

SENATE BILL NO. 48

INTRODUCED BY J. ESSMANN

BY REQUEST OF THE REVENUE AND TRANSPORTATION INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT STANDARDIZING THE STATUTES RELATED TO TAX INCREMENT FINANCING DISTRICTS BY CORRECTING CERTAIN INTERNAL REFERENCES AND TERMINOLOGY AND BY ENSURING CONSISTENT APPLICATION OF CERTAIN STATUTES TO EACH TYPE OF TAX INCREMENT FINANCING DISTRICT; AMENDING SECTIONS 7-15-4282, 7-15-4283, 7-15-4284, 7-15-4286, 7-15-4288, 7-15-4290, 7-15-4292, 7-15-4293, 7-15-4294, 7-15-4295, 7-15-4296, 7-15-4299, 7-15-4301, 7-15-4302, 7-15-4304, 7-15-4324, AND 17-5-820, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 7-15-4282, MCA, is amended to read:

"7-15-4282. Authorization for tax increment financing. Any urban renewal plan; as defined in 7-15-4206, industrial district ordinance; adopted pursuant to 7-15-4299, ~~or~~ technology district ordinance; adopted pursuant to 7-15-4295, or aerospace transportation and technology district ordinance adopted pursuant to 7-15-4296 may contain a provision or be amended to contain a provision for the segregation and application of tax increments; as provided in 7-15-4282 through ~~7-15-4292~~ 7-15-4299."

Section 2. Section 7-15-4283, MCA, is amended to read:

"7-15-4283. Definitions related to tax increment financing. For purposes of 7-15-4282 through ~~7-15-4292 and 7-15-4297~~ through 7-15-4299, the following definitions apply unless otherwise provided or indicated by the context:

(1) "Actual taxable value" means the taxable value of taxable property at any time, as calculated from the last equalized assessment roll ~~last equalized~~.

(2) "Aerospace transportation and technology district" means a tax increment financing aerospace transportation and technology district created pursuant to 7-15-4296.

(3) "Aerospace transportation and technology infrastructure development project" means a project undertaken within or for an aerospace transportation and technology district that consists of any of the activities authorized by 7-15-4288.

(4) "Base taxable value" means the actual taxable value of all taxable property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district prior to the effective date of a tax increment financing provision. This value may be adjusted as provided in 7-15-4287 or 7-15-4293.

(5) "Incremental taxable value" means the amount, if any, by which the actual taxable value at any time exceeds the base taxable value of all property within an urban renewal area, industrial district, technology district, or aerospace transportation and technology district subject to taxation.

(6) "Industrial district" means a tax increment financing industrial district created pursuant to 7-15-4297 through 7-15-4299.

(7) "Industrial infrastructure development project" means a project undertaken within or for an industrial district that consists of any of the activities authorized by 7-15-4288.

(8) "Municipality"; ~~for the purpose of an industrial district created pursuant to 7-15-4297 through 7-15-4299 and operating pursuant to 7-15-4282 through 7-15-4293 and part 43 of this chapter~~; means any incorporated city or town, county, or city-county consolidated local government for the purposes of:

(a) an industrial district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43;

(b) a technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43; or

(c) an aerospace transportation and technology district operating pursuant to 7-15-4282 through 7-15-4294 and Title 7, chapter 15, part 43.

(9) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area, industrial district, technology district, aerospace transportation and technology district, or a part of an area or district is located against the incremental taxable value.

(10) "Tax increment provision" means a provision for the segregation and application of tax increments as authorized by 7-15-4282 through ~~7-15-4292~~ 7-15-4299.

(11) "Taxes" means all taxes levied by a taxing body against property on an ad valorem basis.

(12) "Taxing body" means any incorporated city; or town, county, city-county consolidated local government, school district, or other political subdivision or governmental unit of the state, including the state, that levies taxes against property within the urban renewal area, industrial district, technology district, or an aerospace transportation and technology district.

(13) "Technology district" means a tax increment financing district created pursuant to 7-15-4295.

(14) "Technology infrastructure development project" means a project undertaken within or for a

technology district that consists of any of the activities authorized by 7-15-4288."

