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SENATE BILL NO. 531

INTRODUCED BY D. SALOMON, E. BUTTREY, M. HOPKINS, S. FITZPATRICK, J. ELLSWORTH, K.

BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE COMMUNICATIONS ADVISORY COMMISSION;
REVISING THE CHALLENGE PROCESS; PROVIDING RULEMAKING AUTHORITY; PROVIDING FOR AN
APPLICATION FEE; PROVIDING DEFINITIONS; AMENDING SECTIONS 90-1-602, 90-1-603, 90-1-604, 90-1-
605, 90-1-606, 90-1-607, 90-1-608, AND 90-1-609, MCA; AMENDING SECTION 13, CHAPTER 449, LAWS
OF 2021; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-1-602, MCA, is amended to read:

"90-1-602. (Temporary) Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) (a) "Broadband" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints. The term includes capabilities that are incidental to and enable the operation of the communications service.

(b) The term does not include dial-up internet access service.

~~(1)(2) "Broadband service" means any commercially mature, universally available, terrestrially deployed technology having the capacity to transmit data from or to the internet at minimum speeds downstream and upstream at low latency to accommodate adequate and commonly used internet-based applications for residential, commercial, or government use. "Broadband equity, access, and deployment program" means the program established by the Infrastructure Investment and Jobs Act, Public Law 117-58, and implemented by the national telecommunications and information administration.~~

(2)(3) ~~"Broadband service infrastructure" means the signal transmission facilities and associated network equipment proposed to be deployed in a project area used for the provision of broadband service to~~

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1 residential, business, and government customers.

2 (4) "Challenge" means a contest to a proposal submitted to the department for funding on the
3 grounds as provided for by the national telecommunications and information administration.

4 (5) "Commission" means the communications advisory commission established in 90-1-603.

5 (6) "Community anchor institution" means an entity such as a school, library, health clinic, health
6 center, hospital or other medical provider, public safety entity, institution of higher education, or community
7 support organization.

8 ~~(3)~~(7) "Department" means the department of commerce administration.

9 ~~(4)~~(8) "Eligible provider" means an entity that:

10 (a) has authorization to do business in the state; and

11 (b) has demonstrated that it has the technical, financial, and managerial resources and experience
12 to provide broadband service or other communications service to customers in the state.

13 (9) "Extremely high cost per location threshold" is a subsidy cost for each location to be utilized
14 during the proposal selection process in which a proposal may be declined if use of an alternative technology
15 meeting the broadband, equity, access, and deployment program program's technical requirements would be
16 less expensive.

17 ~~(5)~~(10) "FCC" means the federal communications commission.

18 ~~(6) "Frontier area" means an area where there is no or extremely limited terrestrial broadband service.~~

19 (11) "High-cost area" means an unserved area in which the cost of building out broadband service
20 is fiscally imprudent, and the area contains no less than 80% of unserved broadband-serviceable locations.

21 (12) "Last mile" means broadband infrastructure that serves as the final leg connecting the
22 broadband service provider's network to the end-user customer's premises.

23 ~~(7) "Low latency" means latency that is sufficiently low to allow multiple, simultaneous, real time~~
24 ~~interactive applications.~~

25 (13) "Middle mile" means broadband infrastructure that does not connect directly to an end-user
26 location, including a community anchor institution, and includes leased dark fiber, interoffice transport,
27 backhaul, transport connectivity to data centers, special access transport and other similar services, and wired

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1 or private wireless broadband infrastructure, including microwave capacity, radio tower access, and other
2 services or infrastructure for wireless broadband network, such as towers, fiber, and microwave links.

3

4 ~~(8)(14)~~ "Project" means a proposed deployment of broadband service infrastructure set forth in a
5 proposal for funding authorized under this part.

6 ~~(9)(15)~~ "Project area" means a shapefile area in an unserved or underserved area where the proposed
7 broadband service infrastructure would be built as described in a proposal for funding authorized under this
8 part.

