HOUSE BILL NO. 467

INTRODUCED BY D. HAYMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ELECTRIC UTILITY LAWS; ALLOWING ELECTRIC UTILITIES TO APPLY TO THE PUBLIC SERVICE COMMISSION FOR THE ISSUANCE OF BONDS TO LOWER COSTS WHEN RETIRING OR REPLACING ELECTRIC INFRASTRUCTURE OR FACILITIES; AUTHORIZING THE ISSUANCE OF ENERGY IMPACT ASSISTANCE BONDS; ALLOWING A PORTION OF THE BONDS TO BE USED FOR TRANSITION ASSISTANCE TO COMMUNITIES IMPACTED BY THE RETIREMENT OR REPLACEMENT OF ELECTRIC INFRASTRUCTURE OR FACILITIES; ALLOWING BOND PROCEEDS TO BE USED FOR ADDITIONAL PURPOSES TO BENEFIT RATEPAYERS; AUTHORIZING ENERGY IMPACT ASSISTANCE CHARGES ON RATEPAYERS; REQUIRING THE PUBLIC SERVICE COMMISSION TO REVIEW APPLICATIONS FOR FINANCING ORDERS AND APPROVE OR DENY APPLICATIONS; ESTABLISHING REQUIREMENTS FOR A FINANCING ORDER; MAKING APPROVAL OF A FINANCING ORDER IRREVOCABLE; ALLOWING THE COMMISSION TO ENGAGE OUTSIDE CONSULTANTS; PROVIDING FOR JUDICIAL REVIEW OF FINANCING ORDERS; ESTABLISHING ELECTRIC UTILITY DUTIES; REQUIRING THE DEPARTMENT OF COMMERCE TO ADMINISTER A GRANT PROGRAM TO MITIGATE IMPACTS TO MONTANA WORKERS AND COMMUNITIES RESULTING FROM THE RETIREMENT OR REPLACEMENT OF ELECTRIC INFRASTRUCTURE OR FACILITIES; ESTABLISHING THE DUTIES OF THE DEPARTMENT; ALLOWING LOCAL ADVISORY COMMITTEE INPUT ON DEPARTMENT DECISIONS; PROVIDING RULEMAKING AUTHORITY; PROVIDING A STATUTORY APPROPRIATION; REQUIRING THE DEPARTMENT TO REPORT TO THE ENVIRONMENTAL QUALITY COUNCIL AND LEGISLATIVE FINANCE COMMITTEE; AMENDING SECTIONS 17-7-502 AND 69-1-114, MCA; AND PROVIDING AN EFFECTIVE DATE."

WHEREAS, the closure of electric infrastructure or facilities may have direct economic impacts on Montana communities where the infrastructure or facilities are located, infrastructure or facility workers, and communities where fuel for the infrastructure or facilities is produced; and

WHEREAS, customers of Montana's regulated electric utilities have an interest in ensuring that their utilities are providing efficient and cost-effective electric generation; and

WHEREAS, Montana communities and workers may be directly affected by the closure of electric infrastructure or facilities, and it is in the best interest of the state to ensure that Montana's workforce is able to adapt to the state's changing energy portfolio; and

WHEREAS, there are alternative financing mechanisms used by 21 other states that will result in lower costs to electric utility customers, and the use of these mechanisms can ensure that both the costs of retiring or replacing electric infrastructure or facilities located in the state and transition costs for directly affected Montana communities and infrastructure or facility workers can be financed in a way that reduces the total amount of costs being included in customer rates; and

WHEREAS, customer costs of alternative financing mechanisms can be minimized by achieving the highest possible credit rating from independent credit rating agencies, which requires special procedures and conditions.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 25] may be cited as the "Montana Energy Impact Assistance Act".

NEW SECTION. **Section 2. Purpose -- legislative intent.** (1) The legislature finds that it is imperative to:

(a) implement an alternative financing mechanism to address the retirement and replacement of electric infrastructure or facilities; and

(b) authorize the public service commission to review and approve one or more financing orders, if it deems approval appropriate and in the interest of ratepayers.

(2) The legislature further finds that:

(a) it is the policy of the state to assist infrastructure or facility workers who are directly impacted by the retirement or replacement of electric infrastructure or facilities, the communities where the infrastructure or facilities are located, and the communities where fuel for the infrastructure or facilities is produced;

(b) it is in the interest of the state and its citizens to encourage and facilitate the use of securitized ratepayer-backed bonds as a method for enabling electric utilities to lower the cost of financing the retirement or replacement of electric infrastructure or facilities under certain conditions and to empower the public service commission to review a securitization mechanism to determine whether it is consistent with the public interest and worthy of approval;

(c) the state should authorize the issuance of low-cost securitized ratepayer-backed bonds. The proceeds of these bonds must be used solely to:

(i) provide transition assistance to Montana communities and infrastructure or facility workers that are directly impacted by the retirement or replacement of electric infrastructure or facilities;

(ii) lower long-term costs paid by electric utility customers by reducing financing costs of certain retired or replaced electric infrastructure or facilities; and

(iii) make available capital investment for modernized infrastructure and facilities and services, including least-cost electric generating facilities and other supply-side and demand-side resources.

(d) a grant program is necessary to assist with the administration of securitized ratepayer-backed bond proceeds dedicated to transition assistance for directly impacted Montana communities and electric infrastructure or facility workers.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 25], the following definitions apply:

(1) "Ancillary agreement" means any bond, insurance policy, letter of credit, reserve account, surety bond, interest rate lock or swap arrangement, liquidity or credit support arrangement, or other financial arrangement entered into in connection with Montana energy impact assistance bonds that is designed to promote the credit quality and marketability of Montana energy impact assistance bonds or to mitigate the risk of an increase in interest rates.

