

## SENATE BILL NO. 335

INTRODUCED BY J. WELBORN, D. ANKNEY, P. CONNELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING STATE AND LOCAL AGENCIES TO USE  
5 PUBLIC-PRIVATE PARTNERSHIPS AS AN ALTERNATIVE TO OTHER PROCUREMENT PROCEDURES;  
6 OUTLINING PROCESSES FOR DEVELOPING PUBLIC-PRIVATE PARTNERSHIPS AND TYPES OF ELIGIBLE  
7 PROJECTS; OUTLINING TYPES OF AGREEMENTS AND FINANCING OPTIONS; AMENDING ~~SECTIONS~~  
8 SECTION 7-5-2307, 7-8-2211, 7-8-2219, 7-8-2231, AND 60-2-107, 7-8-2219, MCA; AND PROVIDING AN  
9 EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 NEW SECTION. **Section 1. Legislative intent -- declaration of public purpose.** (1) The legislature  
14 finds and declares that:

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

17 (b) the ability of Montana to provide sufficient quality public infrastructure, facilities, and services will be  
18 enhanced by having development and implementation mechanisms that range from traditional procurement to  
19 a public-private partnership for infrastructure, facility, or technology development or operations; and

20 (c) public-private initiatives increase the potential for innovative approaches, flexibility in contracting and  
21 delivering infrastructure projects, reduced life-cycle infrastructure costs, and risk sharing.

22 (2) (a) A declaration of public purpose is a prerequisite for establishing a public-private partnership.

23 (b) The declaration of public purpose must include a recognition that:

24 (i) a public need exists for timely acquisition, design, construction, improvement, renovation, expansion,  
25 equipping, maintenance, operation, implementation, or installation of a proposed qualifying project;

26 (ii) the public need may not be wholly met by traditional procurement methods; and

27 (iii) the public need may require a balancing of financing assessments that recognize the interplay of user  
28 costs, private expenditures, and a shifting of public financing from up-front outlays to expenditures over time.

29  
30 NEW SECTION. **Section 2. Definitions.** For the purposes of [sections 1 through 12], the following

1 definitions apply:

2 (1) "Affected jurisdiction" means a county, a municipality as defined in 7-1-4121, or a special district in  
3 which all or a portion of a qualifying project is located.

4 (2) "Comprehensive agreement" means an agreement between one or more private partners and one  
5 or more responsible public entities contractually providing for the responsibilities of all parties in developing or  
6 operating a qualifying project in a public-private partnership.

7 (3) "Develop" means to plan, design, organize financing for, lease, acquire, install, construct, or expand  
8 a qualifying project.

9 (4) (a) "Fees" includes rates, ~~tolls~~, and other charges imposed by the private partner or responsible  
10 public entity for use of all or a portion of a qualifying project pursuant to a comprehensive agreement.

11 (b) The term does not include a tax.

12 (5) "Lease payment" means the money paid by a responsible public entity to a private partner for the  
13 leased or rented use of a qualifying project.

14 (6) "Material default" means a default by a private partner in the performance of its duties as outlined  
15 in a comprehensive agreement that:

16 (a) jeopardizes adequate service to the public from a qualifying project; and

17 (b) is not remedied following notice and a reasonable cure period.

18 (7) "Operate" means to finance, maintain, improve, equip, modify, repair, or handle the operations of a  
19 qualifying project.

20 (8) "Private partner" means an individual, corporation, general partnership, limited liability company,  
21 limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private  
22 business entity or a combination of any of these.

23 (9) "Proposal" means a plan for a qualifying project submitted by a private partner with detail beyond a  
24 conceptual level for which all terms determined to be necessary by the responsible public entity are defined. The  
25 necessary terms include but are not limited to costs, payment schedules, financing, deliverables, and project  
26 schedules.

27 (10) (A) "Qualifying project" means a facility or infrastructure to be used by the public or an improvement  
28 to a public facility or infrastructure that is used or will be used by the public at large or in support of a public  
29 purpose or activity. A qualifying project includes but is not limited to:

30 ~~(a)~~(l) civic or educational facilities;

1 ~~(b)(II) surface transportation infrastructure, including roads and bridges or public transportation systems,~~  
 2 airports; and intermodal systems;

3 ~~(c)(III) cultural or recreational facilities;~~

4 ~~(d)(IV) medical facilities not eligible for Montana facility finance authority financing pursuant to Title 90,~~  
 5 chapter 7; AND

6 ~~(e)(V) utilities for water, energy, or wastewater; and~~

7 ~~—— (f) technology infrastructure, services, or applications, including automated data processing,~~  
 8 ~~infrastructure or equipment for telecommunications and broadband, and management information systems.~~

9 (B) THE TERM DOES NOT INCLUDE CONSTRUCTION OF BROADBAND INFRASTRUCTURE.

