

SENATE BILL NO. 335

INTRODUCED BY J. WELBORN

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

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

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

NEW SECTION. Section 1. Legislative intent -- declaration of public purpose. (1) The legislature

finds and declares that:

- (a) it is important for the economic, social, and environmental well-being of Montana that the people of Montana have sufficient quality public infrastructure, facilities, and services;
- (b) the ability of Montana to provide sufficient quality public infrastructure, facilities, and services will be enhanced by having development and implementation mechanisms that range from traditional procurement to a public-private partnership for infrastructure, facility, or technology development or operations; and
- (c) public-private initiatives increase the potential for innovative approaches, flexibility in contracting and delivering infrastructure projects, reduced life-cycle infrastructure costs, and risk sharing.

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

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

- (i) a public need exists for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of a proposed qualifying project;
- (ii) the public need may not be wholly met by traditional procurement methods; and
- (iii) the public need may require a balancing of financing assessments that recognize the interplay of user costs, private expenditures, and a shifting of public financing from up-front outlays to expenditures over time.

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

definitions apply:



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

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

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

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

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

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

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

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

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

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

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

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

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

29 (a) civic or educational facilities;

30 (b) surface transportation infrastructure, including roads and bridges or public transportation systems,

- 1 airports, and intermodal systems;
- 2 (c) cultural or recreational facilities;
- 3 (d) medical facilities not eligible for Montana facility finance authority financing pursuant to Title 90,
- 4 chapter 7;
- 5 (e) utilities for water, energy, or wastewater; and
- 6 (f) technology infrastructure, services, or applications, including automated data processing,
- 7 infrastructure or equipment for telecommunications and broadband, and management information systems.

8 (11) "Responsible public entity" means the state or a political subdivision of the state, including a county,

9 a municipality, a school district, or a combination of the three.

10 (12) "Revenues" includes income, earnings, user fees, lease payments, and other service payments tied

11 to the development or operation of a qualifying project. The term also includes bond proceeds, equity

12 investments, and grants for a qualifying project.

13

14 **NEW SECTION. Section 3. Public-private partnership origination -- confidential information --**

15 **public notice.** (1) A public-private partnership may originate when a responsible public entity:

16 (a) issues a declaration of public purpose as described in [section 1] and requests proposals from private

17 partners for the development or operation of a qualifying project; or

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

19 (2) A responsible public entity receiving an unsolicited proposal shall, prior to taking action on the

20 unsolicited proposal other than to investigate the proposal's feasibility, determine whether to:

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

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

23 (c) issue a declaration of public purpose allowing for a public-private partnership under [sections 1

24 through 12].

25 (3) A responsible public entity may not charge a fee to cover the costs of processing, reviewing, or

26 evaluating proposals submitted in response to a request for proposals under subsection (1)(a) but may charge

27 a reasonable fee to cover the costs of processing and investigating unsolicited proposals submitted as provided

28 in subsection (1)(b).

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

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

1 (ii) provide an explanation of why the information identified under subsection (4)(a)(i) is confidential
2 information and not a public record.

3 (b) (i) The responsible public entity considering the proposal shall determine, based on the explanation
4 provided pursuant to subsection (4)(a)(ii), whether the information is to remain confidential. If the information is
5 not to remain confidential, the private partner may withdraw the application without the information becoming a
6 public record, and the responsible public entity shall return all submitted documentation to the private partner.

7 (ii) If the information is to remain confidential, the responsible public entity shall physically separate the
8 confidential information from the remaining information, the latter of which must be part of the public record.

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

10 (a) of the declaration of public purpose;

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

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

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

15

16 **NEW SECTION. Section 4. Guidelines for public-private partnerships.** (1) Prior to making a
17 declaration of public purpose for a specific proposal, a responsible public entity shall adopt general guidelines,
18 whether through rule, ordinance, or policy, allowing for public-private partnerships and listing criteria for their use.
19 The criteria, in general, shall:

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

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

23 (c) seek to avoid bias; and

24 (d) guide the selection of public-private partnerships.

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

27 (3) The adopted rules, ordinances, or policies must provide criteria for determining whether a proposal
28 is eligible for accelerated selection and review and for designating timeframes related to accelerated proposals.