(2) "Assignee" means any person to which an interest in Montana energy impact assistance property is sold, assigned, transferred, or conveyed, other than as security, and any successor to or subsequent assignee of a person.

(3) "Bondholder" means any holder or owner of Montana energy impact assistance bonds.

(4) "Customer" means a person who takes electric service from an electric utility for consumption of electricity in Montana.

(5) "Department" means the department of commerce provided for in 2-15-1801.

(6) "Electric infrastructure or facility" means:

(a) an individual unit of an electrical generating facility located in Montana that has a generating capacity greater than or equal to 200 megawatts; or

(b) any infrastructure or facility involved in the transmission or delivery of electricity to Montana customers.

(7) "Electric utility" means any electric utility regulated by the commission pursuant to Title 69, chapter 3, including the electric utility's successors or assignees.

(8) "Financing costs" means, if approved by the commission in a financing order, costs to issue, service, repay, or refinance Montana energy impact assistance bonds, whether incurred or paid on issuance of the Montana energy impact assistance bonds or over the life of the bonds.

(9) "Financing order" means an order issued by the commission in accordance with [section 5] that grants, in whole or in part, an application filed pursuant to [section 4] authorizing the issuance of Montana energy impact assistance bonds in one or more series, the imposition, charging, and collection of Montana energy impact assistance charges, and the creation of Montana energy impact assistance property.

(10) "Financing party" means holders of Montana energy impact assistance bonds and trustees, collateral agents, any party under an ancillary agreement, or any other person acting for the benefit of Montana energy impact assistance bondholders.

(11) "Least-cost generation resource" means an incremental supply-side or demand-side resource that when included in an electric utility's generation portfolio produces the lowest cost among alternative resources, considering both short-term and long-term costs and assessing the likelihood of changes in future fuel prices and future environmental requirements, among other considerations.

(12) "Montana energy impact assistance bonds" means low-cost corporate securities, including but not limited to senior secured bonds, debentures, notes, certificates of participation, certificates of beneficial interest, certificates of ownership, or other evidences of indebtedness or ownership that have a scheduled maturity of no longer than 30 years and a final legal maturity date that is not later than 32 years from the issue date, that are rated AA or Aa2 or better by a major independent credit rating agency at the time of issuance, and that are issued by an electric utility or an assignee pursuant to a financing order.

(13) "Montana energy impact assistance charges" means charges in amounts determined appropriate by the commission and authorized by the commission in a financing order in order to provide a source of revenue solely to repay, finance, or refinance Montana energy impact assistance costs and financing costs that are imposed on and are a part of all customer bills and are collected in full by the electric utility that the financing order applies to, its successors or assignees, or a collection agent through a nonbypassable charge that is separate and apart from the electric utility's base rates.

(14) (a) "Montana energy impact assistance costs" means:

(i) at the option of and upon petition by an electric utility, and as approved by the commission pursuant to [section 5], the pretax costs that the electric utility has incurred or will incur that are caused by, associated with, or remain as a result of the retirement or replacement of electric generating infrastructure or facilities located in Montana;

(ii) amounts required to be transferred to the department for transition assistance as required by a financing order; and

(iii) pretax costs that an electric utility has previously incurred related to the commission-approved closure or replacement of electric infrastructure or facilities occurring before [the effective date of this act].

(b) Costs do not include any monetary penalty, fine, or forfeiture assessed against an electric utility by a government agency or court under a federal or state environmental statute, rule, or regulation.

(15) "Montana energy impact assistance property" means:

(a) all rights and interests of an electric utility or successor or assignee of an electric utility under a financing order for the right to impose, bill, collect, and receive Montana energy impact assistance charges as it is authorized to do solely under the financing order and to obtain periodic adjustments to the Montana energy impact assistance charges as provided in the financing order; and

(b) all revenue, collections, claims, rights to payments, payments, money, or proceeds arising from the rights and interests specified in subsection (15)(a), regardless of whether the revenue, collections, claims, rights to payment, payments, money, or proceeds are imposed, billed, received, collected, or maintained together with or commingled with other revenue, collections, rights to payment, payments, money, or proceeds.

(16) "Montana energy impact assistance revenue" means revenue, receipts, collections, payments, money, claims, or other proceeds arising from Montana energy impact assistance property.

(17) "Nonbypassable" means that the payment of a Montana energy impact assistance charge required to repay bonds and related costs may not be avoided by any retail customer located within an electric utility service area.

(18) "Pretax costs" means costs approved by the commission, including but not limited to:

(a) unrecovered capitalized costs of retired or replaced electric infrastructure or facilities;

(b) costs of decommissioning and restoring the site of the electric infrastructure or facility;

(c) other applicable capital and operating costs, accrued carrying charges, deferred expenses, reductions for applicable insurance and salvage proceeds; and

(d) the costs of retiring any existing indebtedness, fees, costs, and expenses to modify existing debt agreements or for waivers or consents related to existing debt agreements.

(19) "Successor" means, with respect to any legal entity, another legal entity that succeeds by operation of law to the rights and obligations of the first legal entity pursuant to any bankruptcy, reorganization, restructuring, other insolvency proceeding, merger, acquisition, consolidation, or sale or transfer of assets, whether any of these occur due to restructuring of the electric power industry or otherwise.