10 (11) "Responsible public entity" means the state or a political subdivision of the state, including a county,  
 11 a municipality, a school district, or a combination of the three.

12 (12) "Revenues" includes income, earnings, user fees, lease payments, and other service payments tied  
 13 to the development or operation of a qualifying project. The term also includes bond proceeds, equity  
 14 investments, and grants for a qualifying project.

15  
 16 NEW SECTION. Section 3. Public-private partnership origination -- confidential information --  
 17 **public notice.** (1) A public-private partnership may originate when a responsible public entity:

18 (a) issues a declaration of public purpose as described in [section 1] and requests proposals from private  
 19 partners for the development or operation of a qualifying project; or

20 (b) receives a request from a private partner who has submitted an unsolicited proposal.

21 (2) A responsible public entity receiving an unsolicited proposal shall, prior to taking action on the  
 22 unsolicited proposal other than to investigate the proposal's feasibility, determine whether to:

23 (a) follow the traditional procurement process outlined in Title 18, chapters 1 through 4;

24 (b) provide for an alternative project delivery contract under 18-2-502 and 18-2-503; or

25 (c) issue a declaration of public purpose allowing for a public-private partnership under [sections 1  
 26 through 12].

27 (3) A responsible public entity may not charge a fee to cover the costs of processing, reviewing, or  
 28 evaluating proposals submitted in response to a request for proposals under subsection (1)(a) but may charge  
 29 a reasonable fee to cover the costs of processing and investigating unsolicited proposals submitted as provided  
 30 in subsection (1)(b).

1 (4) (a) A private partner submitting a proposal shall:

2 (i) identify elements of the proposal containing a trade secret or protected proprietary information; and

3 (ii) provide an explanation of why the information identified under subsection (4)(a)(i) is confidential

4 information and not a public record.

5 (b) (i) The responsible public entity considering the proposal shall determine, based on the explanation

6 provided pursuant to subsection (4)(a)(ii), whether the information is to remain confidential. If the information is

7 not to remain confidential, the private partner may withdraw the application without the information becoming a

8 public record, and the responsible public entity shall return all submitted documentation to the private partner.

9 (ii) If the information is to remain confidential, the responsible public entity shall physically separate the

10 confidential information from the remaining information, the latter of which must be part of the public record.

11 (5) The responsible public entity shall provide public notice:

12 (a) of the declaration of public purpose;

13 (b) of the preferred procurement choice as indicated in subsection (2);

14 (c) of acceptance or rejection of an unsolicited proposal at any time in the process after the initial  
15 investigation; and

16 (d) as provided in the guidelines adopted pursuant to [section 4].

17

18 **NEW SECTION. Section 4. Guidelines for public-private partnerships.** (1) Prior to making a

19 declaration of public purpose for a specific proposal, a responsible public entity shall adopt general guidelines,

20 whether through rule, ordinance, or policy, allowing for public-private partnerships and listing criteria for their use.

21 The criteria, in general, shall:

22 (a) provide for public notice at various junctures in the process and encourage transparency, particularly  
23 related to unsolicited proposals;

24 (b) provide for opportunities to allow competition, engage stakeholders, and ensure outreach;

25 ~~(c) REQUIRE THE PAYMENT OF THE STANDARD PREVAILING WAGE AS DEFINED IN 18-2-401;~~

26 ~~(e)(D)(C)~~ seek to avoid bias; and

27 ~~(d)(E)(D)~~ guide the selection of public-private partnerships.

28 (2) The guidelines adopted as rules, ordinances, or policies may also be used to promote best practices,  
29 including standardized methodologies and processes for either construction or services.

30 (3) The adopted rules, ordinances, or policies must provide criteria for determining whether a proposal

1 is eligible for accelerated selection and review and for designating timeframes related to accelerated proposals.

2 (4) The adopted rules, ordinances, or policies must include the following criteria for proposals:

3 (a) a written analysis of the costs, benefits, and risk transfers related to a proposed qualifying project and

4 provisions for public access to the analysis;

5 (b) an analysis of advantages and disadvantages of developing or operating the qualifying project as a

6 public-private partnership, an alternate project delivery contract, or a traditional procurement contract. The

7 analysis for this subsection (4)(b) must include:

8 (i) anticipated costs to the public-private partnership or to the public over the project's life cycle, adjusting

9 for risk and risk transfers; and

10 (ii) the criteria listed in 18-2-502(2) and (3).