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

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

1 provisions for public access to the analysis;

2 (b) an analysis of advantages and disadvantages of developing or operating the qualifying project as a
3 public-private partnership, an alternate project delivery contract, or a traditional procurement contract. The
4 analysis for this subsection (4)(b) must include:

5 (i) anticipated costs to the public-private partnership or to the public over the project's life cycle, adjusting
6 for risk and risk transfers; and

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

8 (c) an analysis of potential sources of financing, including fees and revenues. The financial analysis must
9 include a comparison between the public-private partnership proposal and the estimated costs of traditional public
10 financing through bonds or other taxation.

11 (d) descriptions of:

12 (i) proposal location;

13 (ii) conceptual construction design or service plans;

14 (iii) the general reputation, qualifications, industry experience, and financial capacity of the private
15 partners; and

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

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

18 (f) a statement of how the private partner proposes to acquire property interests or rights-of-way required
19 for the proposed qualifying project;

20 (g) a list of all permits and approvals required from each affected jurisdiction or from federal agencies,
21 along with a projected schedule for obtaining the permits and approvals;

22 (h) a list of public utility rights-of-way, if applicable, that may be crossed and a statement of how the
23 private partner proposes to address the crossings;

24 (i) the names and contact information of the private partner's principal employees who are to serve as
25 contacts for the proposal; and

26 (j) procedures needed, if applicable, for regional engagement with affected jurisdictions or for proposals
27 that cross jurisdictional boundaries.

28 (5) The criteria for evaluation must provide objective grading criteria for choosing among competing
29 proposals, including consideration of financial and nonfinancial benefits, opportunity costs, quality of materials
30 and services, and timeliness of completion. The grading criteria must also apply to unsolicited proposals to allow

1 for public notice and possible alternate, competitive proposals.

2

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

7

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

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

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

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

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

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

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

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

28

29 **NEW SECTION. Section 7. Public entity options -- interim agreement.** (1) After responding to the
30 public comments and making public the information required to be public under the guidelines adopted pursuant

1 to [section 4], the responsible public entity may enter into an interim agreement with a private partner.

2 (2) (a) An interim agreement:

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

4 (ii) is discretionary with the partners;

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

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

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

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

11 (a) project planning;

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

13 (c) design and engineering; and

14 (d) environmental analysis and mitigation.

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

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

19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (ii) conditions under which the private partner is entitled to compensation for lost revenue or other
26 demonstrable damages if another governmental entity or public agency constructs a competing facility;

27 (iii) dispute resolution procedures;

28 (iv) access terms for audits of the private partner's books and records related to the comprehensive
29 agreement; and

30 (v) a description of any limits on the responsible public entity's rights to develop, maintain, repair,

1 rehabilitate, operate, or lease other projects or provide other services independent of the location or type of the
2 public-private partnership project.

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

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

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

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

17 (7) The requirements listed in subsection (2) for a comprehensive agreement do not mean that a private
18 partner is required to complete the design of a qualifying project prior to the execution of a comprehensive
19 agreement.

20
21 **NEW SECTION. Section 9. Dedication of public property -- definitions.** (1) A responsible public
22 entity may dedicate for use in a qualifying project any property interest that is in the public domain, including land,
23 improvements, and tangible personal property, if the responsible public entity finds that doing so serves the public
24 purpose of [sections 1 through 12] by minimizing the cost of the qualifying project to the responsible public entity
25 or reducing the delivery time of the qualifying project.

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

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

30 (ii) require payment or other consideration as determined by the responsible public entity. A consideration

1 may include but is not limited to the agreement of the private partner to develop or operate the qualifying project.

2 (b) The property interests that the responsible public entity may convey to the private partner in
3 connection with a dedication under this section may include licenses, franchises, easements, or any other right
4 or interest the responsible public entity has adopted as in the public interest.

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

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

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

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

9

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

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

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

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

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

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

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

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

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

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

28 (6) The private partner shall further:

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

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

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

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

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

10 (7) The private partner may:

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

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

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

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

21
22 **NEW SECTION. Section 11. Private-partner financing options.** (1) A private partner may seek
23 financing for projects through federal, state, or private grants or from legislatively designated funds.

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

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

30 (4) Authorization to collect fees or arrange for rights-of-way on behalf of a responsible public entity does

1 not mean that the private partner has the powers of eminent domain as provided in Title 70, chapter 30.

