workable competition has developed for small customers after July 1, 2010, the commission shall provide a report to the legislature that includes recommendations for legislative implementation of customer choice for small customers.

(8) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

(9) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; or

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter; or

(c) regulate the Montana transmission authority established in [section 4].

Section 27. Section 75-20-104, MCA, is amended to read:

"**75-20-104. Definitions.** In this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Addition hereto" means the installation of new machinery and equipment that would significantly change the conditions under which the facility is operated.

(2) "Application" means an application for a certificate submitted in accordance with this chapter and the rules adopted under this chapter.

(3) "Associated facilities" includes but is not limited to transportation links of any kind, aqueducts, diversion dams, pipelines, transmission substations, storage ponds, reservoirs, and any other device or equipment associated with the delivery of the energy form or product produced by a facility, except that the term does not include a facility or a natural gas or crude oil gathering line 25 inches or less in inside diameter.

(4) "Board" means the board of environmental review provided for in 2-15-3502.

(5) "Certificate" means the certificate of compliance issued by the department under this chapter that is required for the construction or operation of a facility.

(6) "Commence to construct" means:

(a) any clearing of land, excavation, construction, or other action that would affect the environment of the site or route of a facility but does not mean changes needed for temporary use of sites or routes for nonutility purposes or uses in securing geological data, including necessary borings to ascertain foundation conditions;

(b) the fracturing of underground formations by any means if the activity is related to the possible future development of a gasification facility or a facility employing geothermal resources but does not include the gathering of geological data by boring of test holes or other underground exploration, investigation, or experimentation;

(c) the commencement of eminent domain proceedings under Title 70, chapter 30, for land or rights-of-way upon or over which a facility may be constructed;

(d) the relocation or upgrading of an existing facility defined by subsection (8)(a) or (8)(b), including upgrading to a design capacity covered by subsection (8)(a), except that the term does not include normal maintenance or repair of an existing facility.

(7) "Department" means the department of environmental quality provided for in 2-15-3501.

(8) "Facility" means:

(a) each electric transmission line and associated facilities of a design capacity of more than 69 kilovolts, except that the term:

(i) does not include an electric transmission line and associated facilities of a design capacity of 230 kilovolts or less and 10 miles or less in length;

(ii) does not include an electric transmission line with a design capacity of more than 69 kilovolts but less than 230 kilovolts for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property

along the centerline; and

(iii) does not include an electric transmission line that is less than 150 miles in length and extends from an electron generation facility, as defined in 15-24-3001(4), to the point at which the transmission line connects to a regional transmission grid at an existing transmission substation or other facility for which the person planning to construct the line has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline; and

(iv) does not include a Montana transmission authority facility as defined in section 3;

(b) (i) each pipeline, whether partially or wholly within the State, greater than 25 inches in inside diameter and 50 miles in length, and associated facilities, except that the term does not include:

(A) a pipeline within the boundaries of the state that is used exclusively for the irrigation of agricultural crops or for drinking water; or

(B) a pipeline greater than 25 inches in inside diameter and 50 miles in length for which the person planning to construct the pipeline has obtained right-of-way agreements or options for a right-of-way from more than 75% of the owners who collectively own more than 75% of the property along the centerline;

(ii) each pipeline, whether partially or wholly within the state, greater than 12 inches in inside diameter and 30 miles in length, and associated facilities used to transport coal suspended in water;

(c) any use of geothermal resources, including the use of underground space in existence or to be created, for the creation, use, or conversion of energy, designed for or capable of producing geothermally derived power equivalent to 25 million Btu's per hour or more or any addition thereto, except pollution control facilities approved by the department and added to an existing plant; or

(d) for the purposes of 75-20-204 only, a plant, unit, or other facility capable of generating 50 megawatts of hydroelectric power or more or any addition thereto.

(9) "Person" means any individual, group, firm, partnership, corporation, limited liability company, cooperative association, government subdivision, government agency, local government, or other organization or entity.

(10) "Transmission substation" means any structure, device, or equipment assemblage, commonly located and designed for voltage regulation, circuit protection, or switching necessary for the construction or operation of a proposed transmission line.

(11) "Utility" means any person engaged in any associated line production, storage, sale, delivery, or furnishing of heat, electricity, gas, hydrocarbon products, or energy in any form for ultimate public use.

NEW SECTION. **Section 28. Codification instruction.** [Sections 1 through ~~19~~ 7] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through ~~19~~ 7].

NEW SECTION. **Section 29. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 31. Effective date.** [This act] is effective July 1, 2005.

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