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IMPACT OF COMPETITION ON THE GENERATION, TRANSMISSION, AND DISTRIBUTION OF ELECTRIC ENERGY STUDY - BACKGROUND MEMORANDUM

The Electric Industry Competition Committee was created by House Bill No. 1237 (1997) to study the impact of competition on the generation, transmission, and distribution of electric energy within this state. The bill was codified as North Dakota Century Code (NDCC) Sections 54-35-18 through 54-35-18.3. Section 54-35-18 states that the Legislative Assembly finds that the economy of North Dakota depends on the availability of reliable, low-cost electric energy and that there is a national trend toward competition in the generation, transmission, and distribution of electric energy, and the Legislative Assembly acknowledges this competition has both potential benefits and adverse impacts on the state's electric suppliers as well as on their shareholders and customers and citizens of this state.

Section 54-35-18.1 outlines the composition of the committee and directs the committee to study the impact of competition on the generation, transmission, and distribution of electric energy within this state and on this state's electric suppliers. Electric suppliers include public utilities, rural electric cooperatives, municipal electric utilities, and power marketers.

Section 54-35-18.2 outlines the study areas that the committee is to address in carrying out its statutory responsibilities. This section provides that the committee is to study the state's electric industry competition and electric suppliers and financial issues, legal issues, social issues, and issues related to system planning, operation, and reliability and is to identify and review potential market structures.

Section 54-35-18.2(9) requires the committee to study Chapter 49-03 and other relevant statutes relating to the extension of electric lines and facilities and the provision of electric service by public utilities and rural electric cooperatives within and outside the corporate limits of a municipality. The study must specifically address and include the criteria used by the Public Service Commission under Chapter 49-03 in determining whether to grant a public utility a certificate of public convenience and necessity to extend its electric lines and facilities to serve customers outside the corporate limits of a municipality and the circumstances, if any, under Chapter 49-03 and other relevant statutes under which a rural electric cooperative may provide electric facilities and service to new customers and existing customers within municipalities being served totally or primarily by a public utility. Notwithstanding this section, Section 54-35-18.3 requires the committee to submit proposed legislation,

if necessary, as a result of this study to the 57th Legislative Assembly.

ELECTRIC INDUSTRY RESTRUCTURING Background

House Bill No. 1237 (1997) reflected the Legislative Assembly's concern that the electric industry is changing rapidly and if competition is to be introduced into North Dakota, it should be done in a fair and equitable manner. Nationally, builders of new technology generating plants, the natural gas industry, and states with high electric rates or excess generating capacity are promoting electric industry restructuring. Arguments put forward for restructuring or implementing competition in the electric industry include greater customer choice, the possibility that open competition may lower costs, encourage generating efficiency, and allocate capital. However, risks and challenges of retail competition include maintaining reliability of supply, pricing outcomes in which some customers may benefit at the expense of others, and allocating stranded costs. The impetus for electric industry restructuring has also come from large industrial and commercial energy users that are opposed to subsidizing residential electricity users. For example, some industrial users are paying 150 percent of the actual cost of providing energy to those users, while residential customers are paying only 60 to 70 percent of the actual cost of providing energy to them.

Traditional Rationale for Regulation

Under the current industry structure, electricity is provided to retail customers by utilities that have geographic monopolies on the provision of electric service within their service territories. Customers within a utility's service territory must purchase all of their electric services from that utility. These services include generation, transmission, distribution, customer service, meter reading, demand-side management, and aggregation and ancillary services.

Generally, three major types of electric utilities exist--investor-owned utilities, municipal and other government-owned utilities, and rural electric cooperatives. States regulate investor-owned utilities regarding their profits, operating practices, and pricing to end-use retail customers, while the Federal Energy Regulatory Commission (FERC) governs the pricing of wholesale bulk power sales and transmission services. Although House Bill No. 1237 (1997) directs the committee to study the impact of competition on the

generation, transmission, and distribution of electric energy, nationwide the restructuring debate is over whether and how to separate the generation of electricity from other electric services in order to allow retail customers to shop for the electricity supplier of their choice.

In North Dakota, the Public Service Commission regulates electric utilities engaged in the generation and distribution of light, heat, or power. North Dakota Century Code Section 49-02-03 grants to the Public Service Commission the power to supervise and establish rates. This section provides:

The commission shall supervise the rates of all public utilities. It shall have the power, after notice and hearing, to originate, establish, modify, adjust, promulgate, and enforce tariffs, rates, joint rates, and charges of all public utilities. Whenever the commission, after hearing, shall find any existing rates, tariffs, joint rates, or schedules unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any of the provisions of this title, the commission by order shall fix reasonable rates, joint rates, charges, or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient, unjustly discriminatory, or otherwise in violation of any provision of law.

Concerning electric utility franchises, NDCC Section 49-03-01 provides that an electric public utility must obtain a certificate of public convenience and necessity from the Public Service Commission before constructing, operating, or extending a plant or system. Similarly, the state's Territorial Integrity Act, Sections 49-03-01.1 through 49-03-01.5, requires an electric public utility to obtain a certificate of public convenience and necessity before constructing, operating, or extending a public utility plant or system beyond or outside of the corporate limits of any municipality. However, Section 49-03-01.3 exempts electric public utilities from the requirement that they obtain a certificate of public convenience and necessity for an extension of electric distribution lines within the corporate limits of a municipality in which it has lawfully commenced operations provided the extension does not interfere with existing services provided by rural electric cooperatives or another electric public utility within the municipality and that any duplication of services is not deemed unreasonable by the Public Service Commission.

As described above, traditionally, an electricity customer must purchase all its electric services from the utility serving that customer's service territory, including the three primary services--generation, transmission, and distribution. Generation refers to the actual creation of electricity, which may be generated using a number of methods and fuel such as nuclear, coal, oil, natural gas, hydro, or wind. Transmission refers to the delivery of electricity over

distances at high voltage from a generation facility through a transmission network usually to one or more distribution substations, where the electricity is stepped down for distribution to residential, commercial, and industrial customers. For the retail customer, the costs for these functions are bundled into retail rates, along with the cost of distribution. Distribution involves the retail sale of electricity directly to consumers.

Other functions traditionally provided by vertically integrated utilities include customer service, billing, meter reading, demand-side management, research and development, and aggregation and ancillary services. Aggregation is the development and management of both a power portfolio, combining power from a variety of sources in order to match the demand for power with adequate power supply and a portfolio of customers with combined demands in order to economically serve those customers. Ancillary services are those services necessary to effect a transfer of electricity between a seller and a buyer and to coordinate generation, transmission, and distribution functions to maintain power quality and system stability.

Under the current industry structure, the utility serving a service territory provides all of these services and functions, selling them as a single bundle. Nationwide, the restructuring debate centers on whether or how the generation function should be separated from the bundle, allowing retail customers to choose their electricity supplier. If generation is unbundled from transmission and distribution, under this scenario, these services may remain regulated functions.

The Regulatory Compact

The provision of electric service has traditionally been considered to exhibit the characteristics of a natural monopoly. According to economic theory, a natural monopoly exists in a market if one service provider in the market can serve customers more efficiently than many competing service providers. A common explanation for electricity provision as a natural monopoly is that allowing competitors to string duplicate transmission and distribution lines and construct excess generation capacity would waste resources and increase electric rates for customers. Generally, the characteristics of a natural monopoly include a high, upfront capital investment in technology; limited storability of a provided service or goods; limited transportability, requiring operations near the end users; and cost advantages of large and integrated systems as a result of better utilization of existing capacity or economies of scale and scope.

In markets exhibiting the characteristics of a natural monopoly, government intervention in the form of regulation over a single firm is considered necessary to provide the market discipline competition cannot provide. In exchange for this monopoly, each

utility is required to serve all customers within its service territory and to provide quality service at just and reasonable rates. The utility is permitted to recover reasonable and prudent expenses associated with its provision of service plus a reasonable rate of return on its investment made to serve customers. This exchange is known as the regulatory compact.

Under the regulatory compact, the traditional method of rate determination has been rate of return regulation. This type of regulation is designed to ensure that utilities offer their services at prices that are based on the cost of the services rather than on the value customers place on those services. In traditional rate of return regulation, the regulating entity determines the revenue requirement (the reasonable and prudent cost of providing utility service), allocates the requirement among customer classes, and translates the allocated revenue requirement into rates.

Traditional rate of return regulation has been criticized for allowing a utility and its shareholders to pass on all of the utility's costs and risks to ratepayers and because the utility faces minimal risks, the utility has little or no incentive to increase its operating efficiency or to minimize its expenses. One critic has stated that rate of return regulation fails to penalize inefficient producers or reward efficient ones.

As an alternative to traditional rate of return regulation, some commentators have advocated and some states have implemented various forms of incentive regulation, including flexible regulation, targeted incentive plans, external performance indexing, price and revenue caps, and performance-based regulation. However, these forms of incentive-based regulation also have their critics. Performance-based regulation opponents have argued that this type of regulation may result in the selection of inappropriate performance benchmarks; incorporation of too many, or contradictory, societal or regulatory goals into the performance-based regulation plan; unreasonable returns to shareholders; or exacerbation of the information asymmetry between utilities and regulators.

Federal Actions to Promote Competition

In 1978 Congress enacted the Public Utility Regulatory Policy Act. The goals of this Act were to make the United States self-sufficient in energy, increase energy efficiency, and encourage the use of renewable alternative fuels. The Act intended to achieve these goals by abandoning the use of natural gas to make electricity, mandating conservation of oil, and encouraging industry to cogenerate electricity using waste heat. The Act required utilities to purchase bulk power produced from cogeneration facilities to ensure that it was financially attractive. However, states were allowed to determine the avoided costs (the amount of money an electric utility would need to spend for the next increment of electric generation that it instead buys from a cogenerator) and quantity of such power. Some states capped the price at the

utility's avoided costs and limited the obligation to purchase to the capacity of the utility. Other states allowed prices above the utility's avoided costs and ordered purchases of additional generation whether needed or not.