9 ~~(10)(16)~~ "Shapefile" means a GIS file format for storing, depicting, and analyzing geospatial data
10 depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file
11 (.shx), and a dBASE table (.dbf).

12 ~~(11)(17)~~ "Underserved area" means ~~an area where at least 10% of the delivery points have no access~~
13 ~~to broadband service offered with a download speed range of at least 100 megabits per second and an upload~~
14 ~~speed of at least 20 megabits per second or less with low latency~~ a location or area that is not an unserved
15 location and that lacks access to broadband service offered with a speed of not less than 100 megabits per
16 second for downloads, a speed of not less than 20 megabits per second for uploads, and latency less than or
17 equal to 100 milliseconds.

18 ~~(18)~~ "Underserved service project" means a project in which not less than 80% of broadband-
19 serviceable locations served by the project are unserved areas or underserved areas.

20 ~~(12)(19)~~ "Unserved area" means ~~a project area where at least 10% of delivery points have no access to~~
21 ~~broadband service or have no access to services operating with a download speed of at least 25 megabits per~~
22 ~~second and upload speed of at least 10 megabits per second with low latency~~ broadband-serviceable location
23 or area that has no access to broadband service or lacks service offered with a speed of not less than 25
24 megabits per second for downloads, a speed of not less than 3 megabits per second for uploads, and a latency
25 less than or equal to 100 milliseconds.

26 ~~(20)~~ "Unserved service project" means a project in which not less than 80% of broadband-
27 serviceable locations served by the project are unserved locations. An unserved service project may be as

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1 small as a single unserved location. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

2

3 **Section 2.** Section 90-1-603, MCA, is amended to read:

4 **"90-1-603. (Temporary) Establishment of program -- administration and funding.** (1) There is a
5 communications advisory commission that consists of nine members who must be appointed as follows:

6 (a) six legislators appointed by the president of the senate;

7 (b) the governor's director of the office of budget and program planning;

8 (c) the governor's chief economic development officer; and

9 (d) the governor's director of administration.

10 (2) The commission may provide parameters governing the submission and funding of broadband
11 deployment grants as allowed by state and federal law or regulation.

12 (4)(3) The department shall establish the broadband infrastructure deployment program and shall
13 administer and act as the fiscal agent for the program and is responsible for receiving and reviewing responsive
14 proposals and awarding contracts after review by the communications advisory commission provided for in
15 Chapter 401, Laws of 2021, and the governor's approval. A request for proposal may be cancelled or any
16 proposal may be rejected in whole or in part when it is in the best interests of the state under the direction of the
17 governor's chief economic development officer and with advice from the commission.

18 (4) The department shall develop parameters in accordance with state and federal law and federal
19 guidance for the deployment of broadband funds with advice from the governor's chief economic development
20 officer and the commission. The department shall make all materials available for public comment at least 14
21 days in advance of consideration by the commission.

22 (5) The governor's chief economic development officer, with advice from the commission, shall
23 review materials as required by the national telecommunications and information administration prior to
24 submission for approval, deployment plans, and grant award recommendations made by the department.

25 (6) The commission may cancel or reject an eligible proposal in whole or in part when it is in the
26 best interests of the state.

27 (7) The commission shall submit to the governor grant award recommendations for final approval.

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1 (8) Appointed members of the commission must be compensated and receive travel expenses as
2 provided in 2-15-124 for each day in attendance at commission meetings or in the performance of any duty or
3 service as a commission member.

4 (9) The department of administration shall staff the commission.

5 (10) Funding for the commission is allocated from the administrative costs allowed in subsection
6 (11).

