

SENATE BILL NO. 558
INTRODUCED BY G. LIND

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA ELECTRIC AND GAS AUTHORITY; DEFINING TERMS; ESTABLISHING AUTHORITY MEMBERSHIP; AUTHORIZING THE ELECTION OF AUTHORITY MEMBERS; CLARIFYING THE PUBLIC SERVICE COMMISSION'S AUTHORITY; REQUIRING THAT THE PUBLIC SERVICE COMMISSION APPROVE THE AUTHORITY'S ACQUISITION OF A PUBLIC UTILITY; PROVIDING THE AUTHORITY WITH CERTAIN POWERS; PROVIDING THE AUTHORITY WITH RULEMAKING AUTHORITY THAT ALLOWS IT TO ISSUE REVENUE BONDS; CLASSIFYING AUTHORITY PROPERTY AS CLASS NINE PROPERTY FOR PROPERTY TAX PURPOSES; PROVIDING THAT CERTAIN AUTHORITY FACILITIES ARE SUBJECT TO THE PRIVILEGE TAX; REQUIRING THE AUTHORITY TO ANNUALLY SUBMIT FINANCIAL REPORTS; REQUIRING THAT THE AUTHORITY REPAY STATE APPROPRIATIONS; AMENDING SECTIONS 15-6-141, 15-6-201, 15-24-1203, AND 18-4-313, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 22] may be cited as the "Montana Electric and Gas Authority Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 22], unless the context clearly requires otherwise, the following definitions apply:

- (1) "Authority" means the Montana electric and gas authority provided for in [section 3].
- (2) "Department" means the department of commerce established in 2-15-1801.
- (3) "Federal government" means the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.
- (4) "Public utility" means a utility or its successor, as of [the effective date of this act], that has restructured in accordance with the provisions of Title 69, chapter 8, before [the effective date of this act].
- (5) "Security" means any note, any stock, whether a common or preferred stock, any bond, debenture, evidence of indebtedness, transferable share, voting-trust certificate, or interest or instrument commonly known as a security, or any certificate of interest, temporary or interim certificate for, receipt for, or warrant or right to

subscribe to or purchase a security.

(6) "Service area" means the area served by a public utility.

(7) "State agency" means any board, authority, agency, department, commission, public corporation, or instrumentality of the state.

(8) "Swap agreement" means:

(a) any interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, or cross-currency rate swap agreement, or a basis swap;

(b) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

(c) a currency swap, option, future, or forward agreement;

(d) a total return, credit spread, or credit swap, option, future, or forward agreement;

(e) a commodity index or a commodity swap, option, future, or forward agreement;

(f) weather swap, weather derivative, or weather option;

(g) any option to enter into an agreement or transaction referred to in this subsection (8); and

(h) any master agreement that provides for an agreement or transaction referred to in this subsection (8).

NEW SECTION. Section 3. Montana electric and gas authority -- membership -- compensation

-- staff. (1) There is created the Montana electric and gas authority. The authority is constituted as a public instrumentality, and its exercise of the powers conferred by [sections 1 through 22] must be considered to be the performance of an essential governmental public function.

(2) Except as provided in [section 4], the authority consists of five members appointed by the governor. 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 sector of the state's economy;

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

(i) residential;

(ii) irrigated agriculture; and

(iii) small commercial enterprise; and

(c) choose a member with academic or business credentials that indicate experience in energy markets

in the region of the western states.

(3) The members shall elect the presiding officer and a vice 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 4-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

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

(6) 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. All meetings of the authority are subject to the provisions of Title 2, chapter 3.

(7) All members are subject to the standards of conduct under the provisions of Title 2, chapter 2.

(8) All 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.

(9) The authority is allocated to the department for administrative purposes as prescribed in 2-15-121.

NEW SECTION. Section 4. Election of authority members. If the authority acquires a public utility, the authority shall request legislation that creates a system for the election of all five authority members by the customers of the acquired public utility within 2 years of the closing of the acquisition.