(20) "Transition assistance" means assistance provided by or directed by the department using Montana energy impact assistance bond proceeds transferred by an electric utility to the department pursuant to the terms of a financing order to assist Montana communities that are directly impacted by the retirement or replacement of electric infrastructure or facilities.

NEW SECTION. **Section 4. Financing orders -- application requirements.** (1) An electric utility may file an application with the commission for approval to issue Montana energy impact assistance bonds in one or more series, impose, charge, and collect Montana energy impact assistance charges, and create Montana energy impact assistance property related to the retirement or replacement of electric infrastructure or facilities in Montana.

(2) (a) Within 120 days of an electric utility's submission of an application, the commission shall determine whether the application is adequate and in compliance with the commission's minimum filing requirements established in rules adopted pursuant to [section 19]. If the commission determines that the application is inadequate, it shall explain the deficiencies.

(b) The commission shall take final action to approve, deny, or modify any application for a financing order as described in subsection (1) in a final order issued within 270 days of receiving an application.

(3) In addition to any other information required by the commission, an application for a financing order must include:

(a) an estimated schedule for the retirement or replacement;

(b) a specification of the effects of the proposed Montana energy impact assistance bond financing on the retirement or replacement;

(c) a proposed methodology for allocating the revenue requirement for the Montana energy impact assistance charge among customer classes;

(d) a description of the nonbypassable Montana energy impact assistance charge required to be paid by customers within the electric utility's service area for recovery of Montana energy impact assistance costs;

(e) an estimate of the net present value of electric utility customer savings expected to result if the financing order is issued as determined by a net present value comparison between the costs to customers that are expected to result from the financing of the undepreciated balances of electric infrastructure or facilities with Montana energy impact assistance bonds and the costs that would result from the application of traditional electric utility financing mechanisms to the same undepreciated balances; and

(f) one or more alternative financing scenarios in addition to the preferred scenario contained in the application.

(4) The commission shall publish a notice of the proposed change on its website and conforming to the requirements of 2-4-601 in one or more newspapers published and of general circulation within the service area of the electric utility. The notice must announce a public hearing on the application, and the commission shall hold a public hearing.

NEW SECTION. **Section 5. Issuance of financing orders.** (1) After notice and hearing in accordance with [section 4(4)], the commission may issue a financing order if the commission finds:

(a) the Montana energy impact assistance costs described in the application related to the retirement or replacement of electric infrastructure or facilities are reasonable;

(b) the proposed issuance of Montana energy impact assistance bonds and the imposition and collection of Montana energy impact assistance charges:

(i) are just and reasonable;

(ii) are consistent with the public interest;

(iii) constitute a prudent and reasonable mechanism for the financing of Montana energy impact assistance costs described in the application; and

(iv) will provide substantial, tangible, and quantifiable benefits to customers that are greater than the benefits that would have been achieved absent the issuance of Montana energy impact assistance bonds; and

(c) the proposed structuring, marketing, and pricing of the Montana energy impact assistance bonds will:

(i) significantly lower overall costs to customers or significantly mitigate rate impacts to customers relative to traditional methods of financing; and

(ii) achieve the maximum net present value of customer savings, as determined by the commission in a financing order, consistent with market conditions at the time of sale and the terms of the financing order.

(2) (a) The financing order must:

(i) determine the maximum amount of Montana energy impact assistance costs that may be financed from proceeds of Montana energy impact assistance bonds authorized to be issued by the financing order;

(ii) provide that an amount of Montana energy impact assistance bond proceeds up to 15% of the net present value of electric utility customer savings estimated pursuant to [section 4(3)(e)] be transferred to the department by the electric utility and deposited in the Montana energy impact assistance special revenue account established in [section 23] to which the financing order applies for use by the department in providing transition assistance grants in accordance with [sections 20 through 25] and paying its reasonable and necessary administrative and operating costs as authorized by [sections 20 through 25];

(iii) describe the proposed customer billing mechanism for Montana energy impact assistance charges and include a finding that the mechanism is just and reasonable;

(iv) describe the financing costs that may be recovered through Montana energy impact assistance charges and the period over which the costs may be recovered, which must end no earlier than the date of final legal maturity of the Montana energy impact assistance bonds;

(v) describe the Montana energy impact assistance property that is created and that may be used to pay, and secure the payment of, the Montana energy impact assistance bonds and financing costs authorized in the financing order;

(vi) authorize the electric utility to finance Montana energy impact assistance costs through the issuance of one or more series of Montana energy impact assistance bonds. An electric utility is not required to secure a separate financing order for each issuance of Montana energy impact assistance bonds or for each scheduled phase of the retirement or replacement of electric infrastructure or facilities approved in the financing order;

(vii) include a formula-based adjustment mechanism for making expeditious periodic adjustments in the Montana energy impact assistance charges that customers are required to pay pursuant to the financing order and for making any adjustments that are necessary to correct for any overcollection or undercollection of the Montana energy impact assistance charges in past periods or to otherwise guarantee the timely payment of Montana energy impact assistance bonds and financing costs and other required amounts and charges payable in connection with Montana energy impact assistance bonds;

(viii) include any additional findings or conclusions determined to be appropriate by the commission and in the best interest of consumers;

(ix) specify the degree of flexibility afforded to the electric utility in establishing the terms and conditions of the Montana energy impact assistance bonds, including but not limited to repayment schedules, expected interest rates, and other financing costs;

(x) specify the timing of actions required by the order so that:

(A) the Montana energy impact assistance bonds are issued as soon as feasible following the issuance of the financing order, independent of the schedule of closing and decommissioning of the electric infrastructure or facility;

(B) the energy assistance funds are transferred to the department as soon as feasible, but no later than the date on which the electric infrastructure or facility ceases operation; and

(C) the applicant utility files to reduce its rates as required in subsection (5) of this section simultaneously with the inception of the Montana energy impact assistance charges and independently of the schedule of closing and decommissioning of the electric infrastructure or facility; and

(xi) specify a future ratemaking process to reconcile any difference between the projected pretax costs included in the amount financed by Montana energy impact assistance bonds and the final actual pretax costs incurred by the utility in retiring or replacing the electric infrastructure or facility.

