

SENATE BILL NO. 515
INTRODUCED BY M. TAYLOR

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATED TO ELECTRICAL ENERGY GENERATION AND ELECTRICAL ENERGY AND NATURAL GAS TRANSMISSION AND DISTRIBUTION; ESTABLISHING A MONTANA POWER AUTHORITY; ALLOWING THE AUTHORITY TO BUY OR BUILD ELECTRICAL GENERATION FACILITIES OR ELECTRICAL ENERGY OR NATURAL GAS TRANSMISSION OR DISTRIBUTION SYSTEMS AND TO ENTER INTO JOINT VENTURES FOR THESE PURPOSES; AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE REVENUE BONDS FOR THE MONTANA POWER AUTHORITY TO ACQUIRE ELECTRICAL GENERATION FACILITIES AND TO BUILD ELECTRICAL ENERGY OR NATURAL GAS TRANSMISSION OR DISTRIBUTION SYSTEMS; PROVIDING THAT THE PRINCIPAL AND INTEREST ON THE BONDS IS PAYABLE FROM THE SALE OF ELECTRICAL ENERGY FROM THE FACILITIES AND FROM ELECTRICAL ENERGY OR NATURAL GAS TRANSMISSION AND DISTRIBUTION CHARGES; ALLOWING THE MONTANA POWER AUTHORITY TO ALSO FINANCE PROJECTS THROUGH COAL SEVERANCE TAX BONDS AND OTHER REVENUE BONDS; PROVIDING RESTRICTIONS ON THE SALE OF POWER TO OUT-OF-STATE CUSTOMERS; REQUIRING A DEFAULT SUPPLIER TO PURCHASE POWER FROM THE AUTHORITY IF THE TRANSACTION IS ADVANTAGEOUS TO CUSTOMERS; RAISING THE RATE OF THE WHOLESALE ENERGY TRANSACTION TAX TO PROVIDE SUPPORT FOR THE AUTHORITY; CLARIFYING THAT THE MONTANA POWER AUTHORITY IS NOT A REGULATED UTILITY; AMENDING SECTIONS 15-72-104, 15-72-106, 17-5-701, 69-3-101, 69-8-102, 69-8-210, 69-8-403, 69-8-416, 77-1-301, AND 90-5-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 9] may be cited as the "Montana Power Authority Act".

NEW SECTION. **Section 2. Purpose.** The legislature finds and declares that:

- (1) the economic viability and security of the state of Montana is directly linked to reliable and affordable electrical energy and natural gas;
- (2) electrical energy and natural gas have become a basic and irreplaceable necessity that impacts the

public health, safety, and welfare of all Montana citizens;

(3) Montana's residential, agricultural, governmental, commercial, and industrial consumers of electrical energy and natural gas are entitled to cost-based prices for electrical energy and natural gas;

and

(4) it is in the public interest that the Montana power authority have the ability to:

(a) purchase electrical energy and natural gas from any supplier in the wholesale market for the purpose of providing reliable, cost-based power exclusively to Montana consumers;

(b) construct, acquire, or enter into joint ventures to construct or acquire electrical generation facilities that will provide cost-based power to consumers in Montana;

(c) construct, acquire, or enter into joint ventures to construct or acquire electrical energy or natural gas transmission or distribution systems;

(d) sell electrical energy to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility that serves Montana customers;

(e) contract with public or private entities for the operation and maintenance of state-owned power facilities; and

(f) encourage and support energy conservation to mitigate consumer costs and detrimental impacts on the environment.

NEW SECTION. Section 3. Definitions. As used in [sections 1 through 9], unless the context requires otherwise, the following definitions apply:

(1) "Cost-based" means the price charged to a distribution services provider that is sufficient to meet the operating costs, including commodity costs, of the Montana power authority and to ensure timely repayment of bonds issued on behalf of or any other debt incurred by the Montana power authority.

(2) "Default supplier" means a distribution services provider or a person that has received a default supplier license from the public service commission.