NEW SECTION. Section 5. General powers of authority. (1) Except as provided in [section 7], the authority may:

(a) sue and be sued and may participate in actions and proceedings, whether judicial, administrative, arbitral, or otherwise;

(b) have a seal and alter the seal and use it or a facsimile to be affixed or impressed or reproduced in any other manner;

(c) employ officers, agents, and employees that the authority considers necessary in carrying out the provisions of [sections 1 through 22];

(d) purchase, receive, take by grant, gift, devise, or bequest, lease, or otherwise acquire, own, hold, improve, employ, use, and deal in and with real or personal property, whether tangible or intangible, or any interest in the property within or outside the state;

(e) acquire real or personal property within or outside the boundaries of the state, whether tangible or

intangible, including without limitation property rights, interests in property, franchises, obligations, contracts, and debt and equity securities;

(f) sell, convey, lease, exchange, transfer, abandon, or otherwise dispose of or mortgage, pledge, or create a security interest in all or any of the authority's assets or properties or any interest in those assets or properties, wherever situated;

(g) purchase, take, receive, subscribe for, or otherwise acquire, hold, make a tender offer for, vote, employ, sell, lend, lease, exchange, transfer, or otherwise dispose of, mortgage, pledge, or grant a security interest in bonds and other obligations, shares, or other securities issued by others, whether engaged in a similar or different business or activity, subject to constitutional restrictions;

(h) make and execute agreements, contracts, and other instruments necessary or convenient in the exercise of authority powers and functions under [sections 1 through 22];

(i) borrow money at a rate or rates of interest determined by the authority and issue authority notes, bonds, or other debt obligations and secure any of its obligations by mortgage or pledge of its property or any interest in its property;

(j) arrange for guarantees, bond insurance, letters of credit, and other forms of credit and liquidity support with respect to its bonds, notes, or other obligations by the federal government, the state, bond insurers, banks, or other financial institutions and enter into insurance, reimbursement, revolving credit, bond purchase, or similar agreements that may contain authority-approved provisions, including without limitation provisions for the payment of premiums or other fees, financial and other covenants, defaults, and remedies;

(k) consent to jurisdiction of courts within or outside the state and waivers of jury trial and immunity from suit and liability;

(l) issue bonds, notes, or other obligations whether or not the income from those bonds, notes, or other obligations is exempt from federal income taxation;

(m) purchase authority bonds, notes, or other obligations at a price that the authority determines;

(n) procure insurance against any loss in connection with its properties or operations from insurers, including the federal government, in an amount that the authority determines necessary and pay any insurance premiums;

(o) negotiate and enter into agreements with trustees or receivers appointed by United States bankruptcy courts or federal district courts or in other proceedings involving adjustment of debts and authorize legal counsel for the authority to appear in those proceedings;

(p) purchase or sell electrical capacity and energy from or to any wholesale power supplier and enter

into contracts, without limitation on the duration of any contract, to meet the aggregated load requirements of consumers in the service area at a price or prices and on other terms negotiated by the authority;

(q) purchase, within or outside of the state, electrical generation facilities, electrical energy or natural gas transmission or distribution systems or rights, coal or gas reserves, or storage facilities;

(r) enter into management agreements for the operation of the property or facilities owned by the authority;

(s) enter into agreements to pay annual sums in lieu of taxes to any local government with respect to any real property that is owned by the authority and is located within the jurisdiction of the local government;

(t) make any inquiry, investigation, survey, or study that the authority determines is necessary to enable it to effectively carry out the provisions of [sections 1 through 22];

(u) subject to the Montana Administrative Procedure Act, adopt, amend, and repeal rules involving authority operations, properties, and facilities in order to implement the provisions of [sections 1 through 22];

(v) enter into any swap agreement for the purpose of hedging risks; and

(w) perform other functions necessary to carry out the provisions of [sections 1 through 22].

(2) The authority shall maintain its headquarters in Butte, Montana, and may maintain other representative offices at a place or places within or outside the state that the authority determines are necessary.