Section 3. Section 7-15-4284, MCA, is amended to read:

"7-15-4284. Filing of tax increment provisions plan or district ordinance. (1) The clerk of the municipality shall file a certified copy of each urban renewal plan, industrial district ordinance, ~~or~~ technology district ordinance, or aerospace transportation and technology district ordinance or an amendment to any of them containing a tax increment provision with the department of revenue.

(2) A certified copy of each plan, ordinance, or amendment must also be filed with the clerk or other appropriate officer of each of the affected taxing bodies."

Section 4. Section 7-15-4286, MCA, is amended to read:

"7-15-4286. Procedure to determine and disburse tax increment. (1) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision must be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area, industrial district, ~~or~~ technology district, or aerospace transportation and technology district and the base taxable value of all taxable property located within the area or district. The mill rate determined must be levied against the sum of the actual taxable value of all taxable property located within as well as outside the area or district.

(2) (a) The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the area or district, except for the university system mills levied and assessed against property, must be paid into a special fund held by the treasurer of the municipality and used as provided in 7-15-4282 through ~~7-15-4292~~ 7-15-4299.

(b) The balance of the taxes collected in each year must be paid to each of the taxing bodies as otherwise provided by law."

Section 5. Section 7-15-4288, MCA, is amended to read:

"7-15-4288. Costs that may be paid by tax increment financing. The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project:

(1) land acquisition;

- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of infrastructure, industrial infrastructure, technology infrastructure, or aerospace transportation and technology infrastructure that includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs, bridges, spaceports for reusable launch vehicles with associated runways and launch, recovery, fuel manufacturing, and cargo holding facilities, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45 of ~~chapter 12~~; Title 7, chapter 13, parts 42 and 43 of ~~chapter 13~~; and Title 7, chapter 14, part 47, of ~~chapter 14~~ and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under 7-15-4233;
- (6) acquisition of infrastructure-deficient areas or portions of areas;
- (7) administrative costs associated with the management of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district;
- (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the municipality itself at its fair market value;
- (9) the compilation and analysis of pertinent information required to adequately determine the needs of an urban renewal project in an urban renewal area, the infrastructure needs of secondary, value-adding industries in the industrial district, the needs of a technology infrastructure development project in the technology district, or the needs of an aerospace transportation and technology infrastructure development project in the aerospace transportation and technology district;
- (10) the connection of the urban renewal area, industrial district, technology district, or aerospace transportation and technology district to existing infrastructure outside the district;
- (11) the provision of direct assistance, through industrial infrastructure development projects, technology infrastructure development projects, or aerospace transportation and technology infrastructure development projects, to secondary, value-adding industries to assist in meeting their infrastructure and land needs within the district; and
- (12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution."

Section 6. Section 7-15-4290, MCA, is amended to read:

"7-15-4290. Use of property taxes and other revenue for payment of bonds. (1) (a) The tax increment derived from an urban renewal area may be pledged for the payment of revenue bonds issued for urban renewal projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay urban renewal costs described in 7-15-4288 and 7-15-4289.

(b) The tax increment derived from an industrial district may be pledged for the payment of revenue bonds issued for industrial infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay industrial district costs described in 7-15-4288 and 7-15-4289.

(c) The tax increment derived from a technology district may be pledged for the payment of revenue bonds issued for technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay technology district costs described in 7-15-4288 and 7-15-4289.

(d) The tax increment derived from an aerospace transportation and technology district may be pledged for the payment of revenue bonds issued for aerospace transportation and technology infrastructure development projects or of general obligation bonds, revenue bonds, or special assessment bonds issued to pay aerospace transportation and technology district costs described in 7-15-4288 and 7-15-4289.

(2) A municipality issuing bonds pursuant to subsection (1) may, by resolution of its governing body, enter into a covenant for the security of the bondholders, detailing the calculation and adjustment of the tax increment and the taxable value on which it is based and, after a public hearing, pledging or appropriating other revenue of the municipality, except property taxes prohibited by subsection (3), to the payment of the bonds if collections of the tax increment are insufficient.

(3) Property taxes, except the tax increment derived from property within the area or district and tax collections used to pay for services provided to the municipality by a project, may not be applied to the payment of bonds issued pursuant to 7-15-4301 for which a tax increment has been pledged."

Section 7. Section 7-15-4292, MCA, is amended to read:

"7-15-4292. Termination of tax increment financing -- exception. (1) The tax increment provision terminates upon the later of:

(a) the 15th year following its adoption; or

(b) the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest on the bonds.