In 1992 Congress enacted the Energy Policy Act to encourage the development of a competitive, national, wholesale electricity market with open access to transmission facilities owned by utilities to both new wholesale buyers and new generators of power. In addition, the Act reduced the regulatory requirements for new nonutility generators and independent power producers. The Federal Energy Regulatory Commission initiated rulemaking to encourage competition for generation at the wholesale level by assuring that bulk power could be transmitted on existing lines at cost-based prices. Under this legislation and rulemaking, generators of electricity, whether utilities or private producers, could market power from underutilized facilities across state lines to other utilities.

Finally, the Federal Energy Regulatory Commission has taken a number of steps to encourage competition in the wholesale market. These actions include authorizing market-based rates, issuing Section 211 wheeling orders, ordering open access transmission tariffs, and issuing the open access transmission rule (FERC Order No. 888). Market-based rates are those set by willing buyers and sellers of power. This method may be used instead of the more traditional method of ratesetting by regulators pursuant to administrative hearings, with rates based on the cost of producing power. On April 24, 1996, the Federal Energy Regulatory Commission issued Order Nos. 888 and 889, which essentially require all utilities that own, control, or operate transmission lines to file nondiscriminatory open access transmission tariffs that offer competitors transmission service comparable to the service that the utility provides. In addition, Federal Energy Regulatory Commission Order No. 888 recognizes the right of utilities to recover legitimate, prudent, and verifiable costs stranded by opening up the wholesale electricity market, i.e., stranded costs. Finally, Federal Energy Regulatory Commission Order No. 888 requires public utilities to functionally unbundle their power and services for wholesale power transactions by requiring the internal separation of transmission from generation marketing services.

Electric Industry Restructuring Initiatives in Other States

Twenty-one states have enacted electric industry restructuring legislation. These states include Arkansas, California, Connecticut, Delaware, Illinois, Massachusetts, Maryland, Maine, Montana, New Hampshire, New Jersey, New Mexico, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Virginia, and West Virginia. In addition, four state public utilities commissions have issued

comprehensive restructuring orders. These include Arizona, Michigan, New York, and Vermont. Twenty-one states and the District of Columbia have active legislative or regulatory processes underway to study restructuring and propose implementing legislation. Five states have undertaken little preliminary activity to date. Four states--California, Massachusetts, Pennsylvania, and Rhode Island--have passed the date on which competition is to be phased in. Competition for Illinois' industrial customers will begin later this year. Each of the four states that has passed the date on which competition is to be phased in are in a transition period during which most customers continue to pay a regulated electricity rate. The National Conference of State Legislatures has identified several trends in those states. The National Conference of State Legislatures notes that competition is slow to take hold for most residential customers, but the rules of the transition from monopoly to competition matter tremendously.

Competition has taken hold more quickly among industrial and commercial customers than among residential customers in California. Almost all residential customers continue to pay a regulated rate for power, albeit one that was reduced by 10 percent through a provision in California's restructuring legislation. As of early 1999, .9 percent of residential customers had switched providers, 7.1 percent of commercial customers had switched providers, and 18.1 percent of industrial customers had switched providers.

In Pennsylvania, approximately 400,000 customers have switched providers, which represents a larger proportion of total customers than switched providers in California. In Rhode Island and Massachusetts, few customers have yet switched providers. In large part, this small number reflects the rules set out in the transition.

The National Conference of State Legislatures notes that many utilities are selling their power plants. Only one state, Maine, has required the sale of all utilities' power plants, while some states have created incentives for utilities to sell their plants. With a few exceptions, these plants have sold for about double their book value, which is a far higher sales price than had been expected. Utilities have also been merging at speeds unprecedented for the industry as they attempt to cut costs and extend their markets.

Utilities have generally been allowed to recover their stranded costs subject to certain restrictions. In general, the magnitude of these stranded costs has been smaller than the original estimates. The higher-than-expected prices that power plants fetched on the open market serve to reduce the total amount of utilities' stranded costs.

The National Conference of State Legislatures notes that green power markets are surprisingly strong. Green power refers to an electricity product distinguished by a contract tied to production of

energy generated from wind, biomass, geothermal, solar, or possibly hydro facilities. More than one-half of the customers in California have chosen a green power product and close to one-third of Pennsylvania's customers have chosen a green power product.

Most states that have enacted restructuring legislation include requirements that power marketers disclose the price, terms, fuel source, and emissions characteristics of the power sold to customers. Although states use a variety of approaches to this effort, it appears that it is technically feasible to track the emissions characteristics of the power generated through the flow of contract dollars.

Almost every state that has passed comprehensive restructuring legislation has had to return the following year for revisions to the policy. Nevada this year revised the dates for phasing-in competition. Illinois and Maine addressed environmental and renewable energy provisions of their bills and Montana put in place an energy tax reform package necessitated by a competitive electric industry. Montana also enacted provisions to give smaller customers a means to participate in the competitive electricity market through a statewide cooperative.

California

In 1996 the California Legislature enacted a major restructuring bill that called for customer choice no later than January 1, 1998, created an independent system operator, established a power exchange, and funded stranded cost recovery through bonds. Provisions of the California legislation include:

- Customer choice commencing no later than January 1, 1998. The California Public Utilities Commission will establish a phase-in schedule that is equitable for all customer classes which must be completed for all customers by January 1, 2002.
- An immediate rate reduction, through use of a bond financing mechanism, of not less than 10 percent for residential and small commercial customers. Additionally, rate savings for these customer classes are expected to be no less than 20 percent by April 1, 2002. Up to \$10 billion in rate reduction bonds will be issued in order to achieve the immediate rate reduction and will spread recovery of a portion of competition transition charge for these customers over 10 years.
- A limited transition period, ending December 31, 2001, during which utilities have an opportunity to recover stranded investment through a nonbypassable competition transition charge levied on the usage of electric power. Recovery is limited to certain categories and types of costs and to only that portion that can be recovered under a rate freeze during the transition period.

- A “firewall” to shield residential and small commercial customers from paying for any competition transition charge exemptions granted to industrial users for economic development or retention purposes.
- An independent system operator and a power exchange subject to the jurisdiction of a five-member oversight board appointed by the Governor and the legislature. Publicly owned utilities and investor-owned utilities are required to give control of their transmission facilities to the independent system operator.
- A requirement that utilities continue funding energy conservation and low-income assistance programs through 2001 and that rate-payers pay for that portion recoverable under the rate freeze. Assistance programs must be funded at levels not less than those authorized for 1996. Funding for energy efficiency and conservation must at least equal \$228 million per year through 2001. During the same period, \$62.5 million must be provided for research, development, and demonstration projects to advance science or technology that would not otherwise be adequately provided for in a competitive market. The amount of \$540 million is provided for renewable resource technologies in this time period.
- A requirement that all electric sellers, marketers, and aggregators register with the California Public Utilities Commission and provide consumers with adequate and reliable information regarding supplier options. Contract recision provisions and “antislamming” or “grid-napping” protections are also included in the legislation.

Maine

Legislation enacted by the Maine Legislature in 1997 established retail competition for the purchase and sale of electricity beginning March 1, 2000. The legislation permits electric utilities a reasonable opportunity to recover verifiable and unmitigable stranded costs and also establishes a standard-offer service for

customers who do not seek or take power in the competitive marketplace. The law sets a 33 percent market-share cap for Central Maine Power Company and Bangor Hydro-Electric Company and preserves low-income assistance programs funded through transmission and distribution rates. It establishes a 30 percent renewal-resource portfolio requirement for competitive electricity providers and a program for renewable research development funded through voluntary contributions. Finally, it requires the Maine Public Utilities Commission to develop a consumer education program.

Montana

During the 1997 legislative session, the Montana Legislature enacted Senate Bill No. 390, the Montana Electric Utility Industry Restructuring and Consumer Choice Act. This Act established restructuring requirements for Montana’s electric utility industry. Pilot programs began July 1, 1998, and a report on those programs is due by July 1, 2000. All utility customers must have a choice in their electricity supplier before July 1, 2002. All utilities must submit transition plans. Certain stranded costs laid out in transition plans will be reviewed and will be paid for by transition bonds. Beginning January 1, 1999, 2.4 percent of each utility’s annual retail sales revenue in Montana for the calendar year ending December 31, 1995, is established as the annual funding level for universal system benefits programs. Unless otherwise modified, this funding level remains in effect until July 1, 2003. The recovery for these programs is authorized through a universal systems benefits charge assessed at each customer meter. One feature of the bill which is relevant to electric industry restructuring in North Dakota is how the bill deals with rural electric cooperatives. Section 20 of the bill provides that rural electric cooperatives have the choice of opting in or out of offering their customers choice. If a cooperative opts in, it must certify to the Montana Public Service Commission that it has adopted a transition plan consistent with the provisions of the Act, but essentially the same as the plans of investor-owned utilities. If a cooperative opts out, the cooperative is precluded from accessing the distribution system and, thus, customers of other utilities that have opened their system up without a preexisting contract. A cooperative must participate in the universal systems benefits program whether it opts in or out.

As noted above, Montana put in place an energy tax reform package necessitated by competitive electric industry and enacted new provisions to give smaller customers a means to participate in the competitive electricity market through a statewide cooperative.

Oklahoma

Senate Bill No. 500, signed by the Governor of Oklahoma on April 25, 1997, created the Electric Restructuring Act of 1997 and stated electric utility industry restructuring goals for that state. The Act establishes customer choice by July 1, 2002. Before that date a series of studies will be conducted on various aspects of restructuring. These studies include:

- Formation of an independent system operator for Oklahoma or the region that must have begun by July 1, 1997, and reported by February 1, 1998.
- A study of technical issues, such as reliability, safety, and transmission, which must have reported findings by December 31, 1998.
- A study of financial issues such as rates, charges, and electric service provider financial obligations. This study must have commenced on January 1, 1999, and reported findings by December 31, 1999.
- A study of consumer issues that must have begun by July 1, 1999, and report findings by August 31, 2000.