11 (c) an analysis of potential sources of financing, including fees and revenues. The financial analysis must

12 include a comparison between the public-private partnership proposal and the estimated costs of traditional public

13 financing through bonds or other taxation.

14 (d) descriptions of:

15 (i) proposal location;

16 (ii) conceptual construction design or service plans;

17 (iii) the general reputation, qualifications, industry experience, and financial capacity of the private

18 partners; and

19 (iv) timeframes for selection of proposals or public notice of an unsolicited proposal;

20 (e) an analysis of the proposal's compatibility with regional infrastructure plans;

21 (f) a statement of how the private partner proposes to acquire property interests or rights-of-way required

22 for the proposed qualifying project;

23 (g) a list of all permits and approvals required from each affected jurisdiction or from federal agencies,

24 along with a projected schedule for obtaining the permits and approvals;

25 (h) a list of public utility rights-of-way, if applicable, that may be crossed and a statement of how the

26 private partner proposes to address the crossings;

27 (i) the names and contact information of the private partner's principal employees who are to serve as

28 contacts for the proposal; and

29 (j) procedures needed, if applicable, for regional engagement with affected jurisdictions or for proposals

30 that cross jurisdictional boundaries.

1 (5) The criteria for evaluation must provide objective grading criteria for choosing among competing  
2 proposals, including consideration of financial and nonfinancial benefits, opportunity costs, quality of materials  
3 and services, and timeliness of completion. The grading criteria must also apply to unsolicited proposals to allow  
4 for public notice and possible alternate, competitive proposals.

5 (6) EXCEPT AS PROVIDED IN SUBSECTION (4)(B)(II), THE GUIDELINES AND THE RULES, ORDINANCES, AND POLICIES  
6 ARE NOT SUBJECT TO THE PROVISIONS OF TITLE 18, CHAPTER 2.

7  
8 NEW SECTION. Section 5. Service contracts. A responsible public entity may contract with a private  
9 partner under the provisions of [sections 1 through 12] on a qualifying project for the delivery of services in  
10 exchange for service payments and other considerations described by the responsible public entity in the  
11 qualifying project.

12  
13 NEW SECTION. Section 6. Proposal development -- public comment -- notification. (1) After  
14 originating a proposal as provided in [section 3(1)(a)] and prior to signing a comprehensive agreement as  
15 provided in [section 8], the responsible public entity shall:

16 (a) follow the guidelines adopted pursuant to [section 4]; and

17 (b) determine if an interim agreement, as provided in [section 7], is preferred.

18 (2) After investigating an unsolicited proposal and with the agreement of the private partner, the  
19 responsible public entity shall provide public notice of the unsolicited proposal for a qualifying project and offer  
20 a public comment period of at least 45 days by posting on the responsible public entity's website, announcing the  
21 proposal at a public meeting, and taking any other public notice actions routinely made by the responsible public  
22 entity.

23 (3) In responding to public comments, the responsible public entity shall provide the information gathered  
24 under the guideline criteria and summarize the graded responses to the criteria.

25 (4) (a) In addition to the public comment period provided for in subsection (2), the responsible public  
26 entity shall separately notify all affected jurisdictions of the proposal in writing.

27 (b) An affected jurisdiction other than the responsible public entity has 45 days after receiving the  
28 notification to submit in writing any comments on the project's potential impact or compatibility with local and  
29 regional budgets and infrastructure plans. The affected jurisdiction shall submit its written comments, if any, to  
30 the responsible public entity developing the proposal.

1 (5) The responsible public entity shall consider all public comments, including those of the affected  
2 jurisdiction, before entering into a comprehensive agreement with a private partner.

3  
4 **NEW SECTION. Section 7. Public entity options -- interim agreement.** (1) After responding to the  
5 public comments and making public the information required to be public under the guidelines adopted pursuant  
6 to [section 4], the responsible public entity may enter into an interim agreement with a private partner.

7 (2) (a) An interim agreement:

8 (i) does not obligate the responsible public entity to enter into a comprehensive agreement;

9 (ii) is discretionary with the partners;

10 (iii) is not a prerequisite to a comprehensive agreement; and

11 (iv) may provide for a mix of public and private payments for any single item listed under subsection (3).

12 (b) The interim agreement may not, in aggregate, complete a qualifying project or provide for fees and  
13 revenues from the qualifying project in the same manner as under a comprehensive agreement.