2

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

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

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

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

15

16 **Section 13.** Section 7-5-2307, MCA, is amended to read:

17 **"7-5-2307. Treatment of rental-purchase contracts.** ~~Every~~ Except as provided in [sections 1 through
18 12], when the county enters into a contract entered into for the rental of machinery, equipment, apparatus,
19 appliances, materials, or supplies of any kind ~~which shall provide for payment of rental by the county and if the~~
20 contract provides that, after a certain fixed amount has been paid as rental, the property ~~shall is to~~ become the
21 property of the county or any other similar provisions or conditions shall be deemed and, the contract must be
22 construed to be as a contract for sale of ~~such the~~ property, and all of the provisions of this part ~~shall apply thereto~~
23 to, and govern, and control the same contract."

24

25 **Section 14.** Section 7-8-2211, MCA, is amended to read:

26 **"7-8-2211. Authorization to sell and exchange county property.** (1) Boards of county commissioners
27 of this state have the power to sell, trade, or exchange any real or personal property, however acquired,
28 belonging to the county that is not necessary to the conduct of county business or the preservation of its property.

29 (2) Whenever a county purchases equipment, as provided in 7-5-2301 and 7-5-2303 through 7-5-2308,
30 county equipment that is not necessary to the conduct of the county business may be traded in as part of the

1 purchase price after appraisal, as provided in 7-8-2214, or may be sold at public auction, as provided in 7-8-2212,
2 in the discretion of the board.

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

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

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

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

15 (5) A county may authorize the transfer of ownership of rural improvement district improvements as
16 provided in 7-12-2128."
17

18 **Section 15.** Section 7-8-2219, MCA, is amended to read:

19 **"7-8-2219. Exchange or donation of county land -- failure to make sale.** (1) If within 1 year of
20 attempting to sell real estate ~~attempted to be sold~~ under the provisions of 7-8-2211 through 7-8-2220 the real
21 estate is not sold, the board of county commissioners may make trades or exchanges of the real estate owned
22 by the county for any other land or real estate of equal value located within the same county.

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

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

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

29 (c) improvements to real property or modifying, altering, or repairing improvements to real property that
30 will enable the corporation, subject to the restrictions of Article X, section 6, of the Montana constitution, to pursue

1 purposes specified in the articles of incorporation of the corporation, including the sale, lease, rental, or other use
2 of the donated land and improvements.

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

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

7

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

9 **"7-8-2231. Authorization to lease county property.** (1) The board of county commissioners has
10 jurisdiction and power, under limitations and restrictions that are prescribed by law, to lease and transfer county
11 property, however acquired, that is not necessary to the conduct of the county's business or the preservation of
12 county property and for which immediate sale cannot be had. The leases must be made in a manner and for
13 purposes that, in the judgment of the board, are best suited to advance the public benefit and welfare.

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

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

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

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

19

20 **Section 17.** Section 60-2-107, MCA, is amended to read:

21 **"60-2-107. Abandonment of highways -- exchange of roadways -- public notice required.** (1)

22 Except as provided in 60-4-213 through 60-4-218, the commission may abandon highways on the federal-aid
23 systems and state highways.

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

27 (b) The commission may:

28 (i) elect to offer to transfer the liability for and the maintenance of a highway to another agency or
29 agencies that may in turn elect to take responsibility for the highway; or

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

1 The

2 (c) Following a decision to abandon a highway, the commission shall notify the board of county
3 commissioners in writing of its intent to abandon a highway and hold a public hearing. The commission shall
4 publish for 3 consecutive weeks in local newspapers within the county the notice of abandonment and public
5 hearing.

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

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

13 (5) The commission may not abandon a highway, road, or right-of-way used to access private land if the
14 access benefits two or more landowners unless all the landowners agree to the abandonment."
15

16 NEW SECTION. Section 18. Notification to tribal governments. The secretary of state shall send
17 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
18 Chippewa tribe.

19
20 NEW SECTION. Section 19. Codification instruction. [Sections 1 through 12] are intended to be
21 codified as an integral part of Title 18, chapter 2, part 5, and the provisions of Title 18, chapter 2, part 5, apply
22 to [sections 1 through 12].

23
24 NEW SECTION. Section 20. Effective date. [This act] is effective July 1, 2017.

25 - END -