New Hampshire

The relevant provisions of the New Hampshire restructuring legislation are:

- The New Hampshire Public Utilities Commission must have issued a final restructuring order by June 30, 1997. Utilities must have offered retail access by January 1, 1998. The New Hampshire Public Utilities Commission may delay this date by up to six months without legislative approval.
- Generation must at least be functionally separated from transmission and distribution functions. The Public Utilities Commission may require that distribution and electricity supply services be provided by separate utility affiliates. However, utilities may own small-scale generation facilities as a means of minimizing transmission and distribution costs. While divestiture is not required, utilities must mitigate their stranded costs, with the sale of surplus assets identified as one form of mitigation.
- In the implementation of full-fledged retail competition, utilities are allowed recovery of net, nonmitigable environmental costs and costs of legally mandated purchase power contracts. They are allowed to seek recovery of generation-related assets.
- The Act allows the Public Utilities Commission to establish a stranded cost recovery charge, with the burden of proof for recovery on the utility. It also allows the Public Utilities Commission to establish interim charges effective for two years from the date that utilities file plans to comply with the Act. The Act states

that entry and exit fees are not preferred recovery mechanisms.

Pennsylvania

House Bill No. 1509, enacted by the Pennsylvania General Assembly in 1996, addressed electric industry restructuring in Pennsylvania. The major provisions are:

- By January 1, 1999, utilities must have offered retail access to one-third of their peak load for each customer class; two-thirds by January 1, 2000; and all by January 1, 2001. Utilities must provide this opportunity on a first-come, first-served basis except as directed by the Pennsylvania Public Utilities Commission. The Pennsylvania Public Utilities Commission may delay implementation of the initial phase by up to one year.
- The Act requires unbundling of the generation, transmission, and distribution functions. Generation will be deregulated while transmission and distribution will continue to be regulated as natural monopolies. Divestiture is permitted but not required.
- Utilities are statutorily entitled to recover their nuclear decommissioning costs; contracts for power purchased from nonutility generators, and prudently incurred costs associated with buydowns and buyouts of these contracts; and regulatory assets. The Pennsylvania Public Utilities Commission may allow recovery of generation-related costs in addition to those listed above. Utilities must mitigate costs to the extent practicable through such measures as accelerated depreciation and minimize rates while maintaining safe and efficient operations.
- The Act establishes a competition transition charge applied to any customer using the transmission or distribution system. The competition transition charge may not shift costs between or within customer classes. Customers that install onsite generation and significantly reduce their purchases through transmission and distribution systems must pay a fully allocated competition transition charge.
- The Act establishes a cap on total rates for utility company customers for the shorter of 4.5 years or until the utility finishes collecting its stranded costs through transition charges and all customers can choose suppliers. The generation component of rates plus transition charges may not exceed current Public Utilities Commission-approved generation costs for the shorter of nine years or until the utility finishes collecting its stranded costs through transition charges and all customers can choose suppliers. Limited exceptions to these

caps exist, for example, if they preclude a utility from earning its Public Utilities Commission-authorized rate of return on its investment.

- The Public Utilities Commission may issue a qualified rate order to allow issuance of transition bonds. Bonds may have a maturity of up to 10 years. Proceeds of the bonds must be used to reduce stranded costs and other transition costs. The competition transition charge must be reduced to the extent stranded costs have been refinanced. Savings and interest costs must be passed on directly to customers through rate reductions.
- The Act requires continuation of gross receipts and other state utility taxes with a formula to maintain revenue neutrality through 2003. The gross receipts tax applies to nonutility electric suppliers.

Rhode Island

The 1996 Rhode Island electric restructuring initiative, codified as Rhode Island General Laws § 39-1-27 et seq., provides:

- As of July 1, 1997, utilities must offer retail access to all new commercial and industrial customers, all existing manufacturing customers with average annual demand of 1,500 kilowatts or more, and all accounts of the state government, subject to an overall cap of 10 percent of the utility's total sales.
- As of January 1, 1998, utilities must offer retail access to all existing manufacturing customers with average annual demand of 200 kilowatts or more and all accounts of municipal governments. Utilities are not required to provide retail access to customers accounting for more than 20 percent of their total sales under this and the preceding provision.
- As of July 1, 1998, utilities must offer retail access to all of their remaining customers. This deadline is moved up if retail access is available to 40 percent or more of total sales in New England. The Rhode Island Public Utilities Commission may delay this deadline by up to six months to permit extension of retail access on reasonable terms.
- The Act requires unbundling of generation, transmission, and distribution functions. Generation will be deregulated, while transmission and distribution will continue to be

regulated by the Federal Energy Regulatory Commission and Rhode Island Public Utilities Commission, respectively. Any utility recovering a stranded cost through the transition charge must determine the market value of its fossil fuel and hydrogenerating assets by the sale or spinoff of these facilities. The market value is then deducted from the utility's stranded costs. Utilities must also attempt to sell their portion of their purchase power contracts that exceed market rates to reduce their stranded costs.

- Stranded costs include nuclear decommissioning costs and nuclear operation and maintenance costs that would continue if the plant were shut down; above-market costs of purchase power contracts and the reasonable costs of buying out or buying down these contracts; regulatory assets; and the net unrecovered capital costs of all of the generating plants owned by the utility or its wholesale power distributor as of December 31, 1995, whether or not plants are operating.
- The Act establishes a transition charge applied to any customer using the transmission or distribution system. A nonutility electric supplier may pay part or all of its customer's transition charge. The charge is set at 2.8 cents per kilowatt hour for the period between July 1, 1997, and December 31, 2000. The charge is subject to adjustment to account for the disposition, pursuant to the Act, of nonnuclear generating assets by wholesale power suppliers. From January 1, 2001, the Public Utilities Commission sets the charge. After January 1, 2010, there is no allowance for costs associated with regulatory assets and unamortized capital investments in generating plants.
- Rate increases generally must have held to the rate of inflation from January 1, 1997, through December 31, 1998. These increases did not apply to low-income customers. Utilities must have filed performance-based rate plans with the Public Utilities Commission.
- The Act establishes a commission that was required to submit a plan to the General Assembly by January 1, 1997, on assessing and taxing utilities and nonregulated power producers.

ELECTRIC UTILITY TAXATION IN OTHER STATES

Two states that have enacted comprehensive electric utility taxation bills include Iowa and Montana.

Iowa

Iowa Senate File 2416, attached as Appendix A, generally replaces the current central property tax

assessment procedures utilized by the Iowa Director of Revenue and Finance in valuing property of entities involved primarily in the production, delivery, and transmission of electricity and natural gas, with excise taxes on electricity and natural gas, and a statewide property tax on certain property of these entities. The Act generally took effect January 1, 1999, and is applicable to property tax assessment years beginning on or after January 1, 1999, and to replacement tax years beginning on or after January 1, 1999.

The Act created Iowa Code Chapter 437A, the purpose of which as stated in the chapter is to replace property taxes imposed on electric and natural gas companies, electric cooperatives, and municipal utilities with a system of taxation that will enable these entities to effectively compete in a competitive marketplace, while preserving revenue neutrality and debt capacity for local governments and taxpayers. The Act imposes a replacement tax on the delivery of electricity to a consumer in Iowa. The replacement delivery tax is an amount equal to the number of kilowatt-hours delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate for each competitive service area plus, if applicable, the number of kilowatt-hours delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each electric competitive service area. The tax rate is to be calculated by the Iowa Director of Revenue and Finance.

The Act provides that the replacement tax includes electric generation, transmission, and delivery tax components. The Act provides for municipal electric transfer replacement tax rates that are to be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1998. The Act also provides for the recalculation of the electric replacement delivery tax as a result of an increase or decrease in the number of taxable kilowatt-hours of electricity reported with respect to any electric competitive service area.

The Act imposes a replacement tax on the delivery of natural gas to a consumer within Iowa. The replacement delivery tax is an amount equal to the number of therms delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate for each competitive service area plus, if applicable, the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each natural gas competitive service area. The tax rate is to be calculated by the Iowa Director of Revenue and Finance.

The Act provides for municipal natural gas transfer replacement tax rates that are to be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1998. The Act also provides for the recalculation of natural gas replacement delivery tax as a result of an increase or decrease in the number of taxable therms of natural gas reported with respect to a natural gas competitive service area.

The Act establishes filing requirements, including the information to be included on the tax return. The Act requires a taxpayer to remit to the county treasurer of each county to which replacement tax is allocated, one-half of the replacement tax due on or before September 30 with the remainder to be remitted on or before the following March 31. The Act establishes a three-year statute of limitations for the Iowa Director of Revenue and Finance to examine and assess additional tax if the return is found to be incorrect. The Act provides that if a return is not filed, or when filed is incorrect and after notice from the director a correct return is not filed, the director is authorized to estimate the tax due. The Act establishes a lien on the property of a taxpayer if a replacement tax, together with any costs which accrue, goes unpaid. The Act provides that this lien is prior to and superior over all subsequent liens.

The Act provides for correction of errors, refunds, or credits of replacement tax paid, and for the confidentiality of information provided on a return by a taxpayer. The Act provides that claims for refund or credit are to be filed with the Iowa Director of Revenue and Finance and must be filed within three years after the replacement tax payment upon which a refund or credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later. Claims for refund or credit on municipal transfer replacement tax are to be filed with the appropriate city's chief financial officer.

The Act provides for the allocation of all replacement tax revenue by the Iowa Director of Revenue and Finance. The Act provides that all replacement taxes owed by a taxpayer are to be allocated among the local taxing districts in which the taxpayer's property is located in accordance with a general allocation formula determined by the Iowa Department of Management on the basis of general property tax equivalents.

The Act imposes an annual statewide property tax of three cents per \$1,000 of assessed value on all property that is primarily and directly used in the production, generation, and transmission, or delivery of electricity or natural gas owned or leased to a person subject to taxation under Iowa Code Chapter 437A.

