

HOUSE BILL NO. 898

2/19 Introduced  
2/19 Referred to Business & Labor  
2/22 Hearing  
2/22 Adverse Committee Report  
2/23 Bill Killed

1 HOUSE BILL NO. 898  
2 INTRODUCED BY Rados

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE  
5 CREATION OF PEOPLE'S ENERGY DISTRICTS TO SUPPLY ELECTRICITY  
6 AND NATURAL GAS WITHIN THE DISTRICT; PROVIDING FOR A BOARD  
7 TO ADMINISTER THE DISTRICT; PROVIDING FOR THE ISSUANCE OF  
8 REVENUE BONDS; AND AMENDING SECTION 69-3-101, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 NEW SECTION. Section 1. Purpose. [Sections 1 through  
12 29] authorize the establishment of people's energy districts  
13 operating on a profit basis to supply electricity and  
14 natural gas distribution within the district and to generate  
15 electricity for sale within the district or for sale to  
16 utilities outside the district.

17 NEW SECTION. Section 2. Definitions. As used in  
18 [sections 1 through 29], the following definitions apply:

19 (1) "Board" means the people's energy district board  
20 created in [section 6].

21 (2) "Electoral district" means a district established  
22 within a people's energy district for the purpose of  
23 electing members of the board.

24 NEW SECTION. Section 3. Territory of district. A  
25 district may include all or part of any number of counties,

1 including municipalities. All territory in a district must  
2 be contiguous.

3 NEW SECTION. Section 4. Initiation of proceedings to  
4 create district. (1) If a proposed district is to include  
5 territory contained within two or more counties, notice must  
6 be given to the governing bodies of such counties that a  
7 multicounty district is proposed. Within each affected  
8 county, after such notice, the governing body of a county  
9 may by resolution declare its intention of calling an  
10 election for the creation of the district or may require the  
11 submission of a petition for the creation of the district,  
12 signed by 15% of the electors of the territory in the county  
13 proposed to be included in the district.

14 (2) The resolution of intention or the petition must  
15 contain:

16 (a) the boundaries of the proposed district;

17 (b) the boundaries of that portion of the district to  
18 be created within the county;

19 (c) the total authorized bonded indebtedness of the  
20 proposed district; and

21 (d) the number of mills of property taxation that the  
22 district may be authorized to levy.

23 (3) Within 60 days after the notice set forth in  
24 subsection (1), the governing bodies of all counties that  
25 have adopted a resolution of intention, together with the



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1 governing bodies of counties where a petition satisfying the  
2 requirements of subsection (1) has been submitted, shall  
3 hold a joint meeting to:

4 (a) set a date, which may not be earlier than 60 days  
5 or more than 90 days from the date of the meeting, to hold  
6 an election on whether the district is to be created and to  
7 elect the first board of the district;

8 (b) as provided in [section 9(1)], apportion the  
9 district for the election of board members;

10 (c) certify the maximum bonded indebtedness, which  
11 must be the amount set forth in the petitions and  
12 resolutions, if that amount was identical, or an average of  
13 all petitions and resolutions, if the amounts differed. If  
14 all anticipated territory did not qualify or more territory  
15 than anticipated qualified, either by resolution or  
16 petition, for an election on the creation of the district,  
17 the governing bodies shall adjust the maximum bonded  
18 indebtedness by subtraction or addition of the percentage of  
19 the unanticipated territory's taxable valuation from or to  
20 the amount of bonded indebtedness.

21 (d) set the boundary of the district, based upon the  
22 territory qualifying for election on the creation of the  
23 district.

24 (4) If a proposed district does not cross a county  
25 boundary, the district must be created by the process set

1 forth in subsections (2) and (3), except that:

2 (a) advance notice to the county governing body is not  
3 required;

4 (b) no joint meeting or resolution is required; and

5 (c) the provisions of subsection (3)(c) do not apply.

6 NEW SECTION. Section 5. Election on question of  
7 creating the district. (1) The election on the question of  
8 creating a district must be conducted, as nearly as  
9 possible, in conformity with general election laws.

10 (2) The ballots shall be submitted in substantially  
11 the following form:

12  FOR the creation of a people's energy district with  
13 a bonded indebtedness authority not to exceed  
14 \$\_\_\_\_\_ and a property tax mill levy authority not  
15 to exceed \_\_\_ mills.