(b) In a financing order, the commission may include any conditions that are necessary to promote the public interest and may grant relief that is different from that which was requested in the application, as long as the relief is within the scope of the matters addressed in the commission's notice of the application.

(3) For the purposes of a financing order, financing costs include:

(a) principal, interest, and redemption premiums that are payable on Montana energy impact assistance bonds;

(b) any payment required under an ancillary agreement and any amount required to fund or replenish a reserve account or other accounts established under the terms of any indenture, ancillary agreement, or other financing document pertaining to the bonds;

(c) any other demonstrable costs related to issuing, supporting, repaying, refunding, and servicing the bonds, including but not limited to servicing fees, accounting and auditing fees, trustee fees, legal fees, consulting fees, financial advisor fees, administrative fees, placement and underwriting fees, capitalized interest, rating agency fees, stock exchange listing and compliance fees, security registration fees, filing fees, information technology programming costs, and any other demonstrable costs necessary to otherwise ensure and guarantee the timely payment of the bonds or other amounts or charges payable in connection with the bonds;

(d) except as provided in 69-3-308, any taxes and license fees imposed on the revenue generated from the collection of a Montana energy impact assistance charge;

(e) except as provided in 69-3-308, any state and local taxes, including franchise, sales and use, and other taxes or similar charges, including but not limited to regulatory assessment fees, whether paid, payable, or accrued; and

(f) any costs incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under [sections 1 through 19] and in accordance with [section 9(4)] engage specialized counsel and expert consultants experienced in securitized electric utility ratepayer-backed bond financing similar to Montana energy impact assistance bonds.

(4) A financing order issued to an electric utility must permit and may require the creation of an electric utility's Montana energy impact assistance property pursuant to subsection (2)(a)(v) be conditioned on, and simultaneous with, the sale or other transfer of the Montana energy impact assistance property to an assignee and the pledge of the Montana energy impact assistance property to secure Montana energy impact assistance bonds.

(5) A financing order must require the applicant utility, simultaneously with the inception of the collection of Montana energy impact assistance charges, to reduce its rates through a reduction in base rates.

NEW SECTION. **Section 6. Effect of financing order.** (1) A financing order remains in effect until the Montana energy impact assistance bonds issued as authorized by the financing order have been paid in full and all financing costs related to the bonds have been paid in full.

(2) A financing order remains in effect and unabated notwithstanding the bankruptcy, reorganization, or insolvency of an electric utility to which the financing order applies or any affiliate of the electric utility or successor entity or assignee.

(3) A financing order is irrevocable, and the commission may not reduce, impair, postpone, or terminate Montana energy impact assistance charges approved in a financing order or impair Montana energy impact assistance property or the collection or recovery of Montana energy impact assistance revenue.

(4) Notwithstanding subsection (3), on its own motion or at the request of an electric utility or any other person, the commission may commence a proceeding and issue a subsequent financing order that provides for refinancing, retiring, or refunding Montana energy impact assistance bonds issued pursuant to the original financing order if:

(a) the commission makes all of the findings specified in [section 5(1)] with respect to the subsequent financing order; and

(b) the modification provided for in the subsequent financing order does not impair in any way the covenants and terms of the Montana energy impact assistance bonds to be refinanced, retired, or refunded.

NEW SECTION. **Section 7. Montana energy impact assistance bonds.** (1) The proceeds of Montana energy impact assistance bonds must be used to recover, finance, or refinance commission-approved Montana energy impact assistance costs and financing costs, including transition assistance to affected workers and communities, and other costs that are secured by or payable from Montana energy impact assistance property.

(2) If certificates of participation or ownership are issued, references to principal, interest, or premium refer to comparable amounts under those certificates.

NEW SECTION. **Section 8. Effect on commission jurisdiction.** (1) Except as provided in subsection (2), if the commission issues a financing order to an electric utility, the commission may not, in exercising its powers and carrying out its duties pursuant to Title 69:

(a) consider the Montana energy impact assistance bonds issued pursuant to the financing order to be debt of the electric utility other than for income tax purposes unless it is necessary to consider the Montana energy impact assistance bonds to be debt to achieve consistency with prevailing utility debt rating methodologies;

(b) consider the Montana energy impact assistance charges paid under the financing order to be revenue of the electric utility;

(c) except as otherwise provided for in [sections 1 through 19] or for the purposes of establishing the electric utility's base rates, consider the Montana energy impact assistance costs or financing costs specified in the financing order to be the regulated costs or assets of the electric utility; or

(d) determine any prudent action taken by an electric utility that is consistent with the financing order to be unjust or unreasonable.