(2) (a) Except as provided in subsection (2)(b), any amounts remaining in the special fund or any reserve

fund after termination of the tax increment provision must be distributed among the various taxing bodies in proportion to their property tax revenue from the area or district.

(b) Upon termination of the tax increment provision, a municipality may retain and use in accordance with the provisions of the urban renewal plan:

(i) funds remaining in the special fund or a reserve fund related to a binding loan commitment, construction contract, or development agreement for an approved urban renewal project that a municipality entered into before the termination of a tax increment provision;

(ii) loan repayments received after the date of termination of the tax increment provision from loans made pursuant to a binding loan commitment; or

(iii) funds from loans previously made pursuant to a loan program established under an urban renewal plan.

(3) After termination of the tax increment provision, all taxes must be levied upon the actual taxable value of the taxable property in the urban renewal area, the industrial district, ~~or~~ the technology district, or the aerospace transportation and technology district and must be paid ~~into the funds to each~~ of the ~~respective~~ taxing bodies as provided by law.

(4) Bonds secured in whole or in part by a tax increment provision may not be issued after the 15th anniversary of tax increment provisions. However, if bonds secured by a tax increment provision are outstanding on the applicable anniversary, additional bonds secured by the tax increment provision may be issued if the final maturity date of the bonds is not later than the final maturity date of any bonds then outstanding and secured by the tax increment provision."

Section 8. Section 7-15-4293, MCA, is amended to read:

"7-15-4293. Adjustment of base taxable value following change of law. (1) If the base taxable value of an urban renewal area, an industrial district, ~~or~~ a technology district, or an aerospace transportation and technology district is affected after its original determination by a statutory, administrative, or judicial change in the method of appraising property, the tax rate applied to it, the tax exemption status of property, or the taxable valuation of property if the change in taxable valuation is based on conditions existing at the time the base year was established, the governing body of the municipality may request the department of revenue to estimate the base taxable value so that the tax increment resulting from the increased incremental value is sufficient to pay all principal and interest on the bonds as those payments become due.

(2) If a tax increment financing district created after January 1, 2002, has not issued bonds, the

governing body of a municipality may request the department of revenue to adjust the base taxable value to account for a loss of taxable revenue resulting from the state granting property in the area or district tax-exempt status within the first year of creation of the tax increment financing district. The municipality shall give notice of and hold a public hearing on the proposed change."

Section 9. Section 7-15-4294, MCA, is amended to read:

"7-15-4294. Assessment agreements. (1) A municipality may enter into a written agreement with any private person:

(a) establishing a minimum market value of land, existing improvements, or improvements or equipment to be constructed or acquired; and

(b) requiring the individual to pay an annual tax deficiency fee whenever the property that is the subject of the agreement is valued by the department of revenue for property tax purposes at a market value that is less than the value established by the agreement. The amount of the deficiency fee may not exceed the difference between the property taxes that would have been imposed on the property based on the minimum value of the property expressed in the agreement and the property taxes that are imposed on the property based on the market value established by the department of revenue.

(2) The property that is the subject of the agreement must be located or installed in an urban renewal area, an industrial district, a technology district, an aerospace transportation and technology district, or any other area or district that is subject to a tax increment financing provision.

(3) The minimum value established by the agreement may be fixed or may increase or decrease in later years from the initial minimum value as provided in the agreement.

(4) The agreement creates a lien on the property pursuant to 71-3-1506 and must be filed and recorded in the office of the county clerk and recorder in each county in which the property or any part of the property is located. Recording an agreement constitutes notice of the agreement to anyone who acquires any interest in the property that is the subject of the agreement, and the agreement is binding upon the person acquiring the interest.

(5) An agreement made pursuant to subsection (1) may be modified or terminated by mutual consent of the current parties to the agreement. Modification or termination of an agreement must be approved by the governing body of the municipality. A document modifying or terminating an agreement must be filed in the office of the county clerk and recorder in each county in which the property or any part of the property is located.

(6) An agreement entered into pursuant to subsection (1) or modified pursuant to subsection (5) terminates on the earliest of:

- (a) the date on which conditions in the agreement for termination are satisfied;
- (b) the termination date specified in the agreement; or
- (c) the date when the tax increment is no longer paid to the municipality under 7-15-4292.