16  AGAINST the creation of a people's energy district.

17 (3) The question of creating a district fails unless  
18 approved by a separate majority of the electors in each  
19 county eligible to vote on the question.

20 NEW SECTION. Section 6. District board. The district  
21 shall be governed by a board. The board consists of five  
22 elected members.

23 NEW SECTION. Section 7. Compensation of board  
24 members. The board members serve without compensation but  
25 may receive mileage and per diem as provided in 2-18-501

1 through 2-18-503.

2 NEW SECTION. Section 8. Nomination and election of  
3 board members. (1) Any registered elector who is a resident  
4 of the electoral district may file with the election  
5 administrator of his county of residence a petition of  
6 candidacy for the office of board member from the electoral  
7 district. The candidate must file a nonpartisan petition for  
8 candidacy containing the signatures of not less than 25  
9 registered electors of the electoral district. No filing fee  
10 is required. Except for the number of signatures required,  
11 the petition must be filed as provided in 13-14-113.

12 (2) The names of the two candidates from each  
13 electoral district receiving the highest number of votes in  
14 the primary election must be placed on the ballots in the  
15 county general election.

16 (3) For nomination for election to the board elected  
17 at the creation of the district, a candidate must file the  
18 petition of candidacy not less than 45 days prior to the  
19 date set for election on the creation of the district. At  
20 that election, the person receiving the highest number of  
21 votes in each electoral district is elected to the office of  
22 board member.

23 NEW SECTION. Section 9. Representation by board --  
24 election from districts -- terms of office. (1) As provided  
25 in [section 4], the county governing bodies, meeting

1 jointly, or the county governing body, if the district is  
2 within a single county, shall apportion the proposed  
3 district into electoral districts of as nearly equal  
4 population as possible of contiguous territory of the  
5 district. Whenever practicable, electoral district lines  
6 must follow existing county, municipal, school district, and  
7 precinct lines.

8 (2) At least once every 10 years, but as often as  
9 considered necessary or when the size of the district  
10 changes, the electoral districts of board members must be  
11 reapportioned by the board, using the criteria set forth in  
12 subsection (1).

13 (3) Each board member must reside in the electoral  
14 district for which he is elected and must continue to reside  
15 in the electoral district while a board member, unless by  
16 reapportionment his residency is changed to another  
17 electoral district, in which case he is considered to  
18 represent the electoral district from which he was elected  
19 until the end of his term.

20 (4) The term of a member of the board is 4 years.  
21 However, board members elected at the creation of the  
22 district shall serve staggered 2- and 4-year terms  
23 established by lot after the original apportionment of  
24 districts. Each term expires upon the election and  
25 qualification of a successor.

1        NEW SECTION. Section 10. Vacancies on board. A  
 2 vacancy on the board shall be filled by an elector appointed  
 3 from the district of the vacant office by the remaining  
 4 board members. The appointed member serves until a successor  
 5 can be elected at the next county general election to fill  
 6 the unexpired term of the vacant office.

7        NEW SECTION. Section 11. Powers of board. (1) The  
 8 board has all powers necessary for the establishment,  
 9 operation, improvement, maintenance, and administration of  
 10 the district.

11        (2) The board may employ an administrative officer for  
 12 the district and may authorize the employment of such other  
 13 officers and employees at such rates of pay as it considers  
 14 necessary.

15        NEW SECTION. Section 12. Transition power of board.  
 16 (1) The board has the power and authority to provide for  
 17 transition periods relating to the establishment and  
 18 discontinuance of service upon the creation of, additions  
 19 to, and subtractions from the district.

20        (2) Such power must be exercised in a manner that  
 21 provides for the prudent operation of the district and the  
 22 least disruption of service to future or former customers.

23        (3) If the board considers it necessary, it shall  
 24 formulate plans setting forth timetables relating to such  
 25 transition periods. The timetables may be amended from time

1 to time, but such amendments may not substantially change  
 2 the plan or prejudice those who have in good faith relied  
 3 upon the plan.

4        (4) Except for a transition plan established at the  
 5 creation of a district, no transition period may exceed 18  
 6 months.