(2) Nothing in subsection (1):

(a) affects the authority of the commission to apply or modify any billing mechanism designed to recover Montana energy impact assistance charges;

(b) prevents or precludes the commission from investigating the compliance of an electric utility with the terms and conditions of a financing order and requiring compliance with the financing order; or

(c) prevents or precludes the commission from imposing regulatory sanctions against an electric utility for failure to comply with the terms and conditions of a financing order or the requirements of [sections 1 through 19].

(3) The commission may not refuse to allow the recovery of any costs associated with the retirement or replacement of electric infrastructure or facilities by an electric utility solely because the electric utility has elected to finance those activities through a financing mechanism other than Montana energy impact assistance bonds.

(4) The commission shall authorize mitigating remedies to offset an electric utility's book losses, as determined necessary by the commission.

NEW SECTION. **Section 9. Electric utility customer protection.** (1) Because the commission's approval of a financing order is irrevocable, typically addresses very large amounts of financing undertaken, and is not reviewable by future commissions, in addition to its other powers and duties, the commission shall perform comprehensive due diligence in its evaluation of an application for a financing order and shall oversee the process used to structure, market, and price Montana energy impact assistance bonds.

(2) In addition to any other authority, the commission:

(a) may attach conditions to the approval of a financing order as the commission finds appropriate to maximize the financial benefits or minimize the financial risks of the transaction to customers and to directly impacted Montana workers and communities;

(b) may specify details of the process used to structure, market, and price Montana energy impact assistance bonds, including the selection of the underwriter or underwriters;

(c) shall review and determine the reasonableness of all proposed upfront and ongoing financing costs; and

(d) shall ensure that the structuring, marketing, and pricing of Montana energy impact assistance bonds maximizes net present value customer savings, consistent with market conditions and the terms of the financing order.

(3) (a) Within 120 days after the issuance of Montana energy impact assistance bonds, the applicant electric utility shall file with the commission information regarding the actual upfront and ongoing financing costs of the Montana energy impact assistance bonds. The commission shall review the prudence of the electric utility's action to determine whether the costs resulted in the lowest overall costs that were reasonably consistent with both market conditions at the time of the issuance and the terms of the financing order.

(b) Except as provided in subsection (3)(c), if the commission determines that the electric utility's actions were not prudent or were inconsistent with the financing order, the commission may apply any remedies that are available.

(c) The commission may not apply any remedy that has the effect, directly or indirectly, of impairing the security for the Montana energy impact assistance bonds.

(4) (a) In performing its responsibilities in accordance with [sections 1 through 19], the commission may engage outside consultants and counsel experienced in securitized electric utility ratepayer-backed bond financing similar to Montana energy impact assistance bonds, and the expenses associated with the engagement may be included as financing costs and included in the Montana energy impact assistance charge. The costs are not an obligation of the state and are assigned solely to the transaction.

(b) Expenses incurred by the commission to hire and compensate additional temporary staff needed to perform its responsibilities under [sections 1 through 19] must be included as financing costs and included in the Montana energy impact assistance charge.

(5) If a utility's application for a financing order is denied or withdrawn for any reason and Montana energy impact assistance bonds are not issued, the commission's costs of retaining expert consultants, as authorized by subsection (4), must be paid by the applicant utility and are considered by the commission as a prudent deferred expense for recovery in the utility's future rates.

NEW SECTION. **Section 10. Judicial review of financing orders.** (1) A financing order is a final order of the commission.

(2) A party aggrieved by the issuance of a financing order may petition for suspension and review of the financing order in the district court of the first judicial district, Lewis and Clark County. In the case of any petition for suspension and review, the court shall proceed to hear and determine the action as expeditiously as practicable and give the action precedence over other matters not accorded similar precedence by law.

NEW SECTION. **Section 11. Electric utilities -- duties -- nonbypassable charges.** (1) The electric bills of an electric utility that obtains a financing order and causes Montana energy impact assistance bonds to be issued must:

(a) explicitly reflect that a portion of the charges on the bill represents Montana energy impact assistance charges approved in a financing order and, if Montana energy impact assistance property has been transferred to an assignee, must include a statement that the assignee is the owner of the rights to Montana energy impact assistance charges and that the electric utility or other entity, if applicable, is acting as a collection agent or servicer for the assignee;

(b) include the Montana energy impact assistance charge on each customer's bill as a separate line item titled "energy impact assistance charge" and may include both the rate and the amount of the charge on each bill; and

(c) explain to customers in an annual filing with the commission the rate impact that financing of the retirement or replacement of electric infrastructure or facilities has on customer rates.

(2) Montana energy impact assistance charges are nonbypassable and payment must be made by all existing and future customers receiving service from the electric utility or its successors or assignees under commission-approved rate schedules or under special contracts.

(3) The failure of an electric utility to comply with this section does not invalidate, impair, or affect any financing order, Montana energy impact assistance property, Montana energy impact assistance charge, or Montana energy impact assistance bonds, but does subject the electric utility to penalties under applicable commission rules.

(4) An electric utility that obtains a financing order and causes Montana energy impact assistance bonds to be issued must demonstrate in an annual filing with the commission that Montana energy impact assistance revenues are applied solely to the repayment of Montana energy impact assistance bonds and other financing costs.

NEW SECTION. **Section 12. Montana energy impact assistance property.** (1) Montana energy impact assistance property described in a financing order is an existing present property right or interest in a property right even though the imposition and collection of Montana energy impact assistance charges depends on the electric utility collecting Montana energy impact assistance charges and on future electricity consumption. The property right or interest exists regardless of whether the revenues or proceeds arising from the Montana energy impact assistance property have been billed, have accrued, or have been collected.