(7) ~~Nothing in this~~ This section limits does not limit a municipality's authority to enter into contracts other than tax deficiency agreements as described in this section."

Section 10. Section 7-15-4295, MCA, is amended to read:

"7-15-4295. Technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of a technology district for technology infrastructure development projects. The purpose of a technology district is ~~for~~ the development of infrastructure to encourage the location and retention of technology infrastructure development projects in the state. The tenants of a technology district must be businesses or organizations engaged in technology-based operations within Montana that through the employment of knowledge or labor add value to a product, process, or export service that results in the creation of new wealth and for which at least 50% of the sales of the business or organization occur outside of Montana or the business or organization is a manufacturing company with at least 50% of its sales to other Montana companies that have 50% of their sales occurring outside of Montana.

(2) A technology district:

(a) must consist of a continuous area with an accurately described boundary that is large enough to host a diversified tenant base of multiple independent tenants;

(b) must be zoned for use in accordance with the area growth policy, as defined in 76-1-103;

(c) may not comprise any property included within an existing urban renewal area, ~~district or industrial infrastructure development district, or aerospace transportation and technology district~~ created pursuant to this part;

(d) must, prior to its creation, be found to be deficient in infrastructure improvements necessary for technology development;

(e) must, prior to its creation, have in place a formally adopted comprehensive development plan that ensures that the district can host a diversified tenant base of multiple independent tenants; and

(f) may not be designed to serve the needs of a single district tenant or group of nonindependent tenants.

(3) A technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ 7-15-4294."

Section 11. Section 7-15-4296, MCA, is amended to read:

"7-15-4296. Aerospace transportation and technology districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an aerospace transportation and technology district for aerospace transportation and technology infrastructure development projects if the proposed aerospace transportation and technology district:

- (a) consists of a continuous area with an accurately described boundary;
- (b) is zoned for use in accordance with the area growth policy document;
- (c) does not include any property included within an existing urban renewal area, ~~district or industrial infrastructure development district, or technology district~~ created pursuant to this part;
- (d) is found to be deficient in infrastructure improvements for industrial development; and
- (e) has as its purpose the development of infrastructure to encourage the location and retention of aerospace transportation and technology infrastructure development projects in the state.

(2) An aerospace transportation and technology district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ 7-15-4294."

Section 12. Section 7-15-4299, MCA, is amended to read:

"7-15-4299. Industrial districts. (1) A local governing body, by ordinance and following a public hearing, may authorize the creation of an industrial district for industrial infrastructure development projects if the proposed industrial district:

- (a) consists of a continuous area with an accurately described boundary;
- (b) is zoned for light or heavy industrial use in accordance with the area growth policy document;
- (c) does not include any property included within an existing urban renewal area, technology district, or aerospace transportation and technology district created pursuant to this part;
- (d) is found to be deficient in infrastructure improvements for industrial development; and
- (e) has as its purpose the development of infrastructure to encourage the growth and retention of secondary, value-adding industries.

(2) An industrial district may use tax increment financing pursuant to the provisions of 7-15-4282 through ~~7-15-4293~~ 7-15-4294."

Section 13. Section 7-15-4301, MCA, is amended to read:

"7-15-4301. Authorization to issue urban renewal bonds, industrial infrastructure development

bonds, technology infrastructure development bonds, aerospace transportation and technology infrastructure development bonds, ~~technology infrastructure development bonds~~, and refunding bonds.

(1) A municipality may:

(a) issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project, industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure development project, ~~or technology infrastructure development project~~ under Title 7, chapter 15, part 42, and this part, including, without limiting the generality of projects, the payment of principal and interest upon any advances for surveys and plans for the projects; and

(b) issue refunding bonds for the payment or retirement of bonds previously issued by it.

(2) ~~The~~ Except as provided in 7-15-4302, bonds may not pledge the general credit of the municipality and must be made payable, as to both principal and interest, solely from the income, proceeds, revenue, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development projects, ~~or technology infrastructure development projects~~ under Title 7, chapter 15, part 42, and this part, including the tax increment received and pledged by the municipality pursuant to 7-15-4282 through ~~7-15-4292~~ 7-15-4299, and, if the income, proceeds, revenue, and funds of the municipality are insufficient for the payment, from other revenue of the municipality pledged to the payment. Payment of the bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source in aid of any urban renewal projects, industrial infrastructure development projects, technology infrastructure development project, or aerospace transportation and technology infrastructure development projects, ~~or technology infrastructure development projects~~ of the municipality under Title 7, chapter 15, part 42, and this part or by a mortgage on all or part of any projects.

