

HOUSE BILL NO. 563

INTRODUCED BY E. ARNTZEN

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PUBLIC-PRIVATE PARTNERSHIPS; PROVIDING DEFINITIONS; AND PROVIDING FOR PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS."

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

NEW SECTION. **Section 1. Legislative findings -- purpose.** (1) The legislature finds and declares that:

(a) it is important for the economic, social, and environmental well-being of Montana that the people of Montana have sufficient quality public infrastructure and services;

(b) the ability of Montana to provide sufficient quality public infrastructure and services will be enhanced by a program providing for private entities to undertake all or a portion of the services or the study, planning, design, development, financing, acquisition, installation, construction, reconstruction, improvement, operation, or maintenance of public infrastructure facilities, including facilities related to transportation, water, or wastewater, public buildings, or any other public facility;

(c) public-private initiatives provide the public sector with increased access to project opportunities and private sector expertise by:

(i) facilitating the collaboration and cost and risk sharing in public infrastructure and service projects between public and private partners;

(ii) bringing innovative thinking from the private sector to bear on public infrastructure and services needs within Montana;

(iii) reducing the public cost of project delivery and services for eligible facilities;

(iv) expediting project delivery;

(v) encouraging life cycle efficiencies in public infrastructure projects;

(vi) fostering flexibility in procurement methods to provide the best value to the public; and

(vii) providing better use and leverage of public resources, increasing private investment in public infrastructure facilities, enhancing capital formation for large projects, and providing savings to taxpayers.

(2) Public agencies are encouraged to enter into public-private partnerships for eligible facilities and



1 services.

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3 **NEW SECTION. Section 2. Definitions.** Unless the context requires otherwise, as used in [sections
4 1 through 3], the following definitions apply to:

5 (1) "Eligible facility" means any facility that a public agency determines is appropriate to be developed,
6 operated, or held in a public-private partnership, including any existing, enhanced, upgraded, or new facility used
7 or useful as public infrastructure. The facilities may include but are not limited to facilities related to transportation,
8 water, or wastewater, public buildings, or any other public facility.

9 (2) "Eligible service" means any service that a public agency determines is appropriate to be provided
10 by a public-private partnership.

11 (3) "Private partner" means a person, entity, or organization that is not the federal government or any
12 other public agency.

13 (4) "Public-private partnership" means an agreement in which the private partner:

14 (a) assists the public agency in defining a feasible project concerning infrastructure or services and
15 negotiates fair and reasonable terms for implementing the project; and

16 (b) assumes responsibility for delivering, improving, operating, or maintaining eligible facilities or for
17 delivering services in accordance with established performance specifications and payment terms.

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19 **NEW SECTION. Section 3. Public-private partnership agreements.** (1) In a public-private
20 partnership, the public agency may include any provision that the public agency determines necessary or
21 appropriate, including provisions:

22 (a) consistent with Article VIII, section 2, of the Montana constitution that authorize the private partner
23 to impose, collect and enforce user fees, tolls, fares, rents, or similar charges, including provisions regarding what
24 the private partner will do with the money collected and the technology that the private partner is required to use
25 to collect these charges;

26 (b) allowing the public agency to accept payments of money and share revenue with the private partner;

27 (c) addressing how the public agency and private partner will share development costs and allocate and
28 manage project risks;

29 (d) establishing performance criteria or incentives;

30 (e) addressing the acquisition of rights-of-way and other property interests that may be required;

1 (f) addressing responsibility for reconstruction or renovations that are required in order for a facility to
2 meet applicable standards at the end of the term of the agreement;

3 (g) for patrolling and law enforcement on, in, or for the eligible facilities;

4 (h) identifying any technical specifications that must be satisfied and a process for the private partner to
5 request and receive authorization to deviate from the specifications on making a showing satisfactory to the public
6 agency;

7 (i) authorizing the private partner to receive a reasonable rate of return on the private partner's
8 investment;

9 (j) regarding the private partner's compensation, including but not limited to provisions regarding the use
10 of availability payments, retention of fees, tolls, fares, rents, or similar charges, and generation and use of other
11 revenue;

12 (k) specifying the conditions under which the private partner is entitled to compensation for lost revenue
13 or other demonstrable damages resulting from the construction of a competing facility by the public agency or
14 another governmental entity;

15 (l) specifying events of default, remedies available to the private partner and public agency, and dispute
16 resolution procedures, including arbitration and other alternative dispute resolution procedures; or

17 (m) regarding the maintenance and auditing of the private partner's books and records.

18 (2) In a public-private partnership, the public agency shall include a provision that establishes the public
19 agency's right to develop, maintain, repair, rehabilitate, operate, or lease other projects or provide other services
20 independent of the location of the projects and services.

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22 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified
23 as an integral part of Title 18, chapter 1, and the provisions of Title 18, chapter 1, apply to [sections 1 through 3].

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