7 ~~(2)(11)~~ Funding for the program established under this section is subject to appropriations from
8 general fund revenue, from bonds issued by the department, or federal broadband stimulus funds or other
9 federal funds appropriated by congress and allocated to the department for funding of broadband
10 communications projects. The department may retain up to 2% of federal funding to support program
11 administration as provided for by the national telecommunications and information administration. The
12 department shall report administrative expenditures to the commission on a quarterly basis. (Terminates on
13 occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

15 **Section 3.** Section 90-1-604, MCA, is amended to read:

16 **"90-1-604. (Temporary) Eligible projects.** (1) An eligible ~~provider proposal~~ may be awarded funding
17 under this section, consistent with the national telecommunications and information administration, for a project
18 in a project area that, as of the date the proposal is filed, constitutes an unserved or underserved area. Funds
19 ~~may not be used to support noncapital expenses, including general operations of an eligible provider,~~
20 ~~nonbroadband services, marketing, or advertising.~~ must be used in accordance with the requirements set forth
21 in the Infrastructure Investment and Jobs Act, Public Law 117-58, and as established by the national
22 telecommunications and information administration.

23 (2) The project area, including middle-mile or last-mile proposals, to be served by a project funded
24 under the program must be described on a shapefile basis.

25 (3) The department may issue requests for proposals or accept proposals from eligible providers
26 or solicit proposals for specific eligible projects as designated by the department, which would be submitted as
27 proposals pursuant to this part.

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1 (4) A broadband project may be recommended to the commission for disqualification on the basis
2 that the location surpasses the extremely high cost per location threshold, high-cost area calculation, or for
3 other valid reasons subject to approval by the national telecommunications and information administration.

4 (5) If no broadband service technology meeting national telecommunications and information
5 administration's technical requirements is deployable for a subsidy of less than the extremely high cost per
6 location threshold at a given location, the commission is authorized to recommend a proposal involving a less
7 costly technology for that location, even if that technology does not provide reliable broadband service but
8 otherwise satisfies the program's technical requirements.

9 (6) Middle-mile or last-mile broadband deployment projects may be recommended by the
10 commission if the responsive proposal meets the requirements set forth by the national telecommunications
11 and information administration.

12 (7) On recommendation by the commission, the department may request proposals from eligible
13 providers for unserved service projects or underserved service projects if no acceptable application is submitted
14 for funding consideration. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

15
16 **Section 4.** Section 90-1-605, MCA, is amended to read:

17 **"90-1-605. (Temporary) Eligible proposals.** (1) Eligible providers who submit responsive proposals:

18 (4)(a) may not receive funds under any other federal or state government grant or loan program
19 where government funding supports 100% of the proposed project's capital costs;

20 (2)(b) shall commit to paying a minimum of 20% of the project costs not less than the minimum
21 matching amount required by the Infrastructure Investment and Jobs Act, Public Law 117-58, and may not
22 provide a minimum matching amount from any funds derived from government grants or subsidies, except for
23 federal funds designated by the Infrastructure Investment and Jobs Act, Public Law 117-58 for broadband
24 deployment. Priority will be given to the eligible provider who contributes the largest percentage of costs from
25 its own funds. Local and tribal governments, in partnership with an eligible provider, may provide funding for
26 broadband infrastructure projects consistent with the provisions of this part, except that such funds may not be
27 counted toward the minimum 20% matching amount from a provider and as provided by the national

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1 telecommunications and information administration.

2 ~~(3)(c)~~ may only be a nongovernment entity with demonstrated experience in providing broadband
3 service or other communications services to end-user residential or business customers in the state, unless the
4 government entity or tribe applies in partnership with an eligible broadband service provider; and

5 (d) shall to the extent required by state or federal law, comply with any affordability requirements.

6 (2) The department, with approval from the commission, may submit a match waiver to the
7 national telecommunications and information administration if a proposal is within an extremely high cost per
8 location threshold or high-cost area or if the commission considers additional special circumstances exist and
9 that a waiver would serve the public interest and effectuate the purposes of the broadband, equity, access, and
10 deployment program. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

11

12 **Section 5.** Section 90-1-606, MCA, is amended to read:

13 **"90-1-606. (Temporary) Proposals.** (1) The department shall establish a location prioritized
14 timeframe commencing an open process for submission of proposals for funding under the proposal program
15 established in this part. The window for submission must be at least 60 days and not more than 90 days for any
16 shapefile area designation.