(3) "Department" means the department of natural resources and conservation established in 2-15-3301.

(4) "Montana power authority" or "authority" means the citizen board established in [section 4].

NEW SECTION. Section 4. Montana power authority -- board composition -- procedures. (1) There is a Montana power authority consisting of a seven-member citizen board appointed by the governor with the consent of the senate.

(2) In selecting the members, the governor shall:

(a) consider each prospective member's knowledge and understanding of the structural and financial dimensions of the electrical energy and natural gas sectors of the state's economy;

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

(i) irrigated agriculture;

(ii) commercial and industrial enterprise; and

(iii) residential;

(c) choose an at-large member with academic or business credentials that indicate that the person has substantial experience in energy markets in the region of the western states; and

(d) choose an at-large member with substantial experience in financial, banking, and bonding matters.

(3) The members shall elect the presiding officer by majority vote.

(4) Members of the Montana power authority shall serve staggered 4-year terms. The governor shall designate two of the initial members to serve 2-year terms and three of the initial members to serve 3-year terms. Vacancies must be filled by appointment for the unexpired term. A member may not serve more than two consecutive terms.

(5) The Montana power authority shall meet at least twice a year and may meet more frequently as required by circumstances or at the request of any two or more members of the authority.

(6) Decisions of the Montana power authority require a simple majority of the whole membership.

(7) The Montana power authority is attached to the department for administrative purposes, and the department shall provide staff support and a liaison between the authority and other state or federal agencies.

NEW SECTION. Section 5. Powers and duties. (1) The Montana power authority may:

(a) purchase electrical energy or natural gas from any wholesale power supplier, on a contractual basis, without limitation on the duration of any contract, to meet the aggregated load requirements of consumers in the service territory of a distribution services provider in Montana;

(b) purchase electrical generation facilities or electrical energy or natural gas transmission or distribution systems in the state;

(c) enter into joint ventures with any municipality, a cooperative, an investor-owned utility, or any other public or licensed private entity in Montana for the purpose of financing the construction of an electrical generation facility or an electrical energy or natural gas transmission or distribution system;

(d) notwithstanding the revenue bonding authority provided for in [sections 6 and 7], request that the legislature approve coal severance tax bonds, in accordance with 17-5-702, or issue revenue bonds, in accordance with 17-5-720, to be issued by the board of examiners pursuant to 17-5-706 for the purpose of:

(i) constructing electrical generation facilities or electrical energy or natural gas transmission or distribution systems in the state; or

(ii) purchasing an electrical generation facility or an electrical energy or natural gas transmission or distribution system; or

(e) sell electrical energy to any distribution services provider in the state;

(f) participate in a regional transmission organization established in response to or in compliance with an order of the federal energy regulatory commission; and

(g) participate with any municipality in an electrical energy generation project as provided in Title 90, chapter 5, part 1.

(2) The Montana power authority shall:

(a) subsequent to the purchase of natural gas from the wholesale market or from an in-state producer, offer cost-based natural gas to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state; and

(b) subsequent to the purchase of electrical energy from the wholesale market or the generation of power from an in-state generation facility, offer cost-based electrical energy to Montana consumers, including to a default supplier and to any municipal utility, cooperative utility, or investor-owned utility in the state.

NEW SECTION. Section 6. Bond authorization. (1) The board of examiners may issue and sell bonds of the state in an aggregate principal amount not to exceed \$850 million for the purposes authorized in [section 7]. The bonds are revenue obligations in which the net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired or built pursuant to [section 7] or revenue from electrical energy or natural gas transmission and distribution charges is pledged for payment of the principal and interest on the bonds. In issuing the bonds, the board has the authority provided for in 17-5-921 through 17-5-930 that is consistent with the authorization provided in this section.