NEW SECTION. Section 6. Authority powers related to electric and natural gas generation, transmission, and distribution facilities. In addition to and without limiting the general powers provided for in [section 5] and except as provided in [section 7], the authority may:

(1) acquire, construct, improve, rehabilitate, maintain, and operate electrical generation facilities, transmission and distribution facilities, storage facilities, and related facilities necessary to maintain an adequate, reliable, efficient, and economic supply of natural gas and electricity within the service area, including acquiring ownership of fuel supplies and electrical generation facilities that are located within or outside the state;

(2) determine the location, type, size, construction, lease, purchase, ownership, acquisition, use, and operation of electrical generation facilities, transmission and distribution facilities, storage facilities, and other necessary related facilities, provided that the authority gives consideration to the construction of energy-efficient facilities, energy conservation, load management programs, and cogeneration within the service area;

(3) apply to the appropriate agencies of the federal government, the state, or other state governments for licenses, permits, or approval of the authority's plans or projects and accept those licenses, permits, or approvals granted by agencies or officials, including any terms and conditions;

(4) institute suit, apply to the legislature for legislation, or take other action that furthers the purposes of [sections 1 through 22] and protect any rights or obligations pursuant to [sections 1 through 22];

(5) study means of maintaining the customer base within the service area and attracting agriculture, commerce, and industry to the service area;

(6) develop, with public participation, a comprehensive least-cost plan that considers the practical and economical use of conservation, renewable resources, and cogeneration for providing service to the authority's customers;

(7) cooperate with and enter into contractual arrangements with private utility companies or public entities regarding the:

(a) ownership, construction, and operation of facilities by the authority and the sale of all or part of the output from those facilities;

(b) construction, completion, acquisition, ownership, and operation of electrical generation facilities, storage facilities, and other associated facilities and the disposition of the output of those electrical generation facilities; and

(c) construction, acquisition, ownership, operation, and use of transmission and distribution facilities;

(8) enter into cooperative and contractual arrangements with political subdivisions with respect to the construction, improvement, rehabilitation, ownership, and operation of electrical generation facilities;

(9) acquire from a public utility all franchise and utility service responsibilities for all of the consumers of natural gas and electricity within the service area, including the responsibility to provide safe and adequate service; and

(10) enter into written agreements with the federal government including the Bonneville power administration and the western area power administration.

NEW SECTION. Section 7. Public service commission authority. (1) The public service commission shall regulate the rates, services, and practices related to electricity or natural gas generation and transmission and distribution facilities owned or operated by the authority.

(2) (a) The authority may not acquire the assets or stock of a public utility or acquire or construct electrical generation facilities without prior approval of the public service commission.

(b) The public service commission may not approve the authority's acquisition of assets or stock of a public utility unless the commission finds that the authority's acquisition of the public utility will not increase electricity or natural gas rates above what those rates would be under current public utility ownership.

NEW SECTION. Section 8. Bonds, bond anticipation notes, and notes of authority. (1) The authority may by resolution issue negotiable notes and bonds to:

- (a) acquire any real or personal property or facilities that the authority considers necessary;
- (b) prepay the purchase of electricity, natural gas, and other fuel and transmission costs;
- (c) pay interest on bonds or notes of the authority for which the interest may be variable or fixed and may accrue without regard to any state usury laws;
- (d) establish reserves to secure its bonds and notes;
- (e) establish or maintain other funds or accounts for the purpose or purposes that the authority considers necessary or desirable in implementing the provisions of [sections 1 through 22];
- (f) pay all other expenses of the authority incidental to the issuance of the bonds or notes, including but not limited to costs of issuance of the bonds, capitalized interest on the bonds, funding a reserve account for the bonds, and swap agreement termination fees; and
- (g) establish or replenish reserves securing the payment of its bonds and notes and finance all other expenditures of the authority incident to and necessary or convenient to carry out the provisions of [sections 1 through 22].

(2) The authority may by resolution:

- (a) issue notes to renew notes and bonds to pay notes, including interest;
- (b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured;
- (c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes; and
- (d) in anticipation of the sale of its securities under [sections 1 through 22], issue temporary notes and renewal notes.