The Act establishes reporting requirements for all electric companies, natural gas companies, electric cooperatives, municipal utilities, and any other person

subject to the replacement taxes established in Iowa Code Chapter 437A for property added or disposed of by these entities. The Act provides a mechanism for the adjustment and reevaluation of the value of the property of these entities.

The Act provides that all revenue from the statewide property tax is to be deposited in the Iowa general fund, with 50 percent of this revenue being available to the Iowa Department of Management for salaries, support, services, and equipment to administer the replacement tax and 50 percent of this revenue being available to the Iowa Department of Revenue and Finance for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

The Act provides that the replacement tax imposed under Iowa Code Chapter 437A is to be reflected in the charges of utilities subject to rate regulation. The Iowa Utilities Board is authorized to determine the amount of replacement tax properly included in retail rates subject to the Iowa Utilities Board's jurisdiction. Finally, the Act requires all taxpayers to file a report with the Iowa Department of Revenue and Finance within 90 days of the effective date of the Act, January 1, 1999, including data necessary to compute the replacement tax.

Montana

The Montana Electrical Generation Tax Reform Act, enacted in 1999, a copy of which is attached as Appendix B, generally revised taxation of electric utilities in Montana. The bill becomes effective January 1, 2000. All investor-owned electric utility generation facilities are transferred from Class 9, 12 percent, to a new Class 13 and taxed at six percent of their market value on January 1, 2000, except for electrical generation facilities used for noncommercial purposes, exclusively for agricultural purposes, or qualifying small power production facilities. The assessed value for the electrical facility's property remaining in Class 9 is not greater in fiscal year 2000 or fiscal year 2001 than the assessed value in 1998. The wholesale energy transaction tax or WET tax applies to kilowatts per hour of electricity produced or consumed in Montana. Electrical production is subject to the tax whether consumed in Montana or exported to another state. Electricity consumed in Montana is subject to the WET tax whether generated in Montana or imported for consumption from another state. The WET tax is applied to electrical transmission at the rate of 0.015 cents per kilowatt-hour. The transmission service provider collects the tax on a quarterly basis.

Exemptions to the WET tax include electricity that is transmitted through the state that is neither produced nor consumed in the state; electricity generated in the state by an agency of the federal government for delivery outside the state; electricity delivered to a distribution services provider that is a

municipal utility or a rural electric cooperative; electricity delivered to a purchaser that receives its power directly from a transmission or distribution facility owned by an entity of the United States government on or before May 2, 1997, or electricity that is transmitted exclusively on transmission or distribution facilities owned by an entity of the United States government on or before May 2, 1997; electricity meeting certain contractual requirements that is delivered by a distribution services provider that was first served by a public utility after December 31, 1996; and electricity that has been subject to the transmission tax in another state. The tax is deposited to the state general fund.

Reimbursements are distributed on a semiannual basis to the county treasurer in the counties affected by a reduction in electric generation of property taxes. Distributions are based on each jurisdiction's change in assessed value of electric generation facilities and its previous year's mill levy.

FEDERAL RESTRUCTURING INITIATIVES

Nine bills relating to electric industry restructuring were introduced during the 105th Congress. However, none became law. To date, at least 14 bills relating to electric industry restructuring have been introduced in the 106th Congress, however, some deal with taxation and other issues and only relate tangentially to electric industry restructuring.

S.282 - This bill, known as the Transition to Competition in the Electric Industry Act, provides that no electric utility may be required, under the Public Utility Regulatory Policies Act of 1978, to enter a new contract or obligation to purchase or sell electricity or capacity from or to qualifying cogeneration and small power production facilities. The bill requires the Federal Energy Regulatory Commission to adopt and enforce regulations designed to ensure that no electric utility may be required to absorb the costs associated with purchases of electric power or capacity from a qualifying facility pursuant to the Public Utility Regulatory Policies Act obligations before enactment of the bill.

S.313 - This bill, known as the Public Utility Holding Company Act of 1999, would repeal the Public Utility Holding Company Act of 1935. The bill prescribes procedural guidelines for both the Federal Energy Regulatory Commission and state access to records of a holding company, including subsidiaries, associates, and affiliates, of a public utility or natural gas company. The bill precludes state access to any person that is a holding company solely by reason of ownership of one or more qualifying facilities under the Public Utility Regulatory Policies Act. The bill subjects production of records to such terms and conditions as may be necessary and appropriate to safeguard against unwarranted disclosure to the public of trade secrets or sensitive commercial information. The bill instructs the Federal Energy

Regulatory Commission to adopt a final rule to exempt specified holding companies from these access requirements. The bill requires the Federal Energy Regulatory Commission to exempt any person or transaction from these access requirements if it finds the regulation of that person or transaction is irrelevant to the jurisdictional rates of a public utility or natural gas company. The bill retains the jurisdiction of the Federal Energy Regulatory Commission and state public utility commissions to determine whether a public utility company or natural gas company may recover in rates any costs of affiliate transactions. The bill does not apply to the federal government, state or political subdivisions, or foreign governmental authority not operating in the United States. The bill also grants the Federal Energy Regulatory Commission certain Federal Power Act enforcement powers and transfers from the Security and Exchange Commission to the Federal Energy Regulatory Commission all books and records that relate primarily to the functions vested in the commission under the bill.

S.386 - This bill, known as the Bond Fairness and Protection Act of 1999, amends the Internal Revenue Code, with respect to tax-exempt bond financing of certain electric facilities, to exclude a permitted open access transaction, as defined in the bill, from the definition of private business use. The bill permits termination of tax-exempt bond financing for certain electric output facilities.

S.516 - This bill, known as the Electric Utility Restructuring Empowerment and Competitiveness Act of 1999, amends the Federal Power Act to prescribe parameters within which a state may exercise jurisdiction over retail electric supplier distribution service provided to retail customers within its borders; establish and enforce electric energy performance standards; exercise authority over retail transactions, including the imposition of surcharges; and require electric energy suppliers to provide wholesale and retail reciprocity with respect to open, nondiscriminatory transmission access and local distribution access.

S.1047 - This bill, known as the Comprehensive Electricity Competition Act, is the Clinton administration's electric restructuring proposal. The bill provides that not later than January 1, 2003, any distribution utility that has the capability to deliver electric energy to an electric consumer over its facilities must offer open access to those facilities for the sale of electric energy to the consumer and must do so at rates, terms, and conditions that are not unduly discriminatory or preferential, as determined by the appropriate regulatory authority. However, state regulatory authorities and nonregulated distribution utilities may opt out of retail competition if the state regulatory authority finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by a distribution utility will have a

negative impact on a class of customers of that utility that cannot be mitigated, and a nonregulated distribution utility may determine not to implement the retail competition requirement if it finds, after notice and opportunity for hearing, that implementation of the retail competition requirement by the distribution utility will have a negative impact on a class of customers of that utility that cannot be mitigated. The bill also contains consumer protection provisions, public benefits provisions, regulates mergers and the corporate structure of electric companies, and implements reliability provisions.

S.1048 - This bill contains the tax provisions that accompany the Comprehensive Electricity Competition Act.

H.R.667 - This bill, known as the Power Bill, would amend the Federal Power Act to declare that its prohibition against mandatory retail wheeling and sham wholesale transactions does not affect any state or local government authority under state law with respect to electric energy sale or transmission directly to an ultimate consumer. The bill prescribes guidelines for state-imposed reciprocity governing access to electric utility transmission distribution facilities. The bill grants cooperatively owned sellers or distributors of electricity the right, as consumer-owned cooperatives, to engage in any activity or provide any service lawfully carried out by any other seller or distributor of electricity in that state. The bill authorizes a state or state regulatory authority to impose charges upon purchases of retail electric energy services, including fees to recover costs incurred by an electric utility that become unrecoverable due to the availability of retail electric service choice, and to pay all reasonable costs associated with government requirements regarding decommissioning of nuclear generating units. The bill declares that, as of the date of enactment, new electric utility contracts for purchase or sale are not subject to specified requirements encouraging cogeneration and small power production. The bill directs the Federal Energy Regulatory Commission to adopt regulations to assure recovery of all costs associated with purchases of electric energy or capacity from a cogeneration or small power production facility by electric utilities. The bill would also repeal the Public Utility Holding Company Act of 1935 and also prescribes guidelines for federal and state access to books and records of electric utility holding companies and their affiliates. The bill requires state laws or regulations for the recovery of stranded costs to be filed with the Federal Energy Regulatory Commission as a prerequisite to state receipt of federal energy assistance. The bill precludes any modification or repeal of these laws or regulations for seven years after their filing date and directs the Federal Energy Regulatory Commission to make these laws or regulations available to the public. Finally, the bill instructs the Secretary of Energy to present a status report to Congress on the extent to

which state actions have removed regulatory and statutory barriers to interstate commerce in electricity.

H.R.721 - This bill, known as the Bond Fairness and Protection Act of 1999, amends the Internal Revenue Code, with respect to tax-exempt bond financing of certain electric facilities, to exclude a permitted open access transaction, as defined in the Act, from the definition of private business use. The bill permits termination of tax-exempt bond financing for certain electric output facilities.

H.R.971 - This bill, known as the Electric Power Consumer Rate Relief Act of 1999, amends the Public Utility Regulatory Policies Act of 1978 to provide that a state regulatory authority may ensure that rates charged by qualifying small power producers and qualifying cogenerators to purchasing electric utilities are just and reasonable to consumers of the purchasing utility and in the public interest and do not exceed the incremental cost at the time of delivery to the utility of alternative electric energy and capacity. The bill authorizes state regulatory authorities to establish programs for monitoring the operating and efficiency performance of in-state cogeneration and small power production facilities in order to determine whether they meet Federal Energy Regulatory Commission standards and requires that a contract entered into before the date of enactment of the bill be amended to conform to state requirements governing rates to retail electric consumers.