14 (3) Under an interim agreement, the private partner may begin activities related to the proposal and be  
15 compensated for activities related to:

16 (a) project planning;

17 (b) work to determine right-of-way acquisition;

18 (c) design and engineering; and

19 (d) environmental analysis and mitigation.

20 (4) Determination of potential project financing may begin under an interim agreement, but the cost must  
21 be borne by the private partner or the responsible public entity, depending on whether the proposal is unsolicited.

22 (5) An interim agreement may provide for multiple private partners if the responsible public entity states  
23 in writing that multiple private partners are in the public's and project's best interest.

24  
25 **NEW SECTION. Section 8. Comprehensive agreements -- limitations.** (1) (a) A comprehensive  
26 agreement may be entered into for a public-private partnership at any time that a responsible public entity  
27 determines that the public good outweighs the use of traditional procurement and makes a declaration of public  
28 purpose as provided in [section 1].

29 (b) A comprehensive agreement may not create a public debt secured by a pledge of the taxing power  
30 of the responsible public entity, although the comprehensive agreement is a general obligation.

1           (2) In addition to other contract terms stipulating the obligations of the parties, ~~including those listed in~~  
2 ~~Title 18, chapters 1 through 5, as applicable,~~ in the guidelines established by the responsible public entity; and  
3 in subsections (3) and (4) of this section, a comprehensive agreement must include:

4           (a) descriptions of which party is responsible for specific project elements and the timeframe for  
5 completing those elements;

6           (b) specification for delivery of maintenance, performance, and payment bonds as well as letters of credit  
7 in connection with the development or operation of the qualifying project. The specification must be in a form and  
8 an amount satisfactory to the responsible public entity and in compliance with [sections 1 through 12] for the  
9 components of the qualifying project that involve construction.

10          (c) a process describing the review of plans and specifications for the qualifying project by the  
11 responsible public entity and describing approval by the responsible public entity if the plans and specifications  
12 conform to standards acceptable to the responsible public entity;

13          (d) details of whether the parties will share the costs of development or of project operations and, if so,  
14 what those shared costs are to be;

15          (e) a description of how the parties will allocate the financial responsibility of cost overruns, if any;

16          (f) an itemization of safeguards to be put in place to mitigate against additional costs or service  
17 disruptions to the public if a material default occurs or if the agreement is canceled;

18          (g) descriptions of performance standards and any incentives or penalties for meeting or falling short  
19 of meeting standards;

20          (h) a description of accounting and auditing standards to be used to evaluate the project implementation;

21          (i) a description of a process to be used by the private partner to request and receive authorization to  
22 deviate from the comprehensive agreement specifications if the private partner demonstrates a need for the  
23 change order that is satisfactory to the responsible public entity;

24          (j) a detailed outline of responsibilities regarding reconstruction or renovation if the project is to revert  
25 to public ownership at the end of the life cycle; and

26          (k) other terms and conditions mutually agreed on by the responsible public entity and the private  
27 partner, including but not limited to:

28           (i) a description of a reasonable rate of return or other payment alternative on the private partner's  
29 investment;

30           (ii) conditions under which the private partner is entitled to compensation for lost revenue or other



1 demonstrable damages if another governmental entity or public agency constructs a competing facility;  
 2 (iii) dispute resolution procedures;  
 3 (iv) access terms for audits of the private partner's books and records related to the comprehensive  
 4 agreement; and  
 5 (v) a description of any limits on the responsible public entity's rights to develop, maintain, repair,  
 6 rehabilitate, operate, or lease other projects or provide other services independent of the location or type of the  
 7 public-private partnership project.

8 (3) The comprehensive agreement must list fees or other nontax revenues that may be established by  
 9 agreement of the parties.

10 (4) A comprehensive agreement must include a provision stating that the private partner expressly  
 11 agrees not to seek an injunction or other equitable relief to delay, prevent, or otherwise hinder the responsible  
 12 public entity or an affected jurisdiction from developing or operating a project that was planned and that may  
 13 impact the revenue that the private partner may derive from the qualifying project under a public-private  
 14 partnership. However, the comprehensive agreement may provide for reasonable compensation to the private  
 15 partner for the adverse effect on the private partner's revenues within the first 10 years if the responsible public  
 16 entity takes action detrimental to the project's expected revenues.

17 ~~(5) A comprehensive agreement is subject to 18-3-101, and a private partner may not enter a~~  
 18 ~~lease-to-own agreement with the state unless two-thirds of the members of each house of the legislature has~~  
 19 ~~approved.~~

20 ~~(6)~~(5) A comprehensive agreement must include provisions for assignment of responsibilities in case  
 21 of a material default, including but not limited to the provisions in [section 12].