(2) The proceeds of the bonds, other than any premiums and accrued interest received, must be deposited in an account in the state special revenue fund. Premiums and accrued interest must be deposited in the debt service fund established in 17-2-102. Proceeds of bonds deposited in the account may be used to pay the costs of issuing the bonds and to fulfill the purposes authorized in [section 7]. For the purposes of 17-5-803

and 17-5-804, the account constitutes a capital projects account. The bond proceeds must be available to the Montana power authority and may be used for the purposes authorized in this section without further budgetary authorization.

(3) (a) In authorizing the sale and issuance of the bonds, the board of examiners, upon request of the Montana power authority, may create separate accounts or subaccounts to provide for the payment and security of the bonds, including a debt service reserve account. The net revenue from the sale of the electrical energy produced from the electrical generation facilities acquired pursuant to [section 7] must be pledged to these accounts.

(b) The electrical energy produced from the electrical generation facilities must be offered to in-state customers before the electrical energy may be offered to other customers.

NEW SECTION. Section 7. Use of bond proceeds. The Montana power authority shall use the proceeds of the bonds authorized in [section 6] to purchase the electrical generation facilities and associated water rights for those facilities, TO BUILD ELECTRICAL ENERGY GENERATION FACILITIES, or to build ~~new~~ state-owned electrical energy or natural gas transmission or distribution systems. The Montana power authority may not acquire a facility or system that is associated with a superfund project.

NEW SECTION. Section 8. Interagency cooperation. (1) State agencies shall cooperate with the Montana power authority in the planning of electrical energy and natural gas purchases or the permitting or constructing of electrical generation facilities.

(2) Within the limits of available resources, state agencies shall provide scientific, economic, and other relevant data requested by the Montana power authority.

NEW SECTION. Section 9. Funding -- special revenue account. (1) There is a Montana power authority special revenue account within the state special revenue fund established in 17-2-102.

(2) Revenue derived from the wholesale energy transaction tax pursuant to 15-72-106 must be deposited into this account.

(3) The revenue received under this section must be used to:

(a) meet the administrative costs of the Montana power authority, including travel expenses for board members; and

(b) to the extent possible, supplement the authority's other financial offers, incentives, and endeavors

pursuant to [sections 5 and 8].

Section 10. Section 15-72-104, MCA, is amended to read:

"15-72-104. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a)

Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of ~~0.015~~ 0.016 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

(b) For electricity produced in the state for delivery outside of the state, the taxpayer is the person owning or operating the electrical generation facility producing the electricity. The transmission services provider shall collect the tax from the person based upon the kilowatt hours introduced onto transmission lines from the electrical generation facility. The amount of kilowatt hours subject to tax must be reduced by 5% to compensate for transmission line losses.

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to 15-72-116.

(d) For electricity produced outside the state for delivery inside the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(e) For electricity delivered to a distribution services provider that is a rural electric cooperative for delivery to purchasers that have opted for customer choice under the provisions of Title 69, chapter 8, part 3, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based on the amount of kilowatt hours of electricity delivered to the distribution services provider that is attributable to customers that have opted for customer choice.

(f) For electricity delivered to a distribution services provider that prior to May 2, 1999, was owned by a public utility as defined in 69-3-101, the tax is imposed on the successor distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider.

(2) (a) If more than one transmission services provider transmits electricity, the last transmission services provider transmitting or delivering the electricity shall collect the tax.

(b) If the transmission services provider is an agency of the United States government, the distribution

services provider receiving the electricity shall self-assess the tax subject to the provisions of this part.

(c) If an electrical generation facility located within the state produces electricity for sale inside and outside the state, sales within the state are considered to have come from electricity produced within the state for purposes of the tax imposed by this section.

(3) (a) Electricity transmitted through the state that is not produced or delivered in the state is exempt from the tax imposed by this section.

(b) Electricity produced in the state by an agency of the of the United States government for delivery outside of the state is exempt from the tax imposed by this section.