(3) Except as otherwise expressly provided by resolution of the authority, every issue of its notes and bonds is an obligation of the authority payable out of any revenue, assets, or money of the authority, subject only to agreements with the holders of particular notes or bonds pledging particular revenue, assets, or money.

(4) (a) The notes and bonds must be authorized by resolutions of the authority, must bear a date, and must mature at times as provided in the resolutions. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. The notes and bonds must:

- (i) bear interest at a variable or fixed rate or rates or be issued as zero-coupon bonds;
- (ii) be in denominations;
- (iii) be in a registered form; (iv) carry registration privileges;

(v) be payable in a medium of payment at places inside or outside the state; and

(vi) be subject to terms of redemption as provided in resolutions of the authority.

(b) The notes and bonds of the authority may be sold at public or private sale at prices that may be above or below par and that are determined by the authority.

NEW SECTION. Section 9. Refunding obligations. (1) The authority may provide for the issuance of refunding obligations for refunding any outstanding obligations that have been issued under [sections 1 through 22], including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 1 through 22] that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under [sections 1 through 22]. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. The proceeds of refunding obligations may be invested as provided in Title 17, chapter 6, 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.

NEW SECTION. Section 10. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue of the notes or bonds may contain provisions that must be a part of the contract or contracts with the holders of the notes or bonds as to:

(1) pledging all or any part of the revenue or funds of the authority to secure the payment of the notes or bonds or of any issue of the notes or bonds, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the authority, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue of the notes or bonds, subject to existing agreements with noteholders or bondholders;

(3) the setting aside of reserves for debt service funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition of the debt service funds; (4) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure

the payment of the notes or bonds or of any issue of the notes or bonds;

(5) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(6) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the consent of the noteholders or bondholders of the amount of notes or bonds, and the manner in which the consent may be given;

(7) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by the authority and to maintain suitable facilities and services for the purpose of carrying out its programs;

(8) vesting in a trustee the property, rights, powers, and duties in trust as the authority determines;

(9) defining the acts or omissions that constitute a default in the obligations and duties of the authority to the noteholders or bondholders and providing for the rights and remedies of the noteholders or bondholders in the event of a default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of [sections 1 through 22].

(10) any new matters of like or different character that in any way affect the security or protection of bondholders.

NEW SECTION. Section 11. Nonimpairment by 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 authority and an eligible government unit or between the authority and the holders of notes and bonds issued by the authority, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose. Obligations issued under the provisions of [sections 1 through 22] do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenue or assets of the authority. An obligation issued under [sections 1 through 22] must contain on the face of the obligation a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

NEW SECTION. Section 12. Trust indenture. (1) In the discretion of the authority, the bonds or notes of the authority may be secured by a trust indenture between the authority and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may

contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenue to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the general overhead cost of the authority.

NEW SECTION. Section 13. Presumption of validity. After issuance, all bonds or notes of the authority are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning the bond's or note's proper authorization, sale, issuance, execution, or delivery by the authority.

NEW SECTION. Section 14. Negotiability of bonds or notes. Notwithstanding any other provisions of law, a bond or note issued under [sections 1 through 22] is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9A, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

NEW SECTION. Section 15. Bonds or notes as legal investments. Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest debt service funds, money, or other funds belonging to them or within their control in bonds or notes issued under [sections 1 through 22].

NEW SECTION. Section 16. Tax exemption of bonds. (1) Bonds, notes, or other obligations issued by the authority under [sections 1 through 22], including the transfer, income, and any profits made on the sale of the bonds, notes, or other obligations, are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes and gift taxes. The authority is not required to pay recording

or transfer fees or taxes on instruments recorded by it.

(2) The securities and other obligations issued by the authority and the transfer and income from those securities and other obligations must, at all times, be free from taxation by the state or any municipality, except for estate and gift taxes.

NEW SECTION. Section 17. Additional funds and accounts. The authority may establish additional reserves or other funds or accounts to further the purposes of [sections 1 through 22] or to comply with the provisions of any of its agreements or resolutions.

