

HOUSE BILL NO. 126

INTRODUCED BY F. ANDERSON

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING DEPARTMENT OF COMMERCE LAWS TO EXPAND ACCESS TO LOW-COST CAPITAL TO CERTAIN ELIGIBLE PROJECTS AND ENTITIES; UPDATING PUBLIC NOTICE REQUIREMENTS FOR CERTAIN PUBLIC HEARINGS; AMENDING THE BOND ISSUANCE CAP ON THE MONTANA FACILITY FINANCE AUTHORITY; REVISING DEFINITIONS; AMENDING SECTIONS 90-5-101, 90-5-108, 90-7-102, 90-7-104, 90-7-225, 90-7-229, AND 90-7-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-5-101, MCA, is amended to read:

"90-5-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" includes but is not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Education facilities" means any real or personal properties required or useful for the operation of an education provider.

(4) "Education provider" means any private, nonprofit corporation or institution within the state of Montana:

(a) authorized to provide or operate education facilities; and

(b) providing a program of education.

~~(3)~~(5) "Electric energy generation facility" means any combination of a physically connected

1 generator or generators, associated prime movers, and other associated property and transmission facilities
 2 and upgrades and improvements of transmission facilities, including appurtenant land and improvements and
 3 personal property, that are normally operated together to produce and transfer electric power. The term
 4 includes but is not limited to generating facilities that produce and transfer electricity from coal-fired steam
 5 turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven
 6 by falling water.

7 ~~(4)~~(6) "Family services provider" means organizations, including nonprofit corporations, that provide
 8 human services for children and adults, including but not limited to early care services for children, youth
 9 services, health services, social services, habilitative services, rehabilitative services, preventive care, and
 10 supportive services, and training, educational, and referral activities in support of human services.

11 ~~(5)~~(7) "Governing body" means the board or body in which the general legislative powers of the
 12 municipality or county are vested.

13 ~~(6)~~—"Higher education facilities" means any real or personal properties required or useful for the
 14 operation of an institution of higher education.

15 ~~(7)~~—"Institution of higher education" means any private, nonprofit corporation or institution within the
 16 state of Montana:

17 ~~(a)~~—authorized to provide or operate educational facilities; and

18 ~~(b)~~—providing a program of education beyond the high school level.

19 (8) "Mortgage" means a mortgage or deed of trust or other security device.

20 (9) "Municipality" means any incorporated city or town in the state.

21 (10) "Project" means:

22 (a) any land, any building or other improvement, and any other real or personal property
 23 considered necessary ~~in connection with~~ or related to the improvement, whether or not now in existence, that
 24 must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises;

25 (b) recreation or tourist facilities;

26 (c) local, state, and federal governmental facilities;

27 (d) multifamily housing, hospitals, long-term care facilities, community-based facilities for
 28 individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities;

- 1 (e) ~~higher~~-education facilities;
- 2 (f) electric energy generation facilities;
- 3 (g) family services provider facilities;
- 4 (h) any facilities that are used or considered necessary to create or produce any intangible item, as
- 5 defined in section 197(d)(1)(C)(iii) of the Internal Revenue Code, 26 U.S.C. 197(d)(1)(C)(iii), including any
- 6 patent, copyright, formula, process, design, pattern, knowledge, format, or other similar intangible item;
- 7 (i) the production of energy using an alternative renewable energy source as defined in 15-6-225;
- 8 and
- 9 (j) any combination of projects in subsections (10)(a) through (10)(i)."

10

11 **Section 2.** Section 90-5-108, MCA, is amended to read:

12 **"90-5-108. Use of proceeds of bond sales.** (1) The proceeds from the sale of bonds issued under

13 authority of this part must be applied only for the purpose for which the bonds were issued or to discharge any

14 existing indebtedness secured by a lien against a hospital or long-term care facility or ~~higher~~-education facility

15 leased or owned by a nonprofit corporation or against a family services provider facility. However, if the project

16 is not a hospital or long-term care facility or ~~higher~~-education facility leased or owned by a nonprofit corporation

17 or a family services provider facility, the proceeds from the sale of bonds may not be used to discharge

18 indebtedness without an improvement to the project.

