

HOUSE BILL NO. 495
INTRODUCED BY J. SESSO

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO OBTAIN AN INTERCAP LOAN TO FUND THE STATE BUILDING ENERGY CONSERVATION PROGRAM AND CREATING A STATE DEBT; APPROVING ENERGY CONSERVATION PROJECTS FOR FISCAL YEARS 2008 AND 2009; APPROPRIATING LOAN PROCEEDS TO THE DEPARTMENT OF ENVIRONMENTAL QUALITY; PROVIDING THAT PROCEEDS MAY BE USED TO FUND MODIFICATIONS TO USE RENEWABLE ENERGY; TRANSFERRING MONEY NOT NEEDED FOR DEBT SERVICE ON ENERGY CONSERVATION BONDS TO THE ENERGY CONSERVATION LOAN ACCOUNT; APPROPRIATING ENERGY CONSERVATION BOND AND LOAN MONEY; PROVIDING STATUTORY APPROPRIATIONS; AMENDING SECTIONS 17-5-1608, 17-7-502, 90-4-602, 90-4-605, 90-4-606, 90-4-612, 90-4-613, AND 90-4-614, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Authority to procure loan.** (1) The department of environmental quality is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$6 million, repayable over a term not to exceed 15 years, for financing the costs and projects described in subsections (2) through (5) and to fulfill the duties imposed by 90-4-605 and 90-4-607.

(2) Pursuant to Title 90, chapter 4, part 6, for fiscal years 2008 and 2009, the department of environmental quality may fund energy conservation projects at the following facilities:

- (a) Montana state university college of technology building, Great Falls;
- (b) university of Montana college of technology building, Helena;
- (c) Montana state university-Billings campus, Billings;
- (d) Montana state prison, department of corrections, Deer Lodge;
- (e) Lone Pine visitor center, department of fish, wildlife, and parks, Kalispell;
- (f) Bitterroot hall, Montana school for the deaf and blind, Great Falls;
- (g) Montana state university college of technology building, Billings;
- (h) auxiliary buildings at university of Montana-western, Dillon;

- (i) music building, university of Montana-Missoula, Missoula;
- (j) Montana veterans' home, department of public health and human services, Columbia Falls;
- (k) Miles City headquarters building, department of fish, wildlife, and parks, Miles City;
- (l) Pershing and Brockman halls, Montana state university-northern, Havre;
- (m) petroleum building, Montana tech of the university of Montana, Butte;
- (n) Xanthopoulos building, Montana state hospital, Warm Springs;
- (o) dairy and laundry operations at Montana correctional enterprises, Montana state prison, department of corrections, Deer Lodge;
- (p) health sciences building, university of Montana-Missoula, Missoula;
- (q) Montana school for the deaf and blind, board of public education, Great Falls;
- (r) new mining and geology building, Montana tech of the university of Montana, Butte;
- (s) Montana state university college of technology, Billings;
- (t) job service centers, department of labor and industry, statewide;
- (u) Montana mental health and nursing care center, department of public health and human services, Lewistown;
- (v) military affairs facilities, department of military affairs, statewide;
- (w) PARTV and Mansfield library building, university of Montana-Missoula, Missoula;
- (x) university of Montana college of technology, Butte;
- (y) Montana state prison housing units, department of corrections, Deer Lodge;
- (z) Montana state hospital, department of public health and human services, Warm Springs;
- (aa) Montana state university-northern campus, Havre;
- (bb) McMullen hall, Montana state university-Billings, Billings;
- (cc) state environmental lab, department of administration, Helena;
- (dd) Montana mental health and nursing care center, department of public health and human services, Lewistown;
- (ee) building envelope projects, all agencies eligible, statewide;
- (ff) autotech classroom, Montana state university-northern, Havre;
- (gg) capitol complex, department of administration, Helena;
- (hh) office buildings, department of natural resources and conservation, Missoula;
- (ii) Montana law enforcement academy, department of administration, Helena;
- (jj) historic buildings, department of commerce, Virginia City and Nevada City;

(kk) Montana state university-Bozeman campus, Bozeman;

(ll) field office headquarters, department of environmental quality and department of natural resources and conservation, Kalispell;

(mm) Montana state hospital campus, department of public health and human services, Warm Springs;

(nn) enterprise systems service centers, department of administration, Helena;

(oo) law school addition, university of Montana-Missoula, Missoula;

(pp) Montana state prison food service, department of corrections, Deer Lodge; and

(qq) fish, wildlife, and parks buildings, department of fish, wildlife, and parks, statewide.

(3) In addition to the energy conservation projects referred to in subsection (2), the department of environmental quality may expend funds borrowed pursuant to subsection (1) to respond to energy savings opportunities.

(4) For purposes of this section, "energy savings opportunity" means an opportunity to improve energy use that will provide significant energy and cost savings to the state and that will be technically infeasible or uneconomical if the department of environmental quality is delayed in providing the necessary funds until specific legislative approval can be obtained. Energy savings opportunities include coordination of energy improvement projects with the long-range building program capital improvement projects and participation in utility demand management programs.