(2) Montana energy impact assistance property described in a financing order exists until all Montana energy impact assistance bonds issued pursuant to the financing order are paid in full and all financing costs and other costs of the Montana energy impact assistance bonds have been recovered in full.

(3) All or any portion of Montana energy impact assistance property described in a financing order issued

to an electric utility may be transferred, sold, conveyed, or assigned to a successor or assignee that is wholly owned, directly or indirectly, by the electric utility and is created for the limited purpose of acquiring, owning, or administering Montana energy impact assistance property or issuing Montana energy impact assistance bonds as authorized by the financing order. All or any portion of Montana energy impact assistance property may be pledged to secure Montana energy impact assistance bonds issued pursuant to a financing order, amounts payable to financing parties and to counterparties under any ancillary agreements, and other financing costs. Each transfer, sale, conveyance, assignment, or pledge by an electric utility or an affiliate of an electric utility is a transaction in the ordinary course of business.

(4) If an electric utility defaults on any required payment of charges arising from Montana energy impact assistance property described in a financing order, a court, upon application by an interested party and without limiting any other remedies available to the applying party, shall order the sequestration and payment of the revenues arising from the Montana energy impact assistance property to the financing parties. Any financing order remains in full force and effect notwithstanding any reorganization, bankruptcy, or other insolvency proceedings with respect to the electric utility or its successors or assignees.

(5) The interest of a transferee, purchaser, acquirer, assignee, or pledgee in Montana energy impact assistance property specified in a financing order issued to an electric utility, and in the revenue and collections arising from that property, is not subject to setoff, counterclaim, surcharge, or defense by the electric utility or any other person or in connection with the reorganization, bankruptcy, or other insolvency of the electric utility or any other entity.

(6) A successor to an electric utility, whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding or whether pursuant to any merger or acquisition, sale, other business combination, or transfer by operation of law, as a result of electric utility restructuring or otherwise, must perform and satisfy all obligations of, and has the same duties and rights under a financing order as the electric utility to which the financing order applies and shall perform the duties and exercise the rights in the same manner and to the same extent as the electric utility, including collecting and paying to any person entitled to receive revenues, collections, payments, or proceeds of Montana energy impact assistance property described in the financing order.

NEW SECTION. **Section 13. Montana energy impact assistance bonds -- legal investments -- not public debt -- pledge of the state.** (1) Banks, trust companies, savings and loan associations, insurance companies, executors, administrators, guardians, trustees, and other fiduciaries may legally invest any money within their control in Montana energy impact assistance bonds.

(2) Montana energy impact assistance bonds issued as authorized by a financing order are not debt of or a pledge of the faith and credit or taxing power of the state, any agency of the state, or any county, municipality, or other political subdivision of the state. Holders of Montana energy impact assistance bonds may not have taxes levied by the state or by any county, municipality, or other political subdivision of the state for the payment of the principal or interest on Montana energy impact assistance bonds. The issuance of Montana energy impact assistance bonds does not directly, indirectly, or contingently obligate the state or a political subdivision of the state to levy any tax or make any appropriation for payment of principal or interest on the Montana energy impact assistance bonds.

(3) The Montana energy impact assistance bonds issued under [sections 1 through 19] are exempt from the provisions of Title 30, chapter 10, but copies of all prospectus and disclosure documents must be deposited for public inspection with the state securities commissioner.

NEW SECTION. **Section 14. Assignee or financing party not subject to commission regulation.** An assignee or financing party that is not already regulated by the commission does not become subject to commission regulation solely as a result of engaging in any transaction authorized by or described in [sections 1 through 19].

NEW SECTION. **Section 15. Effect of other laws.** (1) If any provision of [sections 1 through 19] conflicts with any other law regarding the attachment, assignment, perfection, effect of perfection, or priority of any security interest in or transfer of Montana energy impact assistance property, the provisions of [sections 1 through 19] govern.

(2) Nothing in subsection (1) precludes a utility for which the commission has initially issued a financing order from applying to the commission for:

(a) a subsequent financing order amending the financing order as authorized by [section 6(4)]; or

(b) approval of the issuance of Montana energy impact assistance bonds to refund all or a portion of an outstanding series of Montana energy impact assistance bonds.

NEW SECTION. **Section 16. Security interests in Montana energy impact assistance property.** (1) The creation, perfection, and enforcement of any security interest in Montana energy impact assistance property to secure the repayment of the principal of and interest on Montana energy impact assistance bonds, amounts payable under any ancillary agreement, and other financing costs are governed by this section.

(2) The following apply to a security interest:

(a) the description or indication of Montana energy impact assistance property in a transfer or security agreement and a financing statement is sufficient only if the description or indication refers to [sections 1 through 19] and the financing order creating the Montana energy impact assistance property;

(b) a security interest in Montana energy impact assistance property is a continuously perfected security interest and has priority over any other lien, created by operation of law or otherwise, which may subsequently attach to the Montana energy impact assistance property unless the holder of the security interest has agreed in writing otherwise in accordance with Title 30, chapter 9A, part 3;

(c) the priority of a security interest in Montana energy impact assistance property is not affected by the commingling of Montana energy impact assistance property or Montana energy impact assistance revenue with other money. An assignee, bondholder, or financing party has a perfected security interest in the amount of all Montana energy impact assistance property or Montana energy impact assistance revenue that is pledged for the payment of Montana energy impact assistance bonds even if the Montana energy impact assistance property or Montana energy impact assistance revenue is deposited in a cash or deposit account of the electric utility in which the Montana energy impact assistance revenue is commingled with other money, and any other security interest that applies to the other money does not apply to the Montana energy impact assistance revenue.