H.R.1138 - This bill, known as the Ratepayer Protection Act, declares that after the Act's enactment date, no electric utility may be required to enter a new contract or obligation to purchase or sell electric energy or capacity pursuant to the provisions of the Public Utility Regulatory Policies Act of 1978 governing cogeneration and small power production. The bill directs the Federal Energy Regulatory Commission to adopt and enforce regulations to assure that no utility may be required to absorb the costs associated with electric energy or capacity purchases from a qualifying facility executed before the Act's enactment date, and governed by such provisions, thus assuring these utilities recovery of all costs associated with these purchases. Finally, the bill provides that these regulations must be treated as a rule enforceable under the Federal Power Act.

H.R.1486 - This bill, known as the Power Marketing Administration Reform Act of 1999, requires the Secretary of Energy to develop and implement procedures to ensure that the federal power marketing administrations utilize the same accounting principles and requirements as the Federal Energy Regulatory Commission applies to the electric operations of public utilities.

H.R.1587 - This bill, known as the Electric Energy Empowerment Act of 1999, amends the Federal Power Act to empower the states to order electric utilities within their jurisdiction to provide nondiscriminatory open access through functionally unbundled transmission and local distribution services to retail customers within their borders (retail wheeling).

H.R.2645 - This bill, known as the Electricity Consumer, Worker, and Environmental Protection Act of 1999, implements federal and state standards for electricity service designed to protect workers in the electricity industry.

H.R.2734 - This bill, known as the Community Choice for Electricity Act of 1999, allows groups of customers or entities to acquire retail electric energy on an aggregate basis if the group is served by one or more local distribution companies that are subject to retail competition.

POSSIBLE STUDY APPROACH

In carrying out its statutory responsibilities, the committee may wish to monitor federal electric industry restructuring initiatives, review electric industry restructuring efforts in other states, and follow electric industry restructuring developments in other states. In conducting this study, the committee could solicit testimony from a number of sources. These include the Public Service Commission and its staff, representatives of the state's investor-owned utilities, representatives of the state's generation and transmission cooperatives, representatives of the state's distribution cooperatives, the North Dakota Association of Rural Electric Cooperatives, the state's municipal electric utilities, power marketers, and large commercial and industrial power users.

ATTACH:2

SENATE FILE 2416

AN ACT

RELATING TO THE REPLACEMENT OF PROPERTY TAX ON PROPERTY ASSOCIATED WITH ELECTRICITY AND NATURAL GAS WITH EXCISE TAXES ASSOCIATED WITH ELECTRICITY AND NATURAL GAS, ESTABLISHING A STATEWIDE PROPERTY TAX ON PROPERTY ASSOCIATED WITH ELECTRICITY AND NATURAL GAS, PROVIDING FOR A SPECIAL UTILITY PROPERTY TAX LEVY OR TAX CREDIT, PROVIDING FOR THE ACT'S RETROACTIVE APPLICABILITY, PROVIDING AN EFFECTIVE DATE, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I -- INTRODUCTORY PROVISION

Section 1. LEGISLATIVE FINDINGS. The general assembly finds that with the advent of restructuring of the electric and natural gas utility industry, a competitive environment will replace the current regulated monopoly environment. Currently, utility companies are subject to property taxes which are levied in various amounts with respect to utility property located in areas serviced by the utility companies. If the property tax, as currently levied, continues, the property tax costs in Iowa will become a factor among competitors in the pricing of electricity and natural gas. Moreover, non-Iowa located electricity and natural gas suppliers do not have property in Iowa subject to property tax and to the extent that they are located in a low property tax state, such property tax costs would grant to such non-Iowa suppliers an unfair tax advantage over Iowa-based utility companies.

The general assembly also finds that restructuring may result in the loss of in-lieu-of-tax transfers from surplus funds made by a municipal utility to the city. These transfers take the place of a property tax and are recognized

in this Act as such.

Therefore, the general assembly finds that a need exists to replace the current Iowa property tax system levied on electric and natural gas utility companies located in Iowa. However, any replacement tax needs to be revenue neutral so as not to harm the fiscal stability of local governments which depend upon such utility property taxes and municipal transfers, and further, so as to negate tax costs as a factor in a competitive utility industry environment. Additionally, such replacement tax must allow fair and competitive prices for consumers of electric and natural gas services, and minimize the impact on the cost of such services to consumers.

The general assembly, therefore, finds that the replacement tax should be imposed on the generation, transmission, and delivery of electricity and natural gas. Statewide generation and transmission taxes are necessary to ensure that in the event such functions are conducted by stand-alone generation and transmission companies, such companies will continue to contribute to the tax base. However, imposition of a single statewide delivery tax rate would unfairly increase tax costs for some taxpayers while reducing such costs for others. Such a result would impede a competitive environment and disrupt the tax continuity for taxpayers, and has the potential to unnecessarily increase costs for consumers of gas and electricity. Therefore, to maintain tax continuity and tax revenues for local government and to maintain tax continuity and negate tax costs as a factor in a competitive environment for taxpayers and consumers, the delivery tax rates should be fixed by geographic service areas which are designed and structured to accomplish these goals.

The current property tax valuation process for utility companies is complex and time-consuming to administer. The replacement tax eases this administrative burden on state government.

natural gas delivered to such facility may ultimately be used by another person. A person to whom electricity or natural gas is delivered by a master-metered facility is not a consumer. A "master-metered facility" means any multi-occupancy premises where units are separately rented or owned and where electricity or natural gas is used in centralized heating, cooling, water-heating, or ventilation systems, where individual metering is impractical, where the facility is designated for elderly or handicapped persons and utility costs constitute part of the operating cost and are not apportioned to individual units, or where submetering or resale of service was permitted prior to 1966.

4. "Delivery" means the physical transfer of electricity or natural gas to a consumer. Physical transfer to a consumer occurs when transportation of electricity or natural gas ends and such electricity or natural gas becomes available for use or consumption by a consumer.

5. "Director" means the director of revenue and finance.

6. "Electric company" means a person engaged primarily in the production, delivery, service, or sales of electric energy whether formed or organized under the laws of this state or elsewhere. "Electric company" includes a combination natural gas company and electric company. "Electric company" does not include an electric cooperative or a municipal utility.

7. "Electric competitive service area" means an electric service area assigned by the utilities board under chapter 476 as of January 1, 1999, including utility property and facilities described in section 476.23, subsection 3, which were owned and served by the electric company, electric cooperative, or municipal utility serving such area on January 1, 1999.

8. "Electric cooperative" means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere. An electric cooperative shall also include an incorporated city utility provider.

"Generation and transmission electric cooperative" means an electric cooperative which owns both transmission lines and property which is used to generate electricity. "Distribution electric cooperative" means an electric cooperative other than a generation and transmission electric cooperative or a municipal electric cooperative association.

9. "Electric power generating plant" means a nameplate rated electric power generating plant, which produces electric energy from other forms of energy, including all taxable land, buildings, and equipment used in the production of such electric energy.

10. "Incorporated city utility provider" means a corporation with assets worth one million dollars or more which has one or more platted villages located within the territorial limits of the tract of land which it owns, and which provides electricity to ten thousand or fewer customers.

11. "Lease" means a contract between a lessor and lessee pursuant to which the lessee obtains a present possessory interest in tangible property without obtaining legal title in such property. A contract to transmit or deliver electricity or natural gas using operating property within this state is not a lease. "Capital lease" means a lease classified as a capital lease under generally accepted accounting principles.

12. "Local amount" means the first forty-four million four hundred forty-four thousand four hundred forty-five dollars of the acquisition cost of any major addition which is an electric power generating plant and the total acquisition cost of any other major addition.

13. "Local taxing district" means a city, county, community college, school district, or other taxing district, located in this state and authorized to certify a levy on property located within such district for the payment of bonds and interest or other obligations of such district.

14. "Low capacity factor electric power generating plant" means, for any tax year, an electric power generating plant,

with the exception of an electric power generating plant owned or leased by an electric company, an electric cooperative, or a municipal utility, which operated during the preceding calendar year at a net capacity factor of twenty percent or less. "Net capacity factor" means net actual generation during the preceding calendar year divided by the product of nameplate capacity times the number of hours the plant was in the active state during the preceding calendar year. Upon commissioning, a plant is in the active state until it is decommissioned. "Net actual generation" means net electrical megawatt hours produced by a plant during the preceding calendar year.

15. "Major addition" means any acquisition on or after January 1, 1998, by a taxpayer, by transfer of ownership, self-construction, or capital lease of any interest in any of the following:

- a. A building in this state where the acquisition cost of all interests acquired exceeds ten million dollars.
- b. An electric power generating plant where the acquisition cost of all interests acquired exceeds ten million dollars. For purposes of this paragraph, "electric power generating plant" means each nameplate rated electric power generating plant owned solely or jointly by any person or electric power facility financed under the provisions of chapter 28F in which electrical energy is produced from other forms of energy, including all equipment used in the production of such energy through its step-up transformer.
- c. Natural gas operating property within a local taxing district where the acquisition cost of all interests acquired exceeds one million dollars.
- d. Any operating property in this state by a person not previously subject to taxation under this chapter.

For purposes of this chapter, the acquisition cost of an asset acquired by capital lease is its capitalized value determined under generally accepted accounting principles.

16. "Municipal electric cooperative association" means an electric cooperative, the membership of which is composed entirely of municipal utilities.

17. "Municipal utility" means all or part of an electric light and power plant system or a natural gas system, either of which is owned by a city, including all land, easements, rights-of-way, fixtures, equipment, accessories, improvements, appurtenances, and other property necessary or useful for the operation of the municipal utility.

18. "Natural gas company" means a person that owns, operates, or is engaged primarily in operating or utilizing pipelines for the purpose of distributing natural gas to consumers located within this state, excluding a gas distributing plant or company located entirely within any city and not a part of a pipeline transportation company. "Natural gas company" includes a combination natural gas company and electric company. "Natural gas company" does not include a municipal utility.