(5) If the costs of the projects authorized in subsections (2) and (3) are less than the loan amount authorized in subsection (1), the department of environmental quality may fund projects that would be proposed as part of the state building energy conservation package required by Title 90, chapter 4, part 6, for fiscal years 2010 and 2011.

NEW SECTION. Section 2. Energy conservation loan account. (1) There is an energy conservation loan account in the state special revenue fund established in 17-2-102.

(2) There must be deposited in the energy conservation loan account:

(a) the proceeds of loans obtained pursuant to [section 1];

(b) energy cost savings paid to the department pursuant to [section 11];

(c) money paid into the account pursuant to [section 9]; and

(d) interest earned on the account.

(3) Money deposited in the energy conservation loan account must be used to:

(a) pay the costs of obtaining energy conservation loans;

(b) fulfill the duties imposed by 90-4-605 and 90-4-607; and

(c) repay any indebtedness for loans incurred pursuant to [section 1].

(4) Money in the energy conservation loan account is statutorily appropriated, as provided in 17-7-502, in the amount necessary to make principal and interest payments on energy conservation program loans.

(5) The amount of funds in the energy conservation loan account in excess of the amount needed to make principal and interest payments on the energy conservation program loans is statutorily appropriated, as provided in 17-7-502, to the department to be used to pay the costs of obtaining energy conservation program loans, fund energy conservation projects authorized by the legislature, and fulfill that agency's duties under 90-4-605 and 90-4-607.

Section 3. Section 17-5-1608, MCA, is amended to read:

"17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in 7-6-1101, to exceed ~~\$120~~ \$126 million."

Section 4. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-407; 5-13-403; 10-2-603; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-1-113; 15-1-121; 15-23-706; 15-31-906; 15-35-108; 15-36-332; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 15-70-369; 15-70-601; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 20-8-107; 20-9-534; 20-9-622; 20-26-1503; 22-3-1004; 23-4-105; 23-4-202; 23-4-204; 23-4-302; 23-4-304; 23-5-306;

23-5-409; 23-5-612; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 41-5-2011; 42-2-105; 44-1-504; 44-12-206; 44-13-102; 50-4-623; 53-1-109; 53-6-703; 53-24-108; 53-24-206; 60-11-115; 61-3-415; 69-3-870; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-2-362; 80-2-222; 80-4-416; 80-5-510; 80-11-518; 82-11-161; 87-1-513; 90-1-115; 90-1-205; 90-3-1003; [section 2]; [section 10]; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to Ch. 422, L. 1997, the inclusion of 15-1-111 terminates on July 1, 2008, which is the date that section is repealed; pursuant to sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 4, Ch. 497, L. 1999, the inclusion of 15-38-202 terminates July 1, 2014; pursuant to sec. 10(2), Ch. 10, Sp. L. May 2000, and secs. 3 and 6, Ch. 481, L. 2003, the inclusion of 15-35-108 terminates June 30, 2010; pursuant to sec. 7, Ch. 314, L. 2005, the inclusion of 23-4-105, 23-4-202, 23-4-204, 23-4-302, and 23-4-304 becomes effective July 1, 2007; and pursuant to sec. 17, Ch. 593, L. 2005, the inclusion of 15-31-906 terminates January 1, 2010.)"

Section 5. Section 90-4-602, MCA, is amended to read:

"90-4-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of examiners provided for in 2-15-1007.

(2) "Cost" includes the expenses related to planning, design, construction, and installation of energy conservation improvements and any administrative expenses of the department incurred in the performance of its duties under the energy conservation program.

(3) "Department" means the department of environmental quality provided for in 2-15-3501.

(4) "Energy conservation program" means a program for the financing, acquisition, construction, and installation in state-owned buildings, structures, and facilities of ~~energy saving~~ equipment, systems, and improvements ~~in state-owned buildings, structures, and facilities~~ that save energy or water or use an alternative renewable energy source, as defined in 15-6-225.

(5) "Energy conservation program bonds" includes all series of bonds issued to finance any portion of

the energy conservation program.

(6) "Energy conservation program loans" includes all loans obtained by the department to finance any portion of the energy conservation program.

~~(6)~~(7) "Energy cost savings" means the savings in utility costs to a state agency as a result of an energy conservation program.

~~(7)~~(8) "State agency" means:

- (a) each executive, legislative, or judicial branch department, office, or agency; and
- (b) the university system."

Section 6. Section 90-4-605, MCA, is amended to read:

"90-4-605. Preparation of energy conservation program. (1) The department shall identify buildings that have a potential for energy savings, based on age, energy use, function, and condition of the building. Upon request of the department, a state agency shall provide the department with information necessary to allow the department to comply with this requirement.

(2) Based on the criteria in subsection (1) and on the feasibility of leveraging other funds, such as federal and utility energy conservation program money, the department shall select certain facilities for indepth energy analyses to identify the technical and financial feasibility of making energy conservation improvements to the facilities.

(3) Upon completion of the energy analyses, the department shall identify estimated costs and savings to the state based on these analyses. If the estimated savings are determined to be greater than the bond or loan payment costs for a particular project, the department shall notify the department of administration. Upon receipt of the notification, the department of administration shall implement a design and construction project using bond or loan proceeds for the costs of the project.