17 (2) (a) An eligible provider shall submit a proposal to the department on a form prescribed by the
18 department. A responsive proposal must include the following information:

19 ~~(a)(i)~~ evidence demonstrating the provider's technical, financial, and managerial resources and
20 experience to provide broadband service or other communications services to customers in the state and the
21 ability to build, operate, and manage broadband service networks serving business and residential customers in
22 the state;

23 ~~(b)(ii)~~ a description of the project area, including shapefiles, that the eligible provider proposes to
24 ~~build or serve and specific mapping of currently served areas, if any, including actual speed verification provide~~
25 broadband service;

26 ~~(c)(iii)~~ a description of the broadband service infrastructure that is proposed to be deployed, including
27 facilities, equipment, and network capabilities that include minimum speed thresholds;

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1 ~~(d)~~(iv) evidence, including a certification from the proposal signatory, demonstrating the unserved or
2 underserved nature of the project area to the best of the provider's knowledge;

3 ~~(e)~~(v) the number of households, businesses, and public institutions or entities that would have new
4 access to broadband service as a result of the proposal;

5 ~~(f)~~(vi) the total cost of the proposed project and the timeframe in which it will be completed;

6 ~~(g)~~(vii) the amount of matching funds, including funds from local or tribal governments, ~~and except for~~
7 ~~federal funds designated for broadband deployment, that the eligible provider proposes to contribute and a~~
8 ~~certification that no portion of the provider's matching funds are derived from any federal or state grant program~~
9 or federal funds as allowed by the Infrastructure Investment and Jobs Act, Public Law 117-58, and the national
10 telecommunications and information administration; and

11 ~~(h)~~(viii) a preliminary list of all government authorizations, permits, and other approvals required in
12 connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and
13 the completion of the proposed project.

14 **(b)** The department may request additional information as necessary to review the proposed
15 application. Applications that fail to provide the requirements in this section must be submitted to the
16 commission for review. The commission may review the applications and cancel those that do not meet the
17 requirements of this section.

18 (3) The department shall treat any information that is not publicly available as confidential and
19 subject to the trade secrets protections of state law upon an eligible provider's request for confidential
20 treatment, except that shapefile information depicting broadband coverage in the proposal must be publicly
21 disclosed in sufficient detail to enable a challenging provider to identify the project area proposed to be covered
22 by the provider. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

23

24 **Section 6.** Section 90-1-607, MCA, is amended to read:

25 **"90-1-607. (Temporary) Review of proposal challenges -- approval.** (1) ~~Five~~ Fourteen business
26 days following the closing of the submission window, the department shall make the proposals received
27 available for review in a publicly available electronic file, subject to the confidentiality provisions of 90-1-606(3).

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1 (2) ~~A broadband service provider that has timely submitted a proposal may submit to the~~
2 ~~department, within 30 days of the release of the proposals received, a written challenge to the proposals. The~~
3 ~~challenge must also include a new proposal that identifies improvements or increases in broadband speed,~~
4 ~~lower cost, area coverage, or completion date relative to the submitted proposals. Final response to challenges~~
5 ~~will be provided within 15 days of receipt of challenge for the purpose of expediting awarded projects or~~
6 ~~modifications accepted through the challenge process. This challenge may include:~~

7 ~~(a) information irrefutably disputing a provider's certification that a proposed project area is an~~
8 ~~unserved or an underserved area supported by the department's verified independent analysis and testing;~~

9 ~~(b) that no federal funding has been awarded to support the specific deployment proposed in the~~
10 ~~response pursuant to 90-1-605(1); and~~