19. a. "Natural gas competitive service area" means any of the fifty-two natural gas competitive service areas described as follows:

(1) Each of the following municipal natural gas competitive service areas:

- (a) Taylor county, except for those areas of Taylor county which are contained within another municipal natural gas competitive service area as described in this subsection.
- (b) The city of Brighton in Washington county and the area within two miles of the city limits plus sections 5, 6, 7, 8, 17, 18, 19, 20, 29, and 30 in Brighton township; sections 19, 30, and 33 in Franklin township; sections 1, 2, 11, 12, 13, 14, 23, 24, 25, and 36 in Dutch Creek township; and sections 25, 26, 35, and 36 in Seventy-Six township.
- (c) Davis county.
- (d) The city of Brooklyn in Poweshiek county and the area within two miles of the city limits.

(e) The city of Cascade in Dubuque county and the area within two miles of the city limits.

(f) The city of Cedar Falls in Black Hawk county and the area within one mile of the city limits, not including any part of the city of Waterloo.

(g) The city of Clearfield in Taylor county and the area within two miles of the city limits and sections 20, 21, 26, and 27 of Platte township, Grant township in Taylor county, and Grant township in Ringgold county.

(h) The south half of Cartoll county and sections 3 and 4 of Orange township in Guthrie county.

(i) Adams county, except those areas of Adams county which are contained within another municipal natural gas competitive service area as defined in this subsection.

(j) The city of Emmetsburg in Palo Alto county and the area within two miles of the city limits.

(k) The city of Everly, in Clay county and the area within two miles of the city limits.

(l) The city of Fairbank and the area within two miles of the city limits plus the area one-quarter mile on either side of the county line road, Highway 281, from Fairbank to the intersection of Outer Road and Tenth Street, proceeding twenty-eight hundredths of a mile north in Buchanan and Fayette counties.

(m) The city of Gilmore City in Pocahontas and Humboldt counties and the area within two miles of the city limits.

(n) The city of Granttinger in Palo Alto county and the area within two miles of the city limits.

(o) The city of Guthrie Center, in Guthrie county and the area within one mile of the city limits.

(p) The city of Harlan in Shelby county and the area within two miles of the city limits.

(q) The city of Hartley in O'Brien county and the area within one mile of the city limits, except the eastern one-half of section four in Omega township.

(r) The city of Hawarden in Sioux county and the area within two miles of the city limits.

(s) The city of Lake Park plus Silver Lake township in Dickinson county.

(t) Fayette and New Buda townships in Decatur county.

(u) The city of Lenox in Taylor county including section 1 of Platte township in Taylor county and the townships of Carl, Grant, Mercer, Colony, Union, and Prescott in Adams county.

(v) Grand River township in Wayne county.

(w) New Hope township in Union county and Monroe township in Madison county.

(x) Swoldt and Eden townships in Carroll county and Iowa township in Crawford county.

(y) The city of Montezuma in Poweshiek county and the area within two miles of the city limits plus Jackson township in Poweshiek county except the city of Barnes City, Pleasant Grove and Monroe townships in Mahaska county except the city of Barnes City.

(z) Morning Sun township in Louisa county.

(aa) Wells and Washington townships in Appanoose county.

(ab) The city of Osage in Mitchell county and the area within two miles of the city limits.

(ac) The city of Prescott in Adams county and the area within two miles of the city limits.

(ad) The city of Preston in Jackson county and the area within two miles of the city limits.

(ae) The city of Rensen in Plymouth county and the area within two miles of the city limits.

(af) The city of Rock Rapids in Lyon county and the area within two miles of the city limits.

(ag) The city of Rolfe in Pocahontas county and the area within two miles of the city limits.

(ah) The city of Sabula in Jackson county and the area within two miles of the city limits.

- (aj) The city of Sac City in Sac county and the area within two miles of the city limits.
- (ak) The city of Sanborn in O'Brien county and the area within two miles of the city limits.
- (al) The city of Sioux Center in Sioux county and the area within two miles of the city limits.
- (am) The city of Tipton in Cedar county and the area within two miles of the city limits.
- (an) The city of Waukeo in Dallas county.
- (ao) The city of Wayland plus Jefferson and Trenton townships in Henry county.
- (ap) Seventy-Six and Lime Creek townships in Washington county except for those areas of Seventy-Six township which are contained within another municipal natural gas competitive service area as defined in this subsection.
- (aq) The city of West Bend in Kossuth and Palo Alto counties and the area within two miles of the city limits.
- (ar) The city of Whittamore in Kossuth county and the area within two miles of the city limits.
- (as) Scott, Canaan, and Wayne townships in Henry county.
- (at) The city of Woodbine in Harrison county and the area within two miles of the city limits.
- (au) Nishnabotna township in Crawford county.
- (2) The natural gas competitive service area, excluding any municipal natural gas competitive service area described in subparagraph (1) and consisting of Sioux county; Plymouth county; Woodbury county; Ida county; Harrison county; Shelby county; Audubon county; Palo Alto county; Humboldt county; Mahaska county; Scott county; Lyon county except Wheeler, Dale, Liberal, Grant, Midland, and Elgin townships; O'Brien county except Union, Dale, Summit, Highland, Franklin, and Center townships; Cherokee county except Cherokee and Pilot townships; Monona county except Franklin township and the south half of Ashton township; Pottawattamie county except Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships;

Mills county except Glenwood and Center townships; Montgomery county except Douglas, Washington, and East townships; Page county except Valley, Douglas, Moxley, Nebraska, Harlan, East River, Amity, and Buchanan townships; Fremont county except Green, Scott, Sidney, Benton, Washington, and Madison townships; Brighton and Pleasant townships in Cass county; Sac county except Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac townships; Newell township in Buena Vista county; Calhoun county except Reading township; Denmark township in Emmet county; Kossuth county except Eagle, Grant, Springfield, Hebron, Swea, Harrison, Ledyard, Lincoln, Seneca, Greenwood, Ramsey, and German townships; Webster county except Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Hardin townships; Guthrie county except Grant, Thompson, and Beaver townships; Union township in Union county; Madison county except Ohio and New Hope townships; Warren county except Virginia, Squaw, Liberty, and White Braas townships; Cedar, Union, Bluff Creek, and Pleasant townships in Monroe county; Marion county except Lake Prairie, Knoxville, Summit, and Union townships; Dallas county except Des Moines and Grant townships; Polk county except sections 4, 5, 6, 7, 8, 9, 16, 17, and 18 in Lincoln township and the city of Grimes, and sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 in Union township; Poweshiek, Washington, Mound Prairie, Des Moines, Elk Creek, and Fairview townships in Jasper county; Wright county except Belmond and Pleasant townships; Geneseo township in Cerro Gordo county; Franklin county except Wisner and Scott townships and the city of Coulter; Butler county except Bennesetta, Coldwater, Dayton, and Fremont townships; Floyd county except Rock Grove, Rudd, Rockford, Ulster, Scott, and Union townships; Branford township in Chickasaw county; Bremer county except Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships; Perry, Washington, Westburg, and Sumner townships in Buchanan county; Black Hawk county except Big Creek township; Fremont township in Benton county;

Napello county except Washington township; Benton and Steady Run townships in Keokuk county; the city of Barnes City in Poweshiek county; Iowa township in Washington county; Johnson county except Fremont township; Linn county except Grant Spring Grove, Jackson, Boulder, Washington, Monroe township west and north of Otter Creek and County Home Road, Otter Creek, Maine, Buffalo, Fayette, and Clinton townships; Farmington township in Cedar county; Wapsinococ, Goshen, Moscow, Milton, and Fulton townships in Muscatine county; and Lee county except Des Moines, Montrose, Keokuk, and Jackson townships.

(3) The natural gas competitive service area, excluding any municipal natural gas competitive service areas described in subparagraph (1) and consisting of that part of Kosauk county not described in subparagraph (2); Lincoln and Buffalo townships in Winnebago county; Worth county except Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships; Carro Gordo county except Grimes, Pleasant Valley, and Dougherty townships; Rock Grove and Rudd townships in Floyd county; Eden, Camanche, and Hampshire townships and the city of Clinton in Clinton county; and Stacyville and Union townships in Mitchell county.

(4) The natural gas competitive service area, excluding any municipal natural gas service areas described in subparagraph (1) and consisting of Franklin township and the South Half of Ashton township in Monona county; Crescent, Hazel Dell, Lake, Garner, Kane, and Lewis townships in Pottawattamie county; Glenwood and Center townships in Mills county; Green, Scott, Sidney, Benton, Washington, and Madison townships in Fremont county; Cass, Bear Grove, Union, Noble, Edna, Victoria, Massena, Lincoln, and Grant townships in Cass county; Glidden township in Carroll county; Summit township in Adair county; Grant township in Guthrie county; Crawford county except Nishnabotna township; Clinton, Wall Lake, Coon Valley, Levey, Viola, and Sac township in Sac county; Reading

township in Calhoun county; Marshall, Sherman, Roosevelt, Dover, Grant, Lincoln, and Cedar townships in Pocahontas county; Union, Dale, Summit, Highland, Franklin, and Center townships in O'Brien county; the north half of Clay county plus Clay township; Dickinson county; Emmet county except Denmark, Armstrong Grove, and Iowa Lake townships; Greene county except Bristol, Hardin, Jackson, and Grant townships; Boone county except Worth, Colfax, Des Moines, Jackson, Dodge, and Harrison townships; Des Moines and Grant townships in Dallas county; Roland, Clay, Burnside, Yell, Webster, Gowrie, Lost Grove, Dayton, and Newark townships in Webster county; Clear Lake, Hamilton, Webster, Freedom, Independence, Cass, and Fremont townships in Hamilton county; Ell, Madison, and Ellington townships in Hancock county; Winnebago county except Lincoln and Buffalo townships; Silver Lake, Hartland, Bristol, Brookfield, Fertile, and Danville townships in Worth county; Etna township in Hardin county; Lafayette township and the west one-half of Howard township in Story county; the city of Grimes in Polk county; Independence, Malaka, Mariposa, Hickory Grove, Rock Creek, Kellogg, Newton, Sherman, Palo Alto, Buena Vista, and Richland townships in Jasper county; Palermo, Grant, and Fairfield townships in Grundy county; Bennetts, Coldwater, Dayton, and Fremont townships in Butler county; Rockford, Ulster, Scott, and Union townships in Floyd county; St. Ansgar and Mitchell townships in Mitchell county; Howard county; Chickasaw county except Branford township; Frederika, LeRoy, Sumner No. 2, Fremont, Dayton, Maxfield, and Franklin townships in Bremer county; Big Creek township in Black Hawk county; Brown township in Linn county; Madison township and the east half of Buffalo township in Buchanan county; Fayette county except Earlan, Fremont, Gran, and Jefferson townships; Winneshek county; Alatakes county; Clayton county; Delaware county except Adams and Hazel Green townships; Dubuque county; Jones county except Rome, Hale, Oxford, and the east half of Greenfield townships; and Jackson county.