19 (2) Any accrued interest and premium received in the sale of bonds must be applied to the

20 payment of the principal of or the interest on the bonds sold. If for any reason any portion of the proceeds is not

21 needed for the purpose for which the bonds were issued, then the unneeded portion of the proceeds must be

22 applied to the payment of the principal of or the interest on the bonds."

23

24 **Section 3.** Section 90-7-102, MCA, is amended to read:

25 **"90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the following

26 definitions apply:

- 27 (1) "Authority" means the Montana facility finance authority created in 2-15-1815.
- 28 (2) "Capital reserve account" means the account established in 90-7-317.

1 (3) "Costs" means costs allowed under 90-7-103.

2 (4) "Eligible facility" means any eligible facility as defined in 90-7-104.

3 (5) (a) "Institution" means any public or private:

4 (i) nonprofit hospital, corporation, or other organization authorized to provide or operate an eligible
5 facility in this state;

6 (ii) nonprofit prerelease center, corporation, or other organization authorized to operate a
7 prerelease center in this state; ~~or~~

8 (iii) for-profit or nonprofit corporation or other organization authorized to provide for or to operate a
9 project as defined in 90-5-101;

10 (iv) ~~or a~~ an eligible facility with qualified small issue bond financing pursuant to section 144(a) of
11 the Internal Revenue Code, 26 U.S.C. 144(a); or

12 (v) nonprofit corporation organized under section 501(c)(3) of the Internal Revenue Code, 26
13 U.S.C. 501(c)(3).

14 (b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled
15 by one or more nonprofit entities:

16 (i) a network of health care providers, regardless of how it is organized;

17 (ii) an integrated health care delivery system;

18 (iii) a joint venture or partnership between or among health care providers;

19 (iv) a purchasing alliance composed of health care providers;

20 (v) any health insurers and third-party administrators that are participants in a system, network,
21 joint venture, or partnership that provides health services through one or more health facilities.

22 (6) "Participating institution" means an institution that undertakes the financing, refunding, or
23 refinancing of obligations on the construction or acquisition of an eligible facility pursuant to the provisions of
24 this chapter.

25 (7) "Revenue" means, with respect to eligible facilities, the rents, fees, charges, interest, principal
26 repayments, and other income received or to be received by the authority from any source on account of the
27 eligible facilities."
28

1 **Section 4.** Section 90-7-104, MCA, is amended to read:

2 **"90-7-104. Eligible facility.** (1) The term "eligible facility" means any structure or building suitable for
3 use as:

4 (a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;

5 (b) a public health center, as defined in 7-34-2102;

6 (c) a facility for persons with disabilities;

7 (d) a chemical dependency treatment facility;

8 (e) a nursing school;

9 (f) a medical teaching facility;

10 (g) a laboratory;

11 (h) a dental care facility;

12 (i) a prerelease center;

13 (j) a diagnostic, treatment, or surgical center;

14 (k) a facility providing services for the elderly;

15 (l) a facility owned, used, or supported by a nonprofit corporation organized under section

16 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3);

17 (m) a project defined in 90-5-101;

18 (n) applicable to a project or a facility with qualified small issue bond financing pursuant to section

19 144(a) of the Internal Revenue Code, 26 U.S.C. 144(a); or

20 ~~(m)(o)~~ a structure or facility related to any of the uses enumerated in subsections (1)(a) through ~~(4)(l)~~

21 (1)(n) or required or useful for the operation of an eligible facility. These related facilities include supporting

22 service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and

23 include without limitation the acquisition, preparation, and development of all lands and real and personal

24 property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through ~~(4)(l)~~

25 (1)(n).

26 (2) An eligible facility does not include:

27 ~~(a)~~ items such as food, fuel, supplies, or other items that are customarily considered as current

28 operating expenses; ~~and~~

1 ~~(b) a structure used or to be used primarily for sectarian instruction or study or as a place for~~
2 ~~devotional activities or religious worship."~~

3

4 **Section 5.** Section 90-7-225, MCA, is amended to read:

5 **"90-7-225. Procedure prior to financing qualified small bond issue projects.** (1) In addition to
6 meeting the other requirements contained in this chapter or in state or federal law, the requirements of
7 subsections (2) through (4) must be met before financing is provided for a project described in 90-7-104~~(1)(l)~~
8 (1)(m) and (1)(n).