11 ~~(c) evidence of broadband service infrastructure meeting or exceeding minimum standards for~~
12 ~~competitive proposals in the project area under challenge. The department shall develop criteria for a challenge~~
13 ~~process and publish the criteria for public comment at least 14 days prior to the opening of the challenge~~
14 ~~window. An entity does not have to submit a proposal for funding to challenge proposed projects with the~~
15 ~~advice of the governor's chief economic development officer and the commission. Final responses to~~
16 ~~challenges must be provided within 30 days of receipt of a challenge for the purpose of expediting awarded~~
17 ~~projects for modifications accepted through the challenge process.~~

18 ~~(3) Public shapefile data that includes the project area created under the FCC's rules for shapefiles~~
19 ~~must constitute evidence of broadband service infrastructure sufficient to show that a challenged project area is~~
20 ~~served completely beyond minimum standards.~~

21 (4)(3) In reviewing proposals and any accompanying challenge, the department shall conduct its own
22 review of the proposed project areas to ensure that all awarded funds are used to deploy broadband service
23 infrastructure to unserved or underserved areas. The department may require a provider or challenging
24 provider to submit additional information consistent with this part to enable it to properly assess the proposal or
25 challenge. The department may not award a contract to fund deployment of broadband service infrastructure for
26 a project area that fails to meet any of the criteria provided in this part for being an unserved or underserved
27 area. The department may require a provider to modify a proposal based on broadband access in the proposed

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1 area or other relevant factors.

2 ~~(5)(4)~~ The department shall award funding support for projects set forth in responsive proposals
3 based on a scoring system, approved by the commission, that must be released to the public at least 30 days
4 prior to the window for submission of proposals. The weighting scheme employed by the department must give
5 the highest weight or priority to the following specific criteria provided by the national telecommunications and
6 information administration and the following:

7 ~~(a) the amount of funds a local government and/or school district is contributing to the project relative~~
8 ~~to the amount of federal funds received by that local government and/or school district from the American~~
9 ~~Rescue Plan Act of 2021;~~

10 ~~(b) whether the proposed project area is a frontier, unserved, or underserved area, with frontier and~~
11 ~~unserved areas receiving greater weight;~~

12 ~~(c) the size and scope of the frontier, unserved, or underserved area proposed to be served;~~

13 ~~(d) the experience, technical ability, and financial soundness of the eligible provider in successfully~~
14 ~~deploying and providing broadband service;~~

15 (a) whether the proposed project area serves unserved or underserved areas, with unserved areas
16 receiving greater weight;

17 (b) the number of households, businesses, farms, ranches, and community anchor institutions
18 served;

19 (c) whether the proposed project qualifies as an extremely high cost per location threshold as
20 defined by the department and approved by the national telecommunications and information administration or
21 is a high-cost area as defined by the national telecommunications and information administration;

22 ~~(e)(d)~~ the length of time the provider has been providing broadband service in the state;

23 ~~(f)(e)~~ the extent to which government funding support is necessary to deploy broadband service
24 infrastructure in the proposed project area;

25 ~~(g) the size and proportion of the matching funds proposed to be committed by the provider;~~

26 ~~(h)(f)~~ the service speed thresholds proposed in the proposal and the scalability of the broadband
27 service infrastructure proposed to be deployed with higher speed thresholds receiving greater weight;

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1 ~~(i)(g)~~ the provider's ability to leverage its own nearby or adjacent broadband service infrastructure to
2 facilitate the cost-effective deployment of broadband service infrastructure in the proposed project area;

3 ~~(j)~~ ~~the extent to which the project does not duplicate any existing broadband service infrastructure in~~
4 ~~the proposed project area;~~

5 ~~(k)(h)~~ the estimated time in which the provider proposes to complete the proposed project;

6 ~~(l)~~ ~~the number of Montana jobs the provider proposes to create or maintain relative to the population~~
7 ~~of the region where service is proposed;~~

8 ~~(m)(i)~~ any other factors the department, as recommended by the commission, determines to be
9 reasonable and appropriate, consistent with the purpose of facilitating the economic deployment of broadband
10 service infrastructure to unserved or underserved areas Infrastructure Investment and Jobs Act, Public Law
11 117-58, and the national telecommunications and information administration; and

12 ~~(n)(j)~~ broadband service providers who have broadband service infrastructure already deployed in
13 the project area.