(5) The natural gas competitive service area consisting of Des Moines, Montross, Keokuk, and Jackson townships in Lee county.

(6) The natural gas competitive service area consisting of the city of Allerton and the area within two miles of the city limits.

(7) The natural gas competitive service area consisting of all of Iowa not contained in any of the other natural gas competitive service areas described in this paragraph.

b. "Township" includes any city or part of a city located within the exterior boundaries of that township.

c. References to city limits contained in this subsection mean those city limits as they existed on January 1, 1999.

20. "Operating property" means all property owned by or leased to an electric company, electric cooperative, municipal utility, or natural gas company, not otherwise taxed separately, which is necessary to and without which the company could not perform the activities of an electric company, electric cooperative, municipal utility, or natural gas company.

21. "Pole miles" means miles measured along the line of poles, structures, or towers carrying electric conductors regardless of the number of conductors or circuits carried, and miles of conduit bank, regardless of number of conduits or ducts, of all sizes and types, including manholes and handholes. "Conduit bank" means a length of one or more underground conduits or ducts, whether or not enclosed in concrete, designed to contain underground cables, including a gallery or cable tunnel for power cables.

22. "Purchasing member" means a municipal utility which purchases electricity from a municipal electric cooperative association of which it is a member.

23. "Replacement tax" means the excise tax imposed on the generation, transmission, delivery, consumption, or use of electricity or natural gas under sections 437A.4, 437A.5, 437A.6, or 437A.7.

24. "Self-generator" means a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, who generates, by means of an on-site facility wholly owned by or leased in its entirety to such person, electricity solely for its own consumption, except for inadvertent unscheduled deliveries to the electric utility furnishing electric service to that self-generator. A person who generates electricity which is consumed by any other person, including any owner, shareholder, member, beneficiary, partner, or associate of the person who generates electricity, is not a self-generator. For purposes of this subsection, "on-site facility" means an electric power generating plant that is wholly owned by or leased in its entirety to a person and used to generate electricity solely for consumption by such person on the same parcel of land on which such plant is located or on a contiguous parcel of land. For purposes of this subsection, "parcel of land" includes each separate parcel of land shown on the tax list.

25. "Statewide amount" means the acquisition cost of any major addition which is not a local amount.

26. "Taxpayer" means an electric company, natural gas company, electric cooperative, municipal utility, or other person subject to the replacement tax imposed under section 437A.4, 437A.5, 437A.6, or 437A.7.

27. "Tax year" means a calendar year beginning January 1 and ending December 31.

28. "Transfer replacement tax" means the tax imposed in a competitive service area of a municipal utility which replaces transfers made by the municipal utility in accordance with section 384.89.

29. "Transmission line" means a line, wire, or cable which is capable of operating at an electric voltage of at least thirty-four and one-half kilovolts.

30. "Utilities board" means the utilities board created in section 474.1.

SUBCHAPTER 2

GENERATION, TRANSMISSION, AND DELIVERY TAXES

Sec. 5. NEW SECTION. 437A.4 REPLACEMENT TAX IMPOSED ON DELIVERY OF ELECTRICITY.

1. A replacement delivery tax is imposed on every person who makes a delivery of electricity to a consumer within this state. The replacement delivery tax imposed by this section is equal to the sum of the following:

a. The number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric replacement delivery tax rate in effect for each such electric competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph "a", the number of kilowatt-hours of electricity delivered to consumers by the taxpayer within each electric competitive service area during the tax year multiplied by the electric transfer replacement tax rate for each such electric competitive service area.

2. If electricity is consumed in this state, whether such electricity is purchased, transferred, or self-generated, and the delivery, purchase, transferance, or self-generation of such electricity is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Electric replacement delivery tax rates shall be calculated by the director for each electric competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to electric service of each taxpayer, other than a municipal utility, principally serving an electric competitive service area and of each generation and transmission electric cooperative for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the

average centrally assessed property tax liability allocated to electric service is the centrally assessed property tax liability of such municipal utility allocated to electric service for the 1997 assessment year based on property tax payments made.

b. The director shall determine, for each taxpayer, the number of kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6, the number of pole miles which would have been subject to taxation under section 437A.7, and the number of kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under this section in calendar year 1998, had such sections been in effect for calendar year 1998.

c. The director shall determine the electric generation, transmission, and delivery tax components of the average centrally assessed property tax liability determined in paragraph "a" for each electric competitive service area as follows:

(1) The electric generation tax component for an electric competitive service area shall be computed by multiplying the tax rate set forth in section 437A.6 by the number of kilowatt-hours of electricity generated by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.6 in calendar year 1998, had that section been in effect for calendar year 1998.

(2) The electric transmission tax component for an electric competitive service area shall be computed by multiplying the tax rates set forth in section 437A.7 by the number of pole miles for each line voltage owned or leased by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under section 437A.7 on December 31, 1998, had that section been in effect for calendar year 1998.

(3) The electric delivery tax component for an electric competitive service area shall be the average centrally assessed property tax liability allocated to electric service of the taxpayer principally serving such electric competitive service area less the electric generation and transmission tax components computed for such electric competitive service area.

(4) The electric delivery tax component for each electric competitive service area shall be adjusted, as necessary, to assign the excess property tax liability of each generation and transmission electric cooperative to the electric competitive service areas principally served on January 1, 1999, by its distribution electric cooperative members and by those municipal utilities which were purchasing members of a municipal electric cooperative association that is a member of the generation and transmission electric cooperative. Such assignment of excess property tax liability of each such generation and transmission electric cooperative shall be made in proportion to the appropriate wholesale rate charges in calendar year 1998 to its distribution electric cooperative members and municipal electric cooperative association members which purchased electricity from the generation and transmission electric cooperative. Any amount assignable to a municipal electric cooperative association shall be reassigned to the electric competitive service areas served by such association's purchasing municipal utility members and shall be allocated among them in proportion to the appropriate wholesale rate charges in calendar year 1998 by such municipal electric cooperative association to its purchasing municipal utility members. For purposes of this subsection, "excess property tax liability" means the amount by which the average centrally assessed property tax liability for the assessment years 1993 through 1997 of a generation and transmission electric cooperative exceeds the tentative generation and transmission taxes which would have been imposed on such

generation and transmission electric cooperative under sections 437A.6 and 437A.7 for calendar year 1998, had such taxes been in effect for calendar year 1998. An electric cooperative described in section 437A.7, subsection 2, paragraph "c", is deemed not to have any excess property tax liability.

d. The director shall determine an electric delivery tax rate for each electric competitive service area by dividing the electric delivery tax component for the electric competitive service area, as adjusted by paragraph "c", subparagraph (4), by the number of kilowatt-hours delivered by the taxpayer principally serving the electric competitive service area to consumers in calendar year 1998, which would have been subject to taxation under this section if this section had been in effect for calendar year 1998.

4. Municipal electric transfer replacement tax rates shall be calculated annually by the city council of each city located within an electric competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of electric related transfers made pursuant to section 384.89 by the municipal utility serving the electric competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years by the number of kilowatt-hours of electricity delivered to consumers in the electric competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of

such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal electric transfer replacement tax equal to the average amount of electric-related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. The following are not subject to the replacement delivery tax imposed by subsections 1 and 2:

- a. Delivery of electricity generated by a low capacity factor electric power generating plant.
- b. Delivery of electricity to a city from such city's municipal utility, provided such electricity is used by the city for the public purposes of the city.
- c. Electricity consumed by a state university or university of science and technology, provided such electricity was generated by property described in section 427.1, subsection 1.
- d. Electricity generated and consumed by a self-generator.

7. Notwithstanding subsection 1, the electric delivery tax rate applied to kilowatt-hours of electricity delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and are owned by or leased to and initially served by such taxpayer shall be the electric delivery tax rate in effect for the electric competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another electric competitive service area.

8. If for any tax year after calendar year 1998, the total taxable kilowatt-hours of electricity required to be reported

by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area, increases or decreases by more than the threshold percentage from the average of the base year amounts for that electric competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "a", and subsection 2, for that tax year shall be recalculated by the director for that electric competitive service area so that the total of the replacement electric delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "e", for that electric competitive service area with respect to the tax imposed under subsection 1, paragraph "a", and subsection 2, shall be as follows:

- a. If the number of kilowatt-hours of electricity required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.
- b. If the number of kilowatt-hours of electricity required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that electric competitive service area for the immediately preceding tax year.

For purposes of paragraphs "a" and "b", in computing the tax rate under subsection 1, paragraph "a", and subsection 2, for tax year 1999, the director shall use the electric delivery tax component computed for the electric competitive service area pursuant to subsection 3, paragraph "a", in lieu of the taxes required to be reported for that electric competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any electric competitive service area in which the average of the base year amounts for the

preceding five calendar years does not exceed three billion kilowatt-hours, and ten percent for all other electric competitive service areas.

Any such recalculation of an electric delivery tax rate, if required, shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new electric delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this section, "base year amount" means for calendar years prior to tax year 1999, the sum of the kilowatt-hours of electricity delivered to consumers within an electric competitive service area by the taxpayer principally serving such electric competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable kilowatt-hours of electricity required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any electric competitive service area.