NEW SECTION. Section 18. Credit of state not pledged. Obligations issued under the provisions of [sections 1 through 22] do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenue or funds of the authority generated or received for purposes of [sections 1 through 22]. An obligation issued under [sections 1 through 22] must contain on the face of the obligation a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

NEW SECTION. Section 19. Care and custody of bonds purchased by authority. The authority may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the authority, for rendering services in connection with:

(a) the care, custody, or safekeeping of bonds or other investments held or owned by the authority pursuant to [sections 1 through 22];

(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the authority of bonds or other investments purchased by it or sold by it pursuant to [sections 1 through 22];

(2) pay the cost of the services described in subsection (1); and

(3) in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in a form and amount as, in the opinion of the authority, is necessary or desirable.

NEW SECTION. Section 20. Insurance or guaranty. The authority may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the authority or on bonds, bond anticipation notes, or notes of eligible government units purchased or held by the authority.

NEW SECTION. Section 21. Financial reporting. Beginning on January 1, 2008, the authority shall annually submit a detailed financial report verified by the presiding officer of the authority to the governor, state treasurer, president of the senate, and speaker of the house.

NEW SECTION. Section 22. Repayment of appropriations. (1) Except as provided in subsection (2), an appropriation made by the legislature in connection with planning, study, feasibility analysis, regulatory approval, closing, or any other related costs in connection with the acquisition of the stock or assets of a public utility must be treated as an advance to the authority, and the authority shall repay the appropriation, without interest and times and under conditions mutually agreed upon by the authority and state, upon completion of the acquisition of the stock or assets of a public utility either out of the proceeds of bonds issued by the authority pursuant to [sections 1 through 22] or by delivery of noninterest-bearing bonds of the authority to the state or out of excess revenue of the authority.

(2) If an acquisition of a public utility is not completed by December 31, 2017, the authority is not obligated to repay any expended funds and any unexpended funds must revert to the state general fund.

(3) For purposes of this section, "excess revenue" means gross revenue less the costs of the authority's operations and the payment of debt service of the authority's bonds.

Section 23. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property -- description -- taxable percentage. (1) Class nine property includes:

(a) centrally assessed allocations of an electric power company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by congress to transmit or distribute electrical energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property, except wind generation facilities classified under 15-6-157, used for the sole purpose of serving customers representing less than 95%

of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property or serving an incorporated municipality with a population that is greater than 3,500 persons formerly served by a public utility that after January 1, 1998, received service from the facilities of an electric cooperative is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; ~~and~~

(c) centrally assessed companies' allocations except:

(i) electrical generation facilities classified under 15-6-156 and wind generation facilities classified under 15-6-157;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified under 15-6-135;

(iii) property owned by organizations providing telephone communications to rural areas and classified under 15-6-135;

(iv) railroad transportation property included in 15-6-145;

(v) airline transportation property included in 15-6-145; and

(vi) telecommunications property included in 15-6-156; and

(d) centrally assessed allocations of the Montana electric and gas authority or centrally assessed allocations of transmission facilities, distribution facilities, or both, owned by the Montana electric and gas authority.

(2) Class nine property is taxed at 12% of market value."

Section 24. Section 15-6-201, MCA, is amended to read:

"15-6-201. Governmental, charitable, and educational categories -- exempt property. (1) The following categories of property are exempt from taxation:

(a) except as provided in 15-6-141 and 15-24-1203, the property of:

(i) the United States, except:

(A) if congress passes legislation that allows the state to tax property owned by the federal government or an agency created by congress; or

(B) as provided in 15-24-1103;

(ii) the state, counties, cities, towns, and school districts;

(iii) irrigation districts organized under the laws of Montana and not operated for gain or profit;

(iv) municipal corporations;

(v) public libraries; and

(vi) rural fire districts and other entities providing fire protection under Title 7, chapter 33;