(c) Electricity delivered to a distribution services provider that is the Montana power authority, a municipal utility described in 69-8-103(5)(b), or a rural electric cooperative organized under the provisions of Title 35, chapter 18, is exempt from the tax imposed by this section.

(d) Electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997, is exempt from the tax imposed by this section.

[(e) Electricity delivered by a distribution services provider to a customer with loads of 1,000 kilowatts or greater that was first served by a public utility after December 31, 1996, is exempt from the tax imposed by this section, provided that the customer purchases the electricity pursuant to a contract or contracts that establish the purchase price or prices of electricity. The exemption allowed by this subsection (3)(e) does not apply to electricity purchased under a renewal or extension of an existing contract or existing contracts.]

(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with this part in its rates. (Bracketed language terminates January 1, 2003--sec. 40, Ch. 556, L. 1999.)"

Section 11. Section 15-72-106, MCA, is amended to read:

"15-72-106. Collection of wholesale energy transaction tax -- disposition of revenue. (1) A transmission services provider shall collect the tax imposed under 15-72-104 from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by 15-72-104, both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of this part.

(3) The Except as provided in subsection (4), the wholesale energy transaction tax collected under this

part must be deposited in the general fund.

(4) An amount sufficient to fund the activities of the Montana power authority, as determined by the authority, but not to exceed \$230,000 of the wholesale energy transaction tax collected under this part, must be deposited annually in the state special revenue account provided for in [section 9]."

Section 12. Section 17-5-701, MCA, is amended to read:

"17-5-701. State of Montana coal severance tax bonds. This part provides for the issuance of state of Montana coal severance tax bonds (also referred to as coal severance tax bonds in this part) to:

(1) finance renewable resource projects in the state designed to provide, during and after extensive coal mining, a healthy economy, the alleviation of social and economic impacts created by coal development, and a clean and healthful environment for present and future generations; ~~and~~

(2) finance loans to local governments for infrastructure projects under Title 90, chapter 6, part 7-; and

(3) finance electrical generation facilities and electrical energy and natural gas distribution and transmission facilities at rates that are cost-based, as defined in [section 3]."

Section 13. Section 69-3-101, MCA, is amended to read:

"69-3-101. Meaning of term "public utility". (1) ~~The~~ Except as provided in subsection (2)(d), the term "public utility", ~~within the meaning of for the purposes of this chapter, shall embrace~~ means every corporation, both public and private, company, individual, or association of individuals, as well as their lessees, trustees, or receivers appointed by any court ~~whatsoever, that now or hereafter may~~ own, operate, or control any plant or equipment, any part of a plant or equipment, or any water right within the state for the production, delivery, or furnishing for or to other persons, firms, associations, or corporations, private or municipal:

(a) heat;

(b) street-railway service;

(c) light;

(d) power in any form or by any agency;

(e) except as provided in chapter 7, water for business, manufacturing, household use, or sewerage service, whether within the limits of municipalities, towns, and villages or elsewhere;

(f) regulated telecommunications service.

(2) The term "public utility" does not include:

(a) privately owned and operated water, sewer, or combination systems that do not serve the public;

(b) county or consolidated city and county water or sewer districts as defined in Title 7, chapter 13, parts 22 and 23; ~~or~~

(c) a person exempted from regulation as a public utility as provided in 69-3-111; or

(d) the Montana power authority established in [section 4]."

Section 14. Section 69-8-102, MCA, is amended to read:

"69-8-102. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their supplier of electricity and related services in a competitive market as soon as administratively feasible. Affording this opportunity serves the public interest.

(3) The interests of Montana consumers should be protected and the financial integrity of electrical utilities should be fostered.

(4) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; ~~and~~

(f) access to cost-based electricity from the Montana power authority or a federal power marketing agency; and

~~(f)~~(g) prevention of anticompetitive and abusive activities.

(5) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana."

Section 15. Section 69-8-210, MCA, is amended to read:

"69-8-210. Public utilities -- electricity supply. (1) On the effective date of a commission order implementing a public utility's transition plan pursuant to 69-8-202, the public utility shall remove its generation assets from the rate base.