(3) Bonds issued under this section must be authorized by resolution or ordinance of the local governing body."

Section 14. Section 7-15-4302, MCA, is amended to read:

"7-15-4302. Authorization to issue general obligation bonds. (1) For the purpose of 7-15-4267 or for the purpose of aiding in the planning, undertaking, or carrying out of an urban renewal project, ~~or an~~ industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure project of a municipality, the municipality, in addition to any authority to issue bonds

pursuant to 7-15-4301, may issue and sell its general obligation bonds.

(2) Any bonds issued pursuant to this section ~~shall~~ must be issued in the manner and within the limitations prescribed by the laws of this state for the issuance and authorization of bonds by ~~such~~ the municipality for public purposes generally.

(3) Aiding in the planning, undertaking, or carrying out of an approved urban renewal project, ~~or an~~ industrial infrastructure development project, technology infrastructure development project, or aerospace transportation and technology infrastructure project is considered a single purpose for the issuance of general obligation bonds, and the proceeds of the bonds authorized for ~~any such a~~ project may be used to finance the exercise of ~~any and all~~ the powers conferred upon the municipality by Title 7, chapter 15, part 42, and this part and part 42 ~~which~~ that are necessary or proper to complete the project in accordance with the approved plan, ~~or industrial district ordinance, technology district ordinance, or aerospace transportation and technology district ordinance~~ and any modification thereof to the ordinance that is duly adopted by the local governing body."

Section 15. Section 7-15-4304, MCA, is amended to read:

"7-15-4304. Presumption of regularity of bond issuance. In a suit, action, or proceeding involving the validity or enforceability of; or security for; any bond issued under Title 7, chapter 15, part 42, and this part, a bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, industrial infrastructure development project, ~~or technology infrastructure development project, or aerospace transportation and technology infrastructure development project~~ is conclusively considered to have been issued for that purpose and the project is conclusively considered to have been planned, located, and carried out in accordance with the provisions of Title 7, chapter 15, part 42, and this part."

Section 16. Section 7-15-4324, MCA, is amended to read:

"7-15-4324. Special bond provisions when tax increment financing is involved. (1) Bonds issued under this part for which a tax increment is pledged pursuant to 7-15-4282 through ~~7-15-4292~~ 7-15-4299 must be designed to mature not later than 25 years from their date of issue and must mature in years and amounts so that the principal and interest due on the bonds in each year may not exceed the estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a district, and other estimated revenue, including proceeds of the bonds available for payment of interest on the bonds, pledged to their payment to be received in that year.

(2) The governing body, in the resolution or ordinance authorizing the bonds, shall determine the

estimated tax increment, payments in lieu of taxes or other amounts agreed to be paid by the property owners in a an area or district, and other revenue, if any, for each year the bonds are to be outstanding. In calculating the costs under 7-15-4288 for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increments pledged and sufficient for the payment of the bonds and to fund any reserve fund in respect of the bonds."

Section 17. Section 17-5-820, MCA, is amended to read:

"17-5-820. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 for aerospace transportation and technology infrastructure development projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed \$20 million. Bond proceeds are appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements, to contract with the incorporated city or town, county, or city-county consolidated local government in which a project is located, to contract with an airport authority; as defined in 67-1-101, a local port authority; as described in 7-14-1101, or a regional port authority; as described in 7-14-1102, to contract with a certified regional development corporation; as defined in 90-1-116, or, upon a determination that it is in the best interest of the project, to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement. The plans and specifications for the infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect, who is licensed and bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured

if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned by the state, and the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of first refusal for the purchase of any real property and improvements financed by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board the following:

(a) evidence satisfactory to the board that the developer of each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and

(b) a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the

state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

- (a) whether the project is eligible for financing;
- (b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;
- (c) the projected tax revenue report;
- (d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and
- (e) whether the project is in the public interest.

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-served basis."

NEW SECTION. Section 18. Effective date. [This act] is effective on passage and approval.

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