22 ~~(7)~~(6) The requirements listed in subsection (2) for a comprehensive agreement do not mean that a  
 23 private partner is required to complete the design of a qualifying project prior to the execution of a comprehensive  
 24 agreement.

25  
 26 **NEW SECTION. Section 9. Dedication of public property -- definitions.** (1) A responsible public  
 27 entity may dedicate for use in a qualifying project any REAL property interest that is in the public domain, including  
 28 land; AND improvements, ~~and tangible personal property~~; if the responsible public entity finds that doing so serves  
 29 the public purpose of [sections 1 through 12] by minimizing the cost of the qualifying project to the responsible  
 30 public entity or reducing the delivery time of the qualifying project.

1 (2) (a) Following a decision to exercise a dedication as provided in subsection (1), the responsible public  
2 entity may, subject to the conditions imposed by law governing the dedication:

3 (i) convey any property interest that it has to the private partner under the requirements of [sections 1  
4 through 12]; and

5 (ii) require payment or other consideration as determined by the responsible public entity. A consideration  
6 may include but is not limited to the agreement of the private partner to develop or operate the qualifying project.

7 (b) The property interests that the responsible public entity may convey to the private partner in  
8 connection with a dedication under this section may include ~~licenses, franchises,~~ easements; or any other right  
9 or interest IN REAL PROPERTY the responsible public entity has adopted as in the public interest.

10 ~~(3) As used in this section, the terms "dedicate" and "convey" do not mean:~~

11 ~~—— (a) "disposition" or "disposed of" as used in Article X, section 11, of the Montana constitution;~~

12 ~~—— (b) a "sale" as used in Title 7, chapter 8, part 22 or 25, or 20-25-307; or~~

13 ~~—— (c) a "sale", a "lease", or "leasing" as used in Title 7, chapter 16, part 23, or Title 77, chapter 2, part 3.~~

14

15 **NEW SECTION. Section 10. Private partner authority and duties.** (1) A private partner is entitled to  
16 the powers and authority allowed by the laws that govern the profit, not-for-profit, cooperative, or other type of  
17 organization under which the private partner was formed.

18 (2) A private partner has the authority to develop or operate the qualifying project as provided in the  
19 interim or comprehensive agreement. The authority may include collecting lease payments, imposing user fees,  
20 or entering into service contracts related to the qualifying project.

21 (3) A private partner engaged in one part of a qualifying project is not restricted from owning, leasing,  
22 or acquiring any other right to use or operate the qualifying project.

23 (4) The private partner is responsible for determining and financing its share of the qualifying project,  
24 including decisions to:

25 (a) issue debt, equity, or other securities or obligations;

26 (b) enter into sale and leaseback transactions; or

27 (c) secure financing with a pledge of, security interest in, or lien on any or all of its property, including  
28 all of its property interest in the qualifying project.

29 (5) In operating the qualifying project, the private partner may:

30 (a) make classifications according to reasonable categories for assessment of user fees; and

1 (b) make and enforce rules, with the consent of the responsible public entity, to the same extent that the  
2 responsible public entity may make and enforce rules with respect to similar facilities.

3 (6) The private partner shall further:

4 (a) develop or operate the qualifying project in a manner that is acceptable to the responsible public  
5 entity, pursuant to the terms of the interim or comprehensive agreement;

6 (b) keep the qualifying project open for use by members of the public at times that are appropriate based  
7 on the use of the facility and subject to subsection (7). If the qualifying project is technology infrastructure, the  
8 access may be limited as provided by the interim or comprehensive agreement.

9 (c) maintain or upgrade, or contract for the maintenance or upgrade of, the qualifying project if required  
10 by the interim or comprehensive agreement;

11 (d) cooperate with the responsible public entity in making best efforts to establish any interconnection  
12 with the qualifying project requested by the responsible public entity; and

13 (e) comply with the provisions of the interim or comprehensive agreement and any lease or service  
14 contract.

15 (7) The private partner may:

16 (a) restrict access by the public to the qualifying project until an initial opening;

17 (b) condition public access to the qualifying project on payment of applicable user fees, lease payments,  
18 or service payments; or

19 (c) temporarily close the qualifying project to the public because of emergencies or, with the consent of  
20 the responsible public entity, to protect the safety of the public or to perform reasonable construction or  
21 maintenance activities.