(2) During the transition period, the commission may establish cost-based prices for electricity supply service for customers that do not have a choice of electricity supply service or that have not yet chosen an electricity supplier.

(3) If the transition period is extended, then the customers' distribution services provider shall:

(a) extend any cost-based contract with the distribution services provider's affiliate supplier for a term not more than 3 years; or

(b) purchase electricity from ~~the market~~ the Montana power authority, if and when the authority offers a contract for cost-based electricity that is advantageous to consumers served by the distribution services provider, or if an advantageous contract is not available from the Montana power authority, from the market; and

(c) use a mechanism that recovers electricity supply costs in rates to ensure that those costs are fully recovered.

(4) If a public utility intends to be an electricity supplier through an unregulated division, then the public utility must be licensed as an electricity supplier pursuant to 69-8-404."

Section 16. Section 69-8-403, MCA, is amended to read:

"69-8-403. Commission authority -- rulemaking authority. (1) Beginning on the effective date of a commission order regarding a public utility's transition plan, the commission shall regulate the public utility's retail transmission and distribution services within the state of Montana, as provided in this chapter, and may not regulate the price of electricity supply except as electricity supply may be procured as provided in this section:

(a) by one or more default suppliers for those customers not being served by a competitive supplier; or

(b) by the distribution function of a public utility for those customers that are not being served by a competitive electricity supplier as provided by commission rules. During the transition period, those procurements may include a cost-based contract from a supply affiliate or an unregulated division.

(2) The commission shall decide if there is workable competition in the electricity supply market by determining whether competition is sufficient to inhibit monopoly pricing or anticompetitive price leadership. In reaching a decision, the commission may not rely solely on market share estimates.

(3) The commission shall license electricity suppliers and enforce licensing provisions pursuant to

69-8-404.

(4) The commission shall promulgate rules that identify the licensees and ensure that the offered electricity supply is provided as offered and is adequate in terms of quality, safety, and reliability.

(5) The commission shall establish just and reasonable rates through established ratemaking principles for public utility distribution and transmission services and shall regulate these services. The commission may approve rates and charges for electricity distribution and transmission services based on alternative forms of ratemaking such as performance-based ratemaking, on a demonstration by the public utility that the alternative method complies with this chapter, and on the public utility's transition plan.

(6) The commission shall certify that a cooperative utility has adopted a transition plan that complies with this chapter. A cooperative utility's transition plan is considered certified 60 days after the cooperative utility files for certification.

(7) The commission shall promulgate rules that protect consumers, distribution services providers, and electricity suppliers from anticompetitive and abusive practices.

(8) The commission shall license default suppliers and enforce default licensing provisions pursuant to 69-8-416.

(9) The commission shall promulgate rules for the licensing of default suppliers on or before December 1, 1999.

(10) Until the commission has determined that workable competition has developed for small customers, a default supplier's obligation to serve remains.

(11) In addition to promulgating rules expressly provided for in this chapter, the commission may promulgate any other rules necessary to carry out the provision of this chapter.

(12) This chapter does not give the commission the authority to:

(a) regulate cooperative utilities in any manner other than reviewing certification filings for compliance with this chapter; ~~or~~

(b) compel any change to a cooperative utility's certification filing made pursuant to this chapter; or

(c) regulate the Montana power authority."

Section 17. Section 69-8-416, MCA, is amended to read:

"69-8-416. Default supplier license. (1) In developing licensing rules for default suppliers, notwithstanding the default supplier's obligation to consider the economic merits of purchasing cost-based electricity from the Montana power authority before contracting with another supplier, as provided in 69-8-210,

the commission shall promote and facilitate the development of a competitive market for electricity supply.