(d) Neither a subsequent order of the commission amending a financing order as authorized by [section 6], nor application of an adjustment mechanism as authorized by [section 5(2)(a)(vii)], affects the validity, perfection, or priority of a security interest in or transfer of Montana energy impact assistance property.

(2) (a) A security interest in Montana energy impact assistance property is created, valid, and binding as soon as:

(i) the financing order that describes the Montana energy impact assistance property is issued;

(ii) a security agreement is executed and delivered; and

(iii) value is received for the Montana energy impact assistance bonds.

(b) Once a security interest in Montana energy impact assistance property is created, the security interest attaches without any physical delivery of collateral or any other act. The lien of the security interest is valid, binding, and perfected under Title 30, chapter 9A, part 3, against all parties having claims of any kind in tort, contract, or otherwise against the person granting the security interest, regardless of whether the parties have notice of the lien, upon the filing of a financing statement with the secretary of state.

(3) A valid and enforceable security interest in Montana energy impact assistance property is perfected only when it has attached and when a financing order has been filed with the secretary of state in accordance with procedures that the secretary of state may establish. The financing order must name the pledgor of the Montana energy impact assistance property as debtor and identify the property.

NEW SECTION. **Section 17. Sales of Montana energy impact assistance property.** (1) (a) A sale, assignment, or transfer of Montana energy impact assistance property is an absolute transfer and true sale of, and not a pledge of or secured transaction relating to, the seller's right, title, and interest in, to, and under the Montana energy impact assistance property if the documents governing the transaction expressly state that the transaction is a sale or other absolute transfer. A transfer of an interest in Montana energy impact assistance property may be created when:

(i) the financing order creating and describing the Montana energy impact assistance property is effective;

(ii) the documents evidencing the transfer of the Montana energy impact assistance property are executed and delivered to the assignee; and

(iii) value is received.

(b) A transfer of an interest in Montana energy impact assistance property must be filed with the secretary of state and perfected under Title 30, chapter 9A, part 3, against all third persons, including any judicial lien or other lien creditors or any claims of the seller or creditors of the seller, other than creditors holding a prior security interest, ownership interest, or assignment in the Montana energy impact assistance property previously perfected in accordance with [section 16] or this subsection (1).

(2) The characterization of a sale, assignment, or transfer as an absolute transfer and true sale, and the corresponding characterization of the property interest of the assignee is not affected or impaired by:

(a) commingling of Montana energy impact assistance revenue with other money;

(b) the retention by the seller of:

(i) a partial or residual interest, including an equity interest, in the Montana energy impact assistance property, whether direct or indirect, or whether subordinate or otherwise; or

(ii) the right to recover costs associated with taxes, franchise fees, or license fees imposed on the collection of Montana energy impact assistance revenue;

(c) any recourse that the purchaser may have against the seller;

(d) any indemnification rights, obligations, or repurchase rights made or provided by the seller;

(e) an obligation of the seller to collect Montana energy impact assistance revenues on behalf of an assignee;

(f) the treatment of the sale, assignment, or transfer for tax, financial reporting, or other purposes;

(g) any subsequent financing order amending a financing order as authorized by [section 6]; or

(h) any application of an adjustment mechanism as authorized by [section 5(2)(a)(vii)].

NEW SECTION. **Section 18. Use of amounts received by electric utility as consideration for its transfer of Montana energy impact assistance property.** (1) Subject to commission approval as required by subsection (2), an electric utility may expend or invest amounts the electric utility receives as consideration for its transfer of Montana energy impact assistance property, in a manner that demonstrably benefits ratepayer interests, as follows:

(a) to purchase power to replace electricity generated by the electric infrastructure or facilities that were retired or replaced if the commission determines that the purchased power is a least-cost generation resource, taking into consideration regulatory risk, current and future fuel cost and risk, and fuel delivery infrastructure costs, and is consistent with the electric utility's most recent electricity supply resource procurement plan submitted to the commission in accordance with 69-8-419 or most recent integrated least-cost resource plan submitted in accordance with chapter 3, part 12, of this title;

(b) to build and own generation infrastructure and facilities that are least-cost generation resources, taking into consideration regulatory risk, current and future fuel cost and risk, and fuel delivery infrastructure costs, the addition of which is not inconsistent with the electric utility's resource procurement or integrated least-cost resource plan;

(c) to build, own, or purchase electricity storage capacity to the extent that the investment is either required by law or rule, is the least-cost, or is needed to increase the amount of least-cost generation resources that the electric utility is able to add to its generation portfolio;

(d) to invest in network modernization to the extent that the modernization is necessary to increase the amount of least-cost generation resources able to be added to the electric utility's system; and

(e) to replace any demand or destroyed electric infrastructure or facilities involved in the transmission or delivery of electricity to Montana customers.

(2) In considering any application for approval of the use of Montana energy impact assistance bond proceeds, the commission shall:

(a) use its regular process for consideration of applications; and

(b) fully consider new energy technologies and future environmental regulations.

NEW SECTION. **Section 19. Commission rulemaking.** (1) The commission shall adopt rules that guide the Montana energy impact assistance bond and financing order processes in accordance with [sections 1 through 18].