22 (8) A private partner is not prohibited from providing additional services for the qualifying project to public  
23 or private entities other than the responsible public entity, but the provision of additional services may not impair  
24 the private partner's ability to meet its commitments to the responsible public entity pursuant to the interim or  
25 comprehensive agreement.

26

27 **NEW SECTION. Section 11. Private-partner financing options.** (1) A private partner may seek  
28 financing for projects through federal, state, or private grants or from legislatively designated funds.

29 (2) Consistent with Article VIII, section 2, of the Montana constitution, the terms of a public-private  
30 partnership may authorize the private partner to impose, collect, and enforce user fees only if authorized in the

1 comprehensive agreement.

2 (3) If cost sharing and revenue sharing are part of the comprehensive agreement, the comprehensive  
3 agreement must specify how the responsible public entity will accept or provide payments, into which accounts  
4 the payments are to be deposited, and what percentage of payments, if any, is to go to each partner.

5 (4) Authorization to collect fees or arrange for rights-of-way on behalf of a responsible public entity does  
6 not mean that the private partner has the powers of eminent domain as provided in Title 70, chapter 30.

7  
8 **NEW SECTION. Section 12. Material default -- remedies.** (1) If a material default interrupts or  
9 prevents the private partner from carrying out its obligations under a comprehensive agreement, the responsible  
10 public entity has the right of first refusal to assume the obligations. Under this transfer, the responsible public  
11 entity also is subject to liens on revenues previously granted by the private partner to any person providing  
12 financing for the qualifying project.

13 (2) If the responsible public entity chooses not to assume the obligations as provided in subsection (1),  
14 the responsible public entity may:

15 (a) if legally authorized with the power of condemnation, begin condemnation proceedings, in which case  
16 those who participated in financing the qualifying project may participate in the condemnation proceedings with  
17 the standing of a property owner; or

18 (b) seek to terminate the comprehensive agreement in a manner that must be described in the  
19 comprehensive agreement.

20  
21 ~~Section 13. Section 7-5-2307, MCA, is amended to read:~~  
22 ~~"7-5-2307. Treatment of rental-purchase contracts. Every Except as provided in [sections 1 through~~  
23 ~~12], when the county enters into a contract entered into for the rental of machinery, equipment, apparatus,~~  
24 ~~appliances, materials, or supplies of any kind which shall provide for payment of rental by the county and if the~~  
25 ~~contract provides that, after a certain fixed amount has been paid as rental, the property shall is to become the~~  
26 ~~property of the county or any other similar provisions or conditions shall be deemed and, the contract must be~~  
27 ~~construed to be as a contract for sale of such the property, and all of the provisions of this part shall apply thereto~~  
28 ~~to, and govern, and control the same contract."~~

29  
30 ~~Section 14. Section 7-8-2211, MCA, is amended to read:~~

1 ~~—————"7-8-2211. Authorization to sell and exchange county property. (1) Boards of county commissioners~~  
 2 ~~of this state have the power to sell, trade, or exchange any real or personal property, however acquired,~~  
 3 ~~belonging to the county that is not necessary to the conduct of county business or the preservation of its property.~~

4 ~~————(2) Whenever a county purchases equipment, as provided in 7-5-2301 and 7-5-2303 through 7-5-2308,~~  
 5 ~~county equipment that is not necessary to the conduct of the county business may be traded in as part of the~~  
 6 ~~purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212,~~  
 7 ~~in the discretion of the board.~~

8 ~~————(3) Any sale, trade, or exchange of real or personal property must be accomplished under the provisions~~  
 9 ~~of this title unless the provisions of [sections 1 through 12] apply. In an exchange of real property, the properties~~  
 10 ~~must be appraised, and an exchange of county property may not be made unless property received in exchange~~  
 11 ~~for the county property is of an equivalent value. If the properties are not of equivalent values, the exchange may~~  
 12 ~~be completed if a cash payment is made in addition to the delivery of title for property having the lesser value.~~

13 ~~————(4) If a county owns property containing a historically significant building or monument, the county may~~  
 14 ~~sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The~~  
 15 ~~contract for the transfer of the property must contain a provision that:~~

16 ~~————(a) requires the property to be preserved in its present or restored state upon any subsequent transfer;~~  
 17 ~~and~~

18 ~~————(b) provides for the reversion of the property to the county for noncompliance with conditions attached~~  
 19 ~~to the transfer.~~

20 ~~————(5) A county may authorize the transfer of ownership of rural improvement district improvements as~~  
 21 ~~provided in 7-12-2128."~~

22

23 **Section 13.** Section 7-8-2219, MCA, is amended to read:

24 **"7-8-2219. Exchange or donation of county land -- failure to make sale.** (1) If within 1 year of  
 25 attempting to sell real estate ~~attempted to be sold~~ under the provisions of 7-8-2211 through 7-8-2220 the real  
 26 estate is not sold, the board of county commissioners may make trades or exchanges of the real estate owned  
 27 by the county for any other land or real estate of equal value located within the same county.