14 ~~(6)(5)~~ Frontier High-cost areas will must be considered for services to the extent terrestrial service is
15 economically viable.

16 ~~(7)(6)~~ The department shall set a reasonable timeframe to complete projects selected for funding
17 approval. The department may, in consultation with the provider, set reasonable milestones regarding this
18 completion. The department shall create procedures including penalties associated with any failure to comply
19 with the provisions of the awarded contract without reasonable cause. (Terminates on occurrence of
20 contingency--sec. 13, Ch. 449, L. 2021.)"

21

22 **Section 7.** Section 90-1-608, MCA, is amended to read:

23 **"90-1-608. (Temporary) Implementation.** (1) Consistent with the provisions of this part, the
24 department shall define criteria and implementation processes to ensure that project funds are used as
25 intended.

26 (2) This section may not be construed to preclude the department from considering a provider's
27 financial ability to complete the project proposed in a proposal or making reasonable requests for information

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1 necessary for the oversight and administration of projects funded under this section.

2 (3) The department may adopt rules, in consultation with the commission, as necessary to carry
3 out [sections 1 through 8]. This section may not be construed to empower the department to adopt any
4 additional regulatory obligations or to impose any new or additional regulatory requirements on funding
5 recipients, through proposal agreements or any other mechanism, other than the program implementation
6 procedures expressly authorized in this part or as required by federal laws providing funding to be distributed
7 pursuant to this statute. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

8

9 **Section 8.** Section 90-1-609, MCA, is amended to read:

10 **"90-1-609. (Temporary) Montana broadband infrastructure accounts.** (1) (a) There is a federal
11 special Montana broadband infrastructure account.

12 (b) All money in the account is allocated to the department of ~~commerce~~ administration to be used
13 solely for the purposes of this part. Interest earned on funds in the account must be deposited in the account.

14 (c) The governor may accept and shall deposit into the account federal broadband stimulus funds
15 or other federal funds or other federal funds appropriated by congress and allocated to the department of
16 ~~commerce~~ administration for funding of broadband communications projects.

17 (d) Notwithstanding any other provision of law, funds allocated under this section may not be
18 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to this
19 part.

20 (2) (a) There is a state special Montana broadband infrastructure account.

21 (b) All money in the account is allocated to the department of ~~commerce~~ administration to be used
22 solely for the purposes of this part. Interest earned on funds in the account must be deposited in the account.

23 (c) The governor may accept and shall deposit to the account any penalties allocated to the
24 department of ~~commerce~~ administration for funding of broadband communications projects.

25 (d) Notwithstanding any other provision of law, funds allocated under this section may not be
26 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to this
27 part. (Terminates on occurrence of contingency--sec. 13, Ch. 449, L. 2021.)"

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NEW SECTION. Section 9. Application fees. An eligible provider submitting an application shall include a completed form that must be accompanied by a nonrefundable \$100 application fee and all other required documents and information. The form must be approved by the governor's chief economic development and by the commission.

Section 10. Section 13, Chapter 449, Laws of 2021, is amended to read:

"Section 13. Contingent termination. [Sections 1 through 9] terminate when the budget director certifies to the code commissioner that all funds received from the American Rescue Plan Act of 2021, Public Law 117-2, the Infrastructure Investment and Jobs Act of 2021, Public Law 117-58, or subsequent funding pursuant to [section 3(2)] allocated to the department of ~~commerce~~ administration for communications until funds have been expended."

NEW SECTION. Section 11. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 12. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each federally recognized tribal government in Montana.

NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

- END -