7        NEW SECTION. Section 13. Property tax mill levy. (1)  
 8 The board may authorize the governing bodies of the counties  
 9 in which a district is located to levy a property tax on the  
 10 taxable property within the district.

11        (2) The board shall certify, at the time for levying  
 12 county taxes, the number of mills to be levied on each  
 13 dollar of taxable valuation of the property in the district.  
 14 The number of mills may not exceed the number authorized at  
 15 the election creating the district as that amount may be  
 16 amended by a general vote by the electors of the district.

17        (3) The proceeds of such taxes may be used for any  
 18 purpose necessary for the operation of the district except  
 19 to pay or service any bond issued by the district.

20        NEW SECTION. Section 14. Issuance of revenue bonds.  
 21 (1) The board may borrow money by the issuance of revenue  
 22 bonds to provide funds for the district. Bonds and interest  
 23 coupons issued under the authority of this section do not  
 24 give rise to a pecuniary liability of any county or  
 25 municipality or a charge against their general credit or

1 taxing powers. Such limitation must be plainly stated on the  
2 face of each of such bonds.

3 (2) The bonds authorized in this section may be issued  
4 in the manner and for any length of time considered most  
5 favorable by the board, but the amount of all such  
6 outstanding bonds may not exceed the amount authorized at  
7 the creation of the district as that amount may be amended  
8 in accordance with [section 15].

9 (3) The board may, without limitation, issue refunding  
10 bonds for the refunding of outstanding bond issues.

11 NEW SECTION. Section 15. Amendment of bonded  
12 indebtedness authority. (1) The electors of the district,  
13 after a vote on the question initiated by the board, may:

14 (a) increase the bonded indebtedness authority of the  
15 district; or

16 (b) decrease the bonded indebtedness authority of the  
17 district, but such decrease in authority may not be  
18 construed to limit the validity of any bonds then  
19 outstanding. After such a decrease, the district may not  
20 issue bonds, except refunding bonds, until such issue can be  
21 done within the limits of the amended bonded indebtedness  
22 authority.

23 (2) Upon entry of additional territory to a district,  
24 the bonded indebtedness authority of the district is equal  
25 to its authority prior to such addition plus the amount

1 authorized with the addition.

2 NEW SECTION. Section 16. Borrowed funds. The board  
3 may borrow sums of money in a total amount outstanding not  
4 to exceed 8% of the bonded indebtedness authority.

5 NEW SECTION. Section 17. Reserve account. A district  
6 may establish a reserve account, not to exceed 4% of the  
7 authorized bonded indebtedness, for the purpose of funding  
8 district operations, maintenance, and acquisitions. Such  
9 funds may be invested in the state unified investment  
10 program.

11 NEW SECTION. Section 18. Acquisition of facilities.

12 (1) The district may acquire, either by construction or  
13 purchase or by the exercise of its power of eminent domain,  
14 as provided in [section 19], real property necessary for the  
15 operation of the district and facilities for the  
16 distribution and transmission of natural gas and electricity  
17 within the district, and it may so acquire such property and  
18 facilities outside the district if necessary for  
19 transmission from district-owned generation facilities.

20 (2) The district may purchase or construct electrical  
21 generation facilities located either inside or outside the  
22 district.

23 (3) The district may cooperate with other utilities or  
24 lease from other utilities transmission facilities located  
25 outside the district.

1        NEW SECTION. Section 19. Exercise of power of eminent  
2 domain. (1) Upon adoption by the board of a resolution  
3 declaring that the acquisition of the property described  
4 therein is in the public interest and necessary for use of  
5 the district, the district has the right to acquire by  
6 eminent domain any real property, including fixtures and  
7 improvements, that it considers necessary to carry out the  
8 purposes of [sections 1 through 29].

9        (2) The district may exercise the power of eminent  
10 domain pursuant to the provisions of either:

11        (a) Title 70, chapter 30; or

12        (b) Any other applicable statutory provisions for the  
13 exercise of the power of eminent domain.

14        (3) Property already devoted to a public use may be  
15 acquired, except that no property belonging to any city or  
16 municipality within the boundaries of the district or to any  
17 government may be acquired without its consent.

18        NEW SECTION. Section 20. Rights-of-way -- underground  
19 lines. (1) A district may exercise the power to use public  
20 rights-of-way for its services as provided in 69-4-101.