28 (2) In lieu of the procedure in subsection (1), the board of county commissioners may donate the land  
 29 or sell the land at a reduced price to a corporation for the purpose of constructing:

30 (a) a multifamily housing development operated by the corporation for low-income housing;

1 (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a  
 2 low-income person who meets the eligibility requirements of the corporation. Once the sale is completed, the  
 3 property becomes subject to taxation.

4 (c) improvements to real property or modifying, altering, or repairing improvements to real property that  
 5 will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue  
 6 purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use  
 7 of the donated land and improvements.

8 (3) Land that is transferred pursuant to subsection (2) must be used to permanently provide low-income  
 9 housing. The transfer of the property may contain a reversionary clause to reflect this condition.

10 (4) The provisions of this section do not apply to land conveyed or dedicated as provided in a  
 11 public-private partnership under [sections 1 through 12]."

12

13 ~~Section 16.~~ Section 7-8-2231, MCA, is amended to read:

14 ~~"7-8-2231. Authorization to lease county property. (1) The board of county commissioners has~~  
 15 ~~jurisdiction and power, under limitations and restrictions that are prescribed by law, to lease and transfer county~~  
 16 ~~property, however acquired, that is not necessary to the conduct of the county's business or the preservation of~~  
 17 ~~county property and for which immediate sale cannot be had. The leases must be made in a manner and for~~  
 18 ~~purposes that, in the judgment of the board, are best suited to advance the public benefit and welfare.~~

19 ~~(2) Except as provided in 7-8-2233 and 7-32-2201(5):~~

20 ~~(a) all property must be leased subject to sale by the board; and~~

21 ~~(b) a lease may not be for a period to exceed 10 years.~~

22 ~~(3) The provisions of this section do not apply to land conveyed or dedicated as provided in a~~  
 23 ~~public-private partnership under [sections 1 through 12]."~~

24

25 ~~Section 17.~~ Section 60-2-107, MCA, is amended to read:

26 ~~"60-2-107. Abandonment of highways -- exchange of roadways -- public notice required. (1)~~  
 27 ~~Except as provided in 60-4-213 through 60-4-218, the commission may abandon highways on the federal-aid~~  
 28 ~~systems and state highways.~~

29 ~~(2) (a) Except as provided in 60-4-213 through 60-4-218, before abandoning or discontinuing~~  
 30 ~~maintenance on a highway, the commission shall hold a public hearing in the county or counties affected by the~~

1 abandonment.

2 ~~\_\_\_\_\_ (b) The commission may:~~

3 ~~\_\_\_\_\_ (i) elect to offer to transfer the liability for and the maintenance of a highway to another agency or~~  
4 ~~agencies that may in turn elect to take responsibility for the highway; or~~

5 ~~\_\_\_\_\_ (ii) consider entering into an interim or comprehensive agreement as provided in [sections 1 through 12].~~

6 The

7 ~~\_\_\_\_\_ (c) Following a decision to abandon a highway, the commission shall notify the board of county~~  
8 ~~commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall~~  
9 ~~publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public~~  
10 ~~hearing.~~

11 ~~\_\_\_\_\_ (3) Except as provided in 60-4-213 through 60-4-218, the commission may enter into a public-private~~  
12 ~~partnership as provided in [sections 1 through 12] or into an agreement with a unit of local government, on~~  
13 ~~mutually beneficial terms, to exchange property interests or responsibilities, including maintenance, on any~~  
14 ~~portion of a federal-aid or state highway and on any portion of a county road or city street.~~

15 ~~\_\_\_\_\_ (4) The commission may not abandon a highway, road, or right-of-way used to provide existing legal~~  
16 ~~access to public land or waters, including access for public recreational use as defined in 23-2-301 and as~~  
17 ~~permitted in 23-2-302, unless another highway, road, or right-of-way provides substantially the same access.~~

18 ~~\_\_\_\_\_ (5) The commission may not abandon a highway, road, or right-of-way used to access private land if the~~  
19 ~~access benefits two or more landowners unless all the landowners agree to the abandonment."~~

20

21 NEW SECTION. Section 14. Notification to tribal governments. The secretary of state shall send  
22 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell  
23 Chippewa tribe.