(2) The rules must establish:

(a) guidelines that are consistent with the objectives in [sections 2] for:

(i) meeting Montana's electricity supply resource needs; and

(ii) managing the portfolio of electricity supply resources.

(b) minimum filing requirements for applications filed pursuant to [sections 1 through 18]; and

(c) penalties for failure to comply with [section 11].

(3) The commission may adopt any other rules necessary to:

(a) govern its proceedings and procedures for the filing, investigation, and hearing of applications submitted in accordance with [sections 1 through 18]; and

(b) implement the provisions of [sections 1 through 18].

NEW SECTION. **Section 20. Mitigation of impact -- local advisory committees.** (1) In order to mitigate the direct impacts to Montana workers and local communities resulting from the retirement or replacement of electric infrastructure or facilities, the department shall:

(a) determine the direct impacts that a retirement or replacement of electric infrastructure or facilities will have on Montana workers and communities, including tribal entities, and consult with the appropriate state agencies, tribal and local governments, electric utilities, labor unions, and any other persons who possess relevant information in making a determination; and

(b) provide transition assistance grants in accordance with [section 21] to local governments, tribal entities, or agencies of local government, nonprofit corporations, educational institutions, for-profit corporations, or to any community development agency for its use in mitigating direct impacts to workers and local communities resulting from the retirement or replacement of electric infrastructure or facilities.

(2) (a) When determining grant recipients, the department may take into consideration the advice of a local advisory committee established in accordance with subsections (2)(b) and (2)(c).

(b) The department may establish an advisory committee in conjunction with each local government, tribal government, and school district that includes all or a portion of impacted communities.

(c) A local advisory committee:

(i) may advise the department with respect to the nature and scope of the direct impacts to the community resulting from the retirement or replacement of electric infrastructure or facilities and the development of a transition assistance plan for the community; and

(ii) may either be dissolved by the department when the transition assistance is completed or maintained to advise the department regarding the implementation of the transition assistance.

NEW SECTION. **Section 21. Transition assistance grants.** Transition assistance grants awarded in accordance with [sections 20 through 25] may be provided by the department for:

(1) retraining costs, including costs of any apprenticeship program, or skilled worker training program for directly displaced infrastructure or facility workers;

(2) financial assistance for directly displaced infrastructure or facility workers;

(3) payment of retraining costs, including costs of any apprenticeship program or skilled worker training program, and provision of financial assistance, including wage support or supplemental retirement support, for Montana workers;

(4) job retraining and education for workers who are Montana residents who were directly involved in the transport of fuel to retired or replaced electric infrastructure or facilities and who are laid off or experience reduced work schedules resulting from the retirement or replacement of the electric infrastructure or facilities; or

(5) any combination of subsections (1) through (4).

NEW SECTION. **Section 22. Energy impact assistance department duties -- rulemaking.** The department may:

(1) expend money in the Montana energy impact assistance special revenue account established in [section 23] to meet the requirements of [sections 20 through 25]; and

(2) adopt rules necessary for the administration of [sections 20 through 25] and the implementation of a grant program.

NEW SECTION. **Section 23. Funding -- special revenue account.** (1) There is a Montana energy impact assistance special revenue account within the state special revenue fund established in 17-2-102.

(2) Revenue derived from payments from electric utilities required to make payments pursuant to the provisions of a financing order in accordance with [section 5] and any voluntary contributions made in accordance with [section 24] must be deposited into the account.

(3) The revenue received under this section must be used by the department to implement the requirements of [sections 20 through 25].

(4) The money in the account is statutorily appropriated, as provided in 17-7-502, to the department.

NEW SECTION. **Section 24. Voluntary contributions to department.** (1) Upon the retirement or replacement of electric infrastructure or facilities, an electric utility may, at its sole discretion, voluntarily contribute transition assistance funds to the department, whether or not the utility has obtained a financing order and issued Montana energy impact assistance bonds in connection with the retirement or replacement of electric infrastructure or facilities.

(2) A voluntary contribution must be deposited in the Montana energy impact assistance special revenue account established in [section 23].

NEW SECTION. **Section 25. Reporting to the legislature.** In any fiscal year that the department provides transition assistance, the department shall submit to the environmental quality council established in 5-16-101 and the legislative finance committee established in 5-12-201 a report in accordance with 5-11-210.

Section 26. 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; 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 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; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; [section 23]; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; 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 sec. 10, Ch. 360, L. 1999, the inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of

contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2, Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

Section 27. Section 69-1-114, MCA, is amended to read:

"69-1-114. Fees. (1) Each fee charged by the commission must be reasonable.

(2) Except for a fee assessed pursuant to 69-3-204(2), 69-8-421(10), ~~or~~ 69-12-423(2), <u>or [section 9(4)],</u> a fee set by the commission may not exceed $500.

(3) All fees collected by the department under 69-8-421(10) must be deposited in an account in the special revenue fund. Funds in this account must be used as provided in 69-8-421(10).

<u>(4) All fees collected by the commission under [section 9(4)] must be treated as financing costs and used in accordance with a financing order issued in accordance with [section 5].</u>"

<u>NEW SECTION.</u> **Section 28. Codification instruction.** [Sections 1 through 25] are intended to be codified as an integral part of Title 69, and the provisions of Title 69 apply to [sections 1 through 25].

<u>NEW SECTION.</u> **Section 29. 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].

<u>NEW SECTION.</u> **Section 30. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 31. Effective date.** [This act] is effective July 1, 2019.

- END -