21        (2) A district must comply with the provisions of  
22 69-4-102 requiring underground power lines.

23        NEW SECTION. Section 21. Assets not taxable -- fee in  
24 lieu of taxes. No property, real or personal, owned by a  
25 district is subject to state or local taxation, but the

1 district must pay to each taxing jurisdiction and to each  
2 district requiring assessments the same amount that would be  
3 paid by the district if the property were subject to  
4 taxation.

5        NEW SECTION. Section 22. Service territory of  
6 district. (1) A district shall provide electrical and  
7 natural gas services to all premises receiving electrical  
8 and natural gas services within the boundaries of the  
9 district.

10        (2) A district may provide such services, either  
11 temporarily or indefinitely, by contract with a utility. The  
12 contract may provide that such services are provided under  
13 the rate authority of the utility, with the utility  
14 providing the service as it would to its own customer, or  
15 the district may pay the utility for the provision of the  
16 service and bill the customer itself.

17        (3) The provisions of Title 69, chapter 5, part 1, do  
18 not apply to a district providing services within the  
19 district.

20        NEW SECTION. Section 23. Rules for operation of  
21 district services. The district shall adopt rules for  
22 electricity and natural gas sales and distribution  
23 operations within the district. The rules must define or  
24 provide for the use of metered service, user charges,  
25 classifications of users, applications for service, and uses

1 of the service. The rules must establish the district's  
2 procedure for discontinuance of service and reestablishment  
3 of service.

4 NEW SECTION. Section 24. Rates for sale of  
5 electricity and natural gas. (1) A district may regulate,  
6 establish, and charge, as it considers proper, rates,  
7 charges, and classifications imposed for electrical and  
8 natural gas services to the residents of the district. The  
9 rates, charges, and classifications must be reasonable and  
10 just. The district may not generate a profit from such  
11 services but shall charge the amounts necessary for the  
12 continued operation of the district and for service and  
13 retirement of its debts.

14 (2) Except as provided in [section 25], the authority  
15 conferred on the district in subsection (1) is not subject  
16 to the authority of the public service commission.

17 NEW SECTION. Section 25. Sale of excess capacity to  
18 other utilities. (1) If the district generates or owns  
19 electricity or natural gas not required for the district, it  
20 may sell it to any public or private utility, but the  
21 district may not derive a profit from such a sale.

22 (2) If any utility purchaser of electricity or natural  
23 gas from a district is aggrieved at the price charged, it  
24 may file with the public service commission a petition to  
25 establish a nonprofit price for such electricity or natural

1 gas. The public service commission may establish any  
2 reasonable method for making such a determination.

3 NEW SECTION. Section 26. Annual report to public  
4 service commission. A district shall make an annual report  
5 to the public service commission as provided in 69-3-203 and  
6 furnish a copy thereof to the Montana consumer council. The  
7 report must set forth the rates and number of users of each  
8 service and classification and the total income and  
9 expenditures of the district.

10 NEW SECTION. Section 27. Addition of territory to  
11 district. Territory may be added to a district in any of the  
12 following ways:

13 (1) If all the property owners of an area petition the  
14 board for addition to the district, the board may add the  
15 requested territory to the district if it determines that  
16 the provision of service to the added area would not involve  
17 a significant amount of money and the district and its  
18 residents would not be adversely affected by such addition.

19 (2) If 15% of the electors in an area petition for  
20 addition to the district, the board must call for an  
21 election on the question of whether such an area should be  
22 added to the district. Based upon the taxable valuation of  
23 the proposed addition, the election shall be conducted as  
24 follows:

25 (a) If the area has a taxable valuation of less than



1 5% of the taxable valuation of the district and the board  
 2 determines that the addition would not adversely affect the  
 3 district, the electors of the area proposed to be added to  
 4 the district shall vote on the question and if a majority  
 5 approve the addition, the area becomes a part of the  
 6 district.

7 (b) If the area has taxable valuation of more than 5%  
 8 of the taxable valuation of the district or if the board  
 9 determines that the addition of such territory may have an  
 10 adverse effect on the district, the addition must be  
 11 approved by a vote of the electors of the district and by a  
 12 vote of the electors of the territory to be added to the  
 13 district. The board may require that a vote under this  
 14 subsection (2)(b) include a vote to increase the bonded  
 15 indebtedness authority of the district in an amount not to  
 16 exceed the percentage increase of the taxable valuation of  
 17 the territory to be added.

