

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

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

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

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

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

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

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

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

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

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

25 (iv) expediting project delivery;

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

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

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

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

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

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

8            (2) "Private partner" means a person, entity, or organization that is not the federal government or any  
9 other public agency.

10           (3) "Public-private partnership" means an agreement in which the private partner:

11           (a) assists the public agency in defining a feasible project concerning infrastructure and negotiates fair  
12 and reasonable terms for implementing the project; and

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

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

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

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

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

26           (d) establishing performance criteria or incentives;

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

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

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

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

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

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

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

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

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

15 (2) In a public-private partnership, the public agency shall include a provision that establishes the public  
16 agency's right to develop, maintain, repair, rehabilitate, operate, or lease other projects independent of the  
17 location of the projects.

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19 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified  
20 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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