24

25 NEW SECTION. Section 15. Codification instruction. [Sections 1 through 12] are intended to be  
26 codified as an integral part of Title 18, chapter 2, part 5, and the provisions of Title 18, chapter 2, part 5, apply  
27 to [sections 1 through 12].

28

29 COORDINATION SECTION. SECTION 16. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 373 AND [THIS  
30 ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 11] OF HOUSE BILL NO. 373 MUST BE AMENDED AS FOLLOWS:

1           **NEW SECTION. Section 11. Authorization to sell real property -- resolution required -- contents**  
2 **of resolution -- hearing required.** (1) The board shall, after holding a public hearing noticed as provided in  
3 7-1-2121, adopt a resolution providing for sale and disposition of county real property. The resolution must  
4 include:

5           (a) approved locations for sales, including whether sales may be conducted by use of an internet website  
6 or other online location;

7           (b) a requirement that all sale locations be accessible to the public;

8           (c) types of sales for which public auction is required;

9           (d) who may conduct a sale or auction;

10          (e) procedures for issuing permits, leases, or licenses, including:

11           (i) the terms, conditions, and processes for issuance of permits, leases, and licenses;

12           (ii) authorization to enter into agreements with entities to which permits, leases, or licenses may be  
13 issued;

14           (iii) a prohibition on a lease being made for an amount less than the amount that would have been  
15 collected if taxes on the real property had been levied; and

16           (iv) the process for authorizing a lessee to place improvements on the property;

17           (f) how sales will be noticed if the board intends to provide notice in addition to notice by publication as  
18 required in 7-1-2121;

19           (g) how property retained by the county will be administered and maintained; ~~and~~

20           (h) if applicable, the terms for the conveyance or disposal of real property as part of a public-private  
21 partnership pursuant to [sections 1 through 12 of Senate Bill No. 335]; and

22           ~~(h)~~(i) any other provision that the board considers to be necessary for the disposition of property in a  
23 manner that is in the best interests of the county and its citizens.

24          (2) In adopting the resolution, consideration must be given to multiple-use management.

25          (3) Provisions in the resolution regarding exchanges or donations of real property must be in compliance  
26 with 7-8-2502 and [section 12]."

27

28           **COORDINATION SECTION. SECTION 17. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 373 AND [THIS**  
29 **ACT] ARE BOTH PASSED AND APPROVED, THEN [SECTION 12] OF HOUSE BILL NO. 373 MUST BE AMENDED AS FOLLOWS:**

30           **NEW SECTION. Section 12. Exchange or donation of real property -- appraisal required.** (1)



1 Subject to the provisions of this section and a resolution adopted pursuant to [section 11], the board may make  
2 trades, exchanges, or donations of real property owned by the county.

3 (2) In an exchange of real property, the properties must be appraised and an exchange of county  
4 property may not be made unless property received in exchange for the county property is of an equivalent value.  
5 If the properties are not of equivalent values, the exchange may be completed if a cash payment is made in  
6 addition to the delivery of title for property having the lesser value.

7 (3) If a county owns property containing a historically significant building or monument, the county may  
8 sell or give the property to nonprofit organizations or groups that agree to restore or preserve the property. The  
9 contract for the transfer of the property must contain a provision that:

10 (a) requires the property to be preserved in its current or restored state upon any subsequent transfer;  
11 and

12 (b) provides for the reversion of the property to the county for noncompliance with conditions attached  
13 to the transfer.

14 (4) A county may authorize the transfer of ownership of rural improvement district improvements as  
15 provided in 7-12-2128.

16 (5) A county may donate real property or sell the property at a reduced price to a corporation for the  
17 purpose of constructing:

18 (a) a multifamily housing development operated by the corporation for low-income housing;

19 (b) single-family houses. Upon completion of a house, the corporation shall sell the property to a  
20 low-income person who meets the eligibility requirements of the corporation. After the sale is completed, the  
21 property becomes subject to taxation.

22 (c) improvements to real property or modifying, altering, or repairing improvements to real property that  
23 will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue  
24 purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use  
25 of the donated land and improvements.

26 (6) Land that is transferred pursuant to subsection (5) must be used to permanently provide low-income  
27 housing. The transfer of the property may contain a reversionary clause to reflect this condition.

28 (7) The provisions of this section requiring equivalent value do not apply if an exchange or donation is  
29 part of a public-private partnership under the provisions of [sections 1 through 12 of Senate Bill No. 335]."

30

1 NEW SECTION. **Section 18. Effective date.** [This act] is effective July 1, 2017.

2 - END -