18 NEW SECTION. Section 28. Territory to be subtracted  
 19 from the district. (1) The board may allow parcels or tracts  
 20 of land to be subtracted from the district upon request of a  
 21 service customer or competing utility if it determines that  
 22 such a subtraction would be in the best interests of that  
 23 customer and the district with respect to providing services  
 24 to that customer.

25 (2) (a) If 15% of the electorate of an area request

1 subtraction of the area from the district, the subtraction  
 2 must be approved by a majority of the electors residing in  
 3 the area to be subtracted and by a majority of the electors  
 4 residing in the rest of the district.

5 (b) The electors of an area may petition for  
 6 subtraction from a district subject to contingent liability  
 7 of the district. If the district determines that the  
 8 proceeds of sale of its assets in the subtracted area would  
 9 equal or exceed the percentage relationship of the taxable  
 10 valuation of the subtracted area to the rest of the district  
 11 and that such subtraction is in the best interests of the  
 12 district, it may provide that only the electors in the area  
 13 to be subtracted need vote on the question of subtraction.  
 14 Such a subtraction is effective only after assets of the  
 15 subtracted portion of the district have been sold by the  
 16 district.

17 NEW SECTION. Section 29. Dissolution of district. (1)  
 18 Upon petition by 15% of the electors of the district, a vote  
 19 must be held on the question of whether to dissolve the  
 20 district. The date for the election must be no sooner than  
 21 60 days or later than 120 days from the date the petition is  
 22 submitted to the board.

23 (2) If a majority of those voting on the question  
 24 approve the dissolution, the district court judges of all  
 25 districts wherein the district is located must, within 15

1 days of the official results of the election, set a date,  
 2 which may not be more than 30 days after the official  
 3 results, for the termination of the current board. Such  
 4 judges shall appoint five persons who have never been  
 5 members of the board to become new members of the board. The  
 6 new members of the board shall serve until the district is  
 7 dissolved and must be paid compensation at a rate set by the  
 8 district court judges.

9 (3) The new board shall do all things necessary to  
 10 dissolve the district, including selling its assets and  
 11 negotiating the retirement of its bonded indebtedness.

12 (4) If upon the dissolution of the district it has any  
 13 assets, such assets must be distributed pro rata, by  
 14 assessed valuation, to the counties and municipalities in  
 15 the district for deposit in their general funds.

16 Section 30. Section 69-3-101, MCA, is amended to read:

17 "69-3-101. Meaning of term "public utility". (1) The  
 18 term "public utility", within the meaning of this chapter,  
 19 shall embrace every corporation, both public and private,  
 20 company, individual, association of individuals, their  
 21 lessees, trustees, or receivers appointed by any court  
 22 whatsoever, that now or hereafter may own, operate, or  
 23 control any plant or equipment, any part of a plant or  
 24 equipment, or any water right within the state for the  
 25 production, delivery, or furnishing for or to other persons,

1 firms, associations, or corporations, private or municipal:

- 2 (a) heat;
- 3 (b) street-railway service;
- 4 (c) light;
- 5 (d) power in any form or by any agency;
- 6 (e) except as provided in chapter 7, water for  
 7 business, manufacturing, household use, or sewerage service,  
 8 whether within the limits of municipalities, towns, and  
 9 villages or elsewhere;
- 10 (f) telegraph or telephone service.

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

- 12 (a) privately owned and operated water, sewer, or  
 13 combination systems that do not serve the public; ~~or~~
- 14 (b) county or consolidated city and county water or  
 15 sewer districts as defined in Title 7, chapter 13, parts 22  
 16 and 23; ~~or~~
- 17 (c) a people's energy district as provided in  
 18 [sections 1 through 29]."

19 NEW SECTION. Section 31. Severability. If a part of  
 20 this act is invalid, all valid parts that are severable from  
 21 the invalid part remain in effect. If a part of this act is  
 22 invalid in one or more of its applications, the part remains  
 23 in effect in all valid applications that are severable from  
 24 the invalid applications.

-End-