(2) Default supplier licensing rules must ensure that:

(a) a default supplier may not purchase electricity for or sell electricity to commercial or industrial electric consumers having individual accounts with an average monthly demand in the previous calendar year of 100 kilowatts or more or to new commercial or industrial electric consumers having individual accounts with an estimated monthly demand of 100 kilowatts or more;

(b) a default supplier may not discount its commission- approved rates to retain or gain customers;

(c) a default supplier may not obligate customers to a contractual term or service;

(d) federal power marketing administration power or benefits acquired by a default supplier are distributed as widely and equitably as possible among small customers and in a manner that encourages competition;

(e) a default supplier, except when the default supplier is the distribution services provider, may not construct, purchase, take, receive, or otherwise acquire or own, hold, equip, maintain, or operate electric generating plants or transmission or distribution lines or systems, except that a default supplier may enter into transmission or distribution agreements for the lease or use of capacity on transmission and distribution systems owned by others to supply electricity to its customers in the state;

(f) a default supplier may not offer for sale any products other than electricity supply or provide electricity supply to members or customers other than those residing in the state or sell electricity or otherwise engage in the marketing of electricity on the wholesale market, but may dispose of excess electricity associated with temporary load-energy imbalances.

(3) Except as provided in subsection (2)(e), a default supplier may provide only a single electricity supply service to all of its small customers. A default supplier may also offer an additional electricity supply service that includes a component of renewable energy.

(4) A default supplier may not offer other supply services unless the default supplier forms a separate entity.

(5) Unless a default supplier determines that exercising the option to purchase power from the Montana power authority will not be advantageous to its customers, a default supplier shall purchase cost-based electricity from the authority if the authority's offer to sell the electricity is timely and complies with customer load requirements."

Section 18. Section 77-1-301, MCA, is amended to read:

"77-1-301. Powers and duties of the department. (1) Under the direction of the board, the department has charge of the selecting, exchange, classification, appraisal, leasing, management, sale, or other disposition of the state lands. ~~It~~ The department shall perform ~~such~~ other duties that the board directs, the purpose of the department demands, or the statutes require.

(2) ~~It~~ The department shall collect and receive all ~~moneys~~ money payable to the state through its office as fees, rentals, royalties, interest, penalties, or payments on mortgages or lands purchased from the state or derived from any other source. ~~It~~ The department shall issue a receipt for each cash payment or whenever requested by the payer.

(3) The department shall provide administrative and technical support to the Montana power authority, as provided in [section 4]."

Section 19. Section 90-5-101, MCA, is amended to read:

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

(1) "Agricultural enterprises" include but are 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) "Electrical generation facility" means any combination of a physically connected generator or generators, associated prime movers, and other associated property and transmission facilities and upgrades and improvements of transmission facilities, including appurtenant land and improvements and personal property, that are normally operated together to produce and transfer electrical energy. The term includes but is not limited to generation facilities that produce and transfer electrical energy from coal-fired steam turbines, oil or gas turbines, wind turbines, solar power sources, fuel cells, or turbine generators that are driven by falling water.

~~(3)~~(4) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

~~(4)~~(5) "Higher education facilities" means any real or personal properties required or useful for the operation of an institution of higher education.

~~(5)~~(6) "Institution of higher education" means any private, nonprofit corporation or institution within the state of Montana:

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

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

~~(6)~~(7) "Mortgage" means a mortgage or deed of trust or other security device.

~~(7)~~(8) "Municipality" means any incorporated city or town in the state.

~~(8)~~(9) "Project" means any land; any building or other improvement; and any other real or personal properties considered necessary in connection with the improvement, whether or not now in existence, which must be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, community-based facilities for individuals who are persons with developmental disabilities as defined in 53-20-102, or medical facilities; higher education facilities; ~~small-scale hydroelectric production~~ electrical generation facilities ~~with a capacity of 50 megawatts or less~~; and any combination of these projects."

NEW SECTION. Section 20. Codification instruction. [Sections 1 through 9] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 9].

NEW SECTION. Section 21. 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 22. Effective date. [This act] is effective on passage and approval.

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