(4) The department shall compile a report that must include the following:

- (a) a listing of contacts between the department and other state agencies;
- (b) a summary of the department's review of agency requests and a selection of projects for indepth analysis;
- (c) a summary of the energy analyses conducted by the department, including the estimated cost of each proposed project and the estimated energy cost savings of each proposed project; and
- (d) a listing of additional projects under consideration, for which energy analyses have not been conducted.

(5) The department shall submit the report required by subsection (4) to the governor before September 1 of each even-numbered year."

Section 7. Section 90-4-606, MCA, is amended to read:

"90-4-606. Program report and recommendations. The governor shall submit the projects proposed to be funded by the energy conservation program for the next biennium as a part of the budget required by 17-7-123. The governor shall make available, as provided by 17-7-124:

(1) the report prepared by the department; and

(2) the proposed method of financing the improvement. If energy conservation program bonds or loans are proposed to be issued to finance the program improvements, the governor shall include within the report a written statement by the department that the estimated annual energy savings to be derived from the installation of the energy saving equipment or improvements, upon completion, are expected to equal or exceed the annual debt service to be paid on the energy conservation program bonds proposed to be issued or loans proposed to be obtained to fund the costs of the equipment or improvements."

Section 8. Section 90-4-612, MCA, is amended to read:

"90-4-612. Form -- principal and interest -- fiscal agent -- deposit of proceeds. (1) Each series of energy conservation program bonds may be issued by the board at the request of the department, in denominations and forms, whether payable to bearer or registered as to principal or as to both principal and interest, with provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest at a rate or rates, maturing at times not exceeding 15 years from date of issue, subject to redemption at earlier times and prices and upon notice, and payable at the office of such fiscal agent of the state, as the board shall determine subject to the provisions of ~~this section and~~ 90-4-611 and this section.

(2) In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The bonds and any interest coupons must be signed by the members of the board, and the bonds must be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all ~~such~~ bonds issued and sold.

(3) The board may employ a fiscal agent to assist in the performance of its duties under this part.

(4) There is created an energy conservation program account within the state special revenue fund

established in 17-2-102.

(5) All proceeds of bonds and notes issued under 90-4-611 must be deposited in the energy conservation program account, except that any premiums and accrued interest received must be deposited in the energy conservation program debt service fund account established in 17-2-102 [section 10]."

Section 9. Section 90-4-613, MCA, is amended to read:

"90-4-613. Use of energy conservation program account. (1) The energy conservation program account must be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the energy conservation program.

(2) The department may transfer all money authorized by the legislature for its administrative expenditures from the energy conservation program account to a special revenue fund.

(3) The department shall periodically transfer from the energy conservation program debt service account, established in [section 10], to the energy conservation loan account, established in [section 2], money that is in excess of the amount that is needed to pay debt service on energy conservation program bonds."

NEW SECTION. Section 10. Energy conservation program debt service account. (1) There is an energy conservation program debt service account in the debt service fund type established in 17-2-202.

(2) Money in the account is statutorily appropriated, as provided in 17-7-502.

Section 11. Section 90-4-614, MCA, is amended to read:

"90-4-614. Appropriation of energy cost savings. (1) In preparing the executive budget each biennium, the governor shall include for each state agency participating in the state energy conservation program:

(a) an estimate of the energy cost savings expected for that agency in each year of the biennium; and
 (b) ~~a projection of the debt service on energy conservation program bonds that should be apportioned to that agency in each year of the biennium. Debt service is zero after the term of bond repayment.~~

(2) Each session, the legislature shall review the governor's submission pursuant to 90-4-606 and subsection (1) of this section and appropriate in the general appropriations act the following:

(a) authority for each participating state agency to transfer funds in an amount equal to ~~the agency's projected debt service to~~ its energy cost savings for projects funded with energy conservation program bonds to the energy conservation program debt service account established in 90-4-612 [section 10]; and

(b) authority for each participating state agency to transfer funds ~~to the long-range building program fund~~

~~in an amount equal to the difference between the estimated energy cost savings to the agency and the projected debt service apportioned to that agency in an amount equal to its energy cost savings for projects funded with energy conservation loan funds to the energy conservation loan account established in [section 2].~~

(3) The current level utility appropriations of state agencies participating in the energy conservation program must be reduced by the sum of the amounts appropriated in subsections (2)(a) and (2)(b).

(4) Each participating state agency shall transfer upon request of the department the amounts appropriated in accordance with subsection (2)."

NEW SECTION. **Section 12. Appropriation.** There is appropriated to the department of environmental quality for the 2009 biennium from the energy conservation program account, established in 90-4-612, \$475,000 to be used to fulfill that agency's duties under 90-4-605 and 90-4-607.

NEW SECTION. **Section 13. Two-thirds vote required.** Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for enactment of [section 1].

NEW SECTION. **Section 14. Codification instruction.** [Sections 2 and 10] are intended to be codified as an integral part of Title 90, chapter 4, part 6, and the provisions of Title 90, chapter 4, part 6, apply to [sections 2 and 10].

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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