9 (2) The authority shall find that the financing is in the public interest. In order to determine whether
10 or not the financing is in the public interest, a public hearing must be conducted in the following manner:

11 (a) the city or county in which the project will be located must be notified, and the city and county
12 shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

13 (b) if a request for a local hearing is not received by the authority within 14 days after the
14 notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

15 (3) Notice of the hearing must be published at least once a week for 2 weeks prior to the date set
16 for the hearing by publication in a newspaper of general circulation in the city or county where the hearing will
17 be held and the project will be located. The notice must include the time and place of the hearing, a general
18 description of the nature and location of the project, the name of the lessee, borrower, or user of the project and
19 the maximum principal amount of the financing to be provided by the authority.

20 (4) If the hearing required by subsection (2) is conducted by a local government, the governing
21 body of the local government shall notify the authority of its determination of whether the financing is in the
22 public interest within 14 days after the completion of the public hearing."

23

24 **Section 6.** Section 90-7-229, MCA, is amended to read:

25 **"90-7-229. Procedure prior to financing certain projects.** (1) In addition to meeting the other
26 requirements contained in this chapter or in state or federal law, the requirements of subsections (2) through (4)
27 must be met before financing is provided for a project described in 90-7-104~~(1)(l)~~(1)(m) and (1)(n).

28 (2) The authority shall find that the financing is in the public interest. In order to determine whether

1 or not the financing is in the public interest, a public hearing must be conducted in the following manner:

2 (a) the city or county in which the project will be located must be notified, and the city and county
3 shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

4 (b) if a request for a local hearing is not received by the authority within 14 days after the
5 notification in subsection (2)(a), the authority may hold the hearing at a time and place it determines.

6 (3) Notice of the hearing must be published at least once a week for 2 weeks prior to the date set
7 for the hearing by publication in a newspaper of general circulation in the city or county where the hearing will
8 be held and the project will be located. The notice must include the time and place of the hearing, a general
9 description of the nature and location of the project, the name of the lessee, borrower, or user of the project,
10 and the maximum principal amount of the financing to be provided by the authority.

11 (4) If the hearing required by subsection (2) is conducted by a local government, the governing
12 body of the local government shall notify the authority of its determination of whether the financing is in the
13 public interest within 14 days after the completion of the public hearing."
14

15 **Section 7.** Section 90-7-302, MCA, is amended to read:

16 **"90-7-302. Bonds and notes of authority.** (1) The authority may in each biennium borrow money
17 and issue bonds and notes in an aggregate principal amount not to exceed ~~\$500 million~~ \$1 billion on behalf of
18 nonprofit corporations organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3),
19 exclusive of bonds or notes issued to refund outstanding bonds or notes. There is no limit on the aggregate
20 principal amount of bonds and notes which may be issued by the authority on behalf of private corporations not
21 organized under section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), other than as may exist
22 under applicable federal law.

23 (2) Bonds must be authorized. The authority may specify that the bonds must be dated and must
24 mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must bear
25 interest at a rate or rates, be in denominations, be in the proper registered or bearer form, be executed in a
26 manner, be payable in a medium of payment and at a place or places, and be subject to terms of redemption
27 that the authority may provide.

28 (3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the

1 Uniform Commercial Code, subject to requirements as to registration.

2 (4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the
3 time or times that the authority may determine.

4 (5) Before the issuance of any bonds, the authority shall make provisions, by lease or other
5 agreement, regarding the eligible facility or facilities being financed by the issue of the bonds, for rentals or
6 other considerations sufficient, in the judgment of the authority, to:

7 (a) pay the principal of and interest on the bonds as they become due;

8 (b) create and maintain the reserves for payment of the principal and interest;

9 (c) meet all obligations in connection with the lease or other agreement; and

10 (d) meet all costs necessary to service the bonds unless the lease or agreement provides that the
11 obligations are to be met or costs are to be paid by a party other than the authority.

12 (6) The authority, before issuing any bonds, shall certify that an applicant has submitted a
13 statement that indicates that any contract let for a public project costing more than \$25,000 and financed from
14 the proceeds of bonds issued under this part will contain a provision requiring the contractor to pay the
15 standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless
16 the contractor performing the work has entered into a collective bargaining agreement covering the work to be
17 performed.

18 (7) The authority may combine, for the purposes of a single offering, bonds financing more than
19 one eligible facility under this chapter."

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21 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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