(b) buildings and furnishings in the buildings that are owned by a church and used for actual religious worship or for residences of the clergy, not to exceed one residence for each member of the clergy, together with the land that the buildings occupy and adjacent land reasonably necessary for convenient use of the buildings, which must be identified in the application, and all land and improvements used for educational or youth recreational activities if the facilities are generally available for use by the general public but may not exceed 15 acres for a church or 1 acre for a clergy residence after subtracting any area required by zoning, building codes, or subdivision requirements;

(c) property owned and used exclusively for agricultural and horticultural societies not operated for gain or profit;

(d) property, not to exceed 80 acres, which must be legally described in the application for the exemption, used exclusively for educational purposes, including dormitories and food service buildings for the use of students in attendance and other structures necessary for the operation and maintenance of an educational institution that:

(i) is not operated for gain or profit;

(ii) has an attendance policy; and

(iii) has a definable curriculum with systematic instruction;

(e) property used exclusively for nonprofit health care facilities, as defined in 50-5-101, licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3. A health care facility that is not licensed by the department of public health and human services and organized under Title 35, chapter 2 or 3, is not exempt.

(f) property that is:

(i) owned and held by an association or corporation organized under Title 35, chapter 2, 3, 20, or 21;

(ii) devoted exclusively to use in connection with a cemetery or cemeteries for which a permanent care and improvement fund has been established as provided for in Title 35, chapter 20, part 3; and

(iii) not maintained and not operated for gain or profit;

(g) subject to subsection (2), property that is owned or property that is leased from a federal, state, or local governmental entity by institutions of purely public charity if the property is directly used for purely public

charitable purposes;

(h) evidence of debt secured by mortgages of record upon real or personal property in the state of Montana;

(i) public museums, art galleries, zoos, and observatories that are not operated for gain or profit;

(j) motor vehicles, land, fixtures, buildings, and improvements owned by a cooperative association or nonprofit corporation organized to furnish potable water to its members or customers for uses other than the irrigation of agricultural land;

(k) the right of entry that is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land with a surface title that is held by another to explore, prospect, or dig for oil, gas, coal, or minerals;

(l) (i) property that is owned and used by a corporation or association organized and operated exclusively for the care of persons with developmental disabilities, persons with mental illness, or persons with physical or mental impairments that constitute or result in substantial impediments to employment and that is not operated for gain or profit; and

(ii) property that is owned and used by an organization owning and operating facilities that are for the care of the retired, aged, or chronically ill and that are not operated for gain or profit; and

(m) property owned by a nonprofit corporation that is organized to provide facilities primarily for training and practice for or competition in international sports and athletic events and that is not held or used for private or corporate gain or profit. For purposes of this subsection (1)(m), "nonprofit corporation" means an organization that is exempt from taxation under section 501(c) of the Internal Revenue Code and incorporated and admitted under the Montana Nonprofit Corporation Act.

(2) (a) For the purposes of subsection (1)(b), the term "clergy" means, as recognized under the federal Internal Revenue Code:

(i) an ordained minister, priest, or rabbi;

(ii) a commissioned or licensed minister of a church or church denomination that ordains ministers if the person has the authority to perform substantially all the religious duties of the church or denomination;

(iii) a member of a religious order who has taken a vow of poverty; or

(iv) a Christian Science practitioner.

(b) For the purposes of subsection (1)(g):

(i) the term "institutions of purely public charity" includes any organization that meets the following requirements:

(A) The organization offers its charitable goods or services to persons without regard to race, religion, creed, or gender and qualifies as a tax-exempt organization under the provisions of section 501(c)(3), Internal Revenue Code, as amended.

(B) The organization accomplishes its activities through absolute gratuity or grants. However, the organization may solicit or raise funds by the sale of merchandise, memberships, or tickets to public performances or entertainment or by other similar types of fundraising activities.

(ii) agricultural property owned by a purely public charity is not exempt if the agricultural property is used by the charity to produce unrelated business taxable income as that term is defined in section 512 of the Internal Revenue Code, 26 U.S.C. 512. A public charity claiming an exemption for agricultural property shall file annually with the department a copy of its federal tax return reporting any unrelated business taxable income received by the charity during the tax year, together with a statement indicating whether the exempt property was used to generate any unrelated business taxable income.

(iii) up to 15 acres of property owned by a purely public charity is exempt at the time of its purchase even if the property must be improved before it can directly be used for its intended charitable purpose. If the property is not directly used for the charitable purpose within 8 years of receiving an exemption under this section or if the property is sold or transferred before it entered direct charitable use, the exemption is revoked and the property is taxable. In addition to taxes due for the first year that the property becomes taxable, the owner of the property shall pay an amount equal to the amount of the tax due that year times the number of years that the property was tax-exempt under this section. The amount due is a lien upon the property and when collected must be distributed by the treasurer to funds and accounts in the same ratio as property tax collected on the property is distributed. At the time the exemption is granted, the department shall file a notice with the clerk and recorder in the county in which the property is located. The notice must indicate that an exemption pursuant to this section has been granted. The notice must describe the penalty for default under this section and must specify that a default under this section will create a lien on the property by operation of law. The notice must be on a form prescribed by the department.

(iv) not more than 160 acres may be exempted by a purely public charity under any exemption originally applied for after December 31, 2004. An application for exemption under this section must contain a legal description of the property for which the exemption is requested.

(c) For the purposes of subsection (1)(i), the term "public museums, art galleries, zoos, and observatories" means governmental entities or nonprofit organizations whose principal purpose is to hold property for public display or for use as a museum, art gallery, zoo, or observatory. The exempt property includes all real

and personal property owned by the public museum, art gallery, zoo, or observatory that is reasonably necessary for use in connection with the public display or observatory use. Unless the property is leased for a profit to a governmental entity or nonprofit organization by an individual or for-profit organization, real and personal property owned by other persons is exempt if it is:

- (i) actually used by the governmental entity or nonprofit organization as a part of its public display;
- (ii) held for future display; or
- (iii) used to house or store a public display."

Section 25. 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 electric and gas authority ownership interest in 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.

(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 26. Section 18-4-313, MCA, is amended to read:

"18-4-313. Contracts -- terms, extensions, and time limits. (1) Except as provided in subsection (2) or unless otherwise provided by law, a contract, lease, or rental agreement for supplies or services may not be made for a period of more than 7 years. A contract, lease, or rental agreement may be extended or renewed if the terms of the extension or renewal, if any, are included in the solicitation, if funds are available for the first fiscal period at the time of the agreement, and if the total contract period, including any extension or renewal, does not exceed 7 years. Payment and performance obligations for succeeding fiscal periods are subject to the availability and appropriation of funds for the fiscal periods.

(2) The contract term limit specified in subsection (1) does not apply to:

(a) a contract for hardware, software, or other information technology resources, which may be made for a period not to exceed 10 years;

(b) a department of revenue liquor store contract governed by the term specified in 16-2-101; ~~and~~

(c) a department of corrections contract governed by the term specified in 53-1-203, 53-30-505, or 53-30-608; and

(d) a Montana electric and gas authority contract governed by the provisions of [sections 1 through 22].

(3) Prior to the issuance, extension, or renewal of a contract, it must be determined that:

(a) estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(b) the contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(4) If funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract must be canceled."

NEW SECTION. **Section 27. Codification instruction.** [Sections 1 through 22] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 22].

NEW SECTION. **Section 28. 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 29. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. Section 30. Termination -- contingency. (1) [This act] terminates on:

(a) December 31, 2017, unless the Montana electric and gas authority acquires all or a portion of the assets or stock in any public utility that has restructured under Title 69, chapter 8; or

(b) the date that a private entity acquires all of the assets or stock of a public utility that has restructured under Title 69, chapter 8.

(2) The authority shall notify the code commissioner if it acquires all or a portion of the assets or stock in a public utility that has restructured under Title 69, chapter 8.

(3) The public service commission shall notify the code commissioner of the date that a private entity acquires all of the assets or stock of a public utility that has restructured under Title 69, chapter 8.

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