9. a. After calendar year 1998, if a municipal electric cooperative association ceases to purchase electricity from the generation and transmission electric cooperative from which it purchased electricity in 1998, and for a period of one hundred eighty days after such purchases cease, no municipal utility member of such association purchases electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to

the electric competitive service areas principally served by the municipal utility members on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

b. After calendar year 1998, if a municipal utility ceases to be a purchasing member of a municipal electric cooperative association which purchased electricity in calendar year 1998 from a generation and transmission electric cooperative, and for a period of one hundred eighty days after the municipal utility ceases to be a purchasing member of such association such municipal utility does not purchase electricity from such generation and transmission electric cooperative, the excess property tax liability assigned pursuant to subsection 3, paragraph "c", subparagraph (4), to the electric competitive service area principally served by the municipal utility on January 1, 1999, shall be removed from the electric delivery tax component of those electric competitive service areas and the electric delivery tax rate for those electric competitive service areas shall be recalculated to reflect that change.

c. If a recalculation has previously been made by the director pursuant to subsection 8 for an electric competitive service area described in this subsection, the recalculation required by this subsection shall be made by the director by modifying the most recent recalculation under subsection 8 to eliminate the excess property tax liability originally allocated to such electric competitive service area under subsection 3, paragraph "c", subparagraph (4).

d. Any recalculation required by this subsection shall be made and the new rate shall be published in the Iowa administrative bulletin by the director by May 31 of the calendar year during which the events described in paragraphs "a" and "b" are reported as provided in section 437A.8, subsection 1, paragraph "f". The new electric delivery tax

rate shall be effective January 1 of the tax year in which it is published and shall apply prospectively, until such time as further adjustment is required.

10. The electric delivery tax rate in effect for each electric competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

Sec. 6. NEW SECTION. 437A.5 REPLACEMENT TAX IMPOSED ON DELIVERY OF NATURAL GAS.

1. A replacement delivery tax is imposed on every person who makes a delivery of natural gas to a consumer within this state. The replacement delivery tax imposed by this section shall be equal to the sum of the followings:

a. The number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the natural gas delivery tax rate in effect for each such natural gas competitive service area.

b. Where applicable, and in addition to the tax imposed by paragraph "a", the number of therms of natural gas delivered to consumers by the taxpayer within each natural gas competitive service area during the tax year multiplied by the municipal natural gas transfer replacement tax rate for each such natural gas competitive service area.

2. If natural gas is consumed in this state, whether such natural gas is purchased or transferred, and the delivery, purchase, or transference of such natural gas is not subject to the tax imposed under subsection 1, a tax is imposed on the consumer at the rates prescribed under subsection 1.

3. Natural gas delivery tax rates shall be calculated by the director for each natural gas competitive service area as follows:

a. The director shall determine the average centrally assessed property tax liability allocated to natural gas

service of each taxpayer, other than a municipal utility, principally serving a natural gas competitive service area for the assessment years 1993 through 1997 based on property tax payments made. In the case of a municipal utility, the average centrally assessed property tax liability allocated to natural gas service is the centrally assessed property tax liability of such municipal utility allocated to natural gas service for the 1997 assessment year based on property tax payments made. For purposes of this subsection, taxpayer does not include a pipeline company defined in section 479A.2.

b. The director shall determine for each taxpayer the number of therms of natural gas delivered to consumers which would have been subject to taxation under this section in calendar year 1998 had this section been in effect for calendar year 1998.

c. The director shall determine a natural gas delivery tax rate for each natural gas competitive service area by dividing the average centrally assessed property tax liability allocated to natural gas service of the taxpayer principally serving the natural gas competitive service area by the number of therms of natural gas delivered by such taxpayer to consumers in calendar year 1998 which would have been subject to taxation under this section had such section been in effect for calendar year 1998.

4. Municipal natural gas transfer replacement tax rates shall be calculated annually by the city council of each city located within a natural gas competitive service area served by a municipal utility as of January 1, 1999, by dividing the average annual dollar amount of natural gas related transfers made pursuant to section 384.89 by the municipal utility serving the natural gas competitive service area, other than those transfers declared exempt from the transfer replacement tax by the city council, plus the municipal transfer replacement tax received by the municipality, if any, during the five immediately preceding calendar years, by the number

of therms of natural gas delivered to consumers in the natural gas competitive service area during the immediately preceding calendar year which were subject to taxation under this section or which would have been subject to taxation under this section had it been in effect for such calendar year. The city council on its own motion, or in the case of a municipal utility governed by a board of trustees under chapter 388 upon a resolution of the board of trustees requesting such action, may declare any transfer or part of such transfer to be exempt from the transfer replacement tax under this section. Such rates shall be calculated and reported to the director on or before August 31 of each tax year.

5. A municipal utility taxpayer is entitled to a credit against the municipal natural gas transfer replacement tax equal to the average amount of natural gas related transfers made by such municipal utility taxpayer under section 384.89, other than those transfers declared exempt from transfer replacement tax by the city council, during the preceding five calendar years.

6. Notwithstanding subsection 1, the natural gas delivery tax rate applied to therms of natural gas delivered by a taxpayer to utility property and facilities which are placed in service on or after January 1, 1999, and which are owned by or leased to and initially served by such taxpayer shall be the natural gas delivery tax rate in effect for the natural gas competitive service area principally served by such utility property and facilities even though such utility property and facilities may be physically located in another natural gas competitive service area.

7. Delivery of natural gas to a city from such city's municipal utility is not subject to the replacement delivery tax imposed under subsection 1, paragraph "a", and subsection 2, provided such natural gas is used by the city for the public purposes of the city.

Section 437A.5, subsection 2, does not apply to natural gas consumed by a person, other than an electric company, natural gas company, electric cooperative, or municipal utility, acquired by means of facilities owned by or leased to such person on January 1, 1999, which were physically attached to pipelines that are not permitted pursuant to chapter 479 and used by such person for the purpose of bypassing the local natural gas company or municipal utility.

8. If, for any tax year after calendar year 1998, the total taxable therms of natural gas required to be reported by taxpayers pursuant to section 437A.8, subsection 1, paragraphs "a" and "b", with respect to any natural gas competitive service area increases or decreases by more than the threshold percentage from the average of the base year amounts for that natural gas competitive service area during the immediately preceding five calendar years, the tax rate imposed under subsection 1, paragraph "a", and subsection 2 for that tax year shall be recalculated by the director for that natural gas competitive service area so that the total of the replacement natural gas delivery taxes required to be reported pursuant to section 437A.8, subsection 1, paragraph "a", for that natural gas competitive service area with respect to the tax imposed under subsection 1, paragraph "a", and subsection 2 shall be as follows:

a. If the number of therms of natural gas required to be reported increased by more than the threshold percentage, one hundred two percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

b. If the number of therms of natural gas required to be reported decreased by more than the threshold percentage, ninety-eight percent of such taxes required to be reported by taxpayers for that natural gas competitive service area for the immediately preceding tax year.

c. For purposes of paragraphs "a" and "b", in computing the tax rate under subsection 1, paragraph "a", and subsection 2 for calendar year 1999, the director shall use the average centrally assessed property tax liability allocated to natural gas service computed for the natural gas competitive service area pursuant to subsection 3, paragraph "a", in lieu of the taxes required to be reported for that natural gas competitive service area for the immediately preceding tax year.

The threshold percentage shall be determined annually and shall be eight percent for any natural gas competitive service area in which the average of the base year amounts for the preceding five calendar years does not exceed two hundred fifty million therms, and ten percent for all other natural gas competitive service areas.

Recalculation of a natural gas delivery tax rate, if required, shall be made and the new rate published in the Iowa administrative bulletin by the director by no later than May 31 following the tax year. The director shall adjust the tentative replacement tax imposed by subsection 1, paragraph "a", and subsection 2 required to be shown on any affected taxpayer's return pursuant to section 437A.8, subsection 1, paragraph "e", to reflect the adjusted delivery tax rate for the tax year, and report such adjustment to the affected taxpayer on or before June 30 following the tax year. The new natural gas delivery tax rate shall apply prospectively, until such time as further adjustment is required.

For purposes of this subsection, "base year amount" means for calendar years prior to tax year 1999, the sum of the therms of natural gas delivered to consumers within a natural gas competitive service area by the taxpayer principally serving such natural gas competitive service area which would have been subject to taxation under this section had this section been in effect for those years; and for tax years after calendar year 1998, the taxable therms of natural gas required to be reported by taxpayers pursuant to section

437A.8, subsection 1, paragraphs "a" and "b", with respect to any natural gas competitive service area.

9. The natural gas delivery tax rate in effect for each natural gas competitive service area shall be published by the director in the Iowa administrative bulletin on or before November 30, 1999, and annually after that date, during the last quarter of the tax year.

Sec. 7. NEW SECTION. 437A.6 REPLACEMENT TAX IMPOSED ON ELECTRIC GENERATION.

1. A replacement generation tax of six hundredths of a cent per kilowatt-hour of electricity generated within this state during the tax year is imposed on every person generating electricity, except electricity generated by the following:

- a. A low capacity factor electric power generating plant.
- b. Facilities owned by or leased to a municipal utility when devoted to public use and not held for pecuniary profit, except facilities of a municipally owned electric utility held under joint ownership or lease and facilities of an electric power facility financed under chapter 28F.
- c. Wind energy conversion property subject to section 427B.26.
- d. Methane gas conversion property subject to section 427.1, subsection 29.
- e. Facilities owned by or leased to a state university or university of science and technology, to the extent electricity generated by such facilities is consumed exclusively by such state university or university of science and technology.
- f. On-site facilities wholly owned by or leased in their entirety to a self-generator.

2. For purposes of this section, if a generation facility is jointly owned or leased, the taxpayer shall compute the number of kilowatt-hours of electricity subject to the replacement generation tax by multiplying the taxpayer's

percentage interest in the jointly held generation facility by the number of kilowatt-hours of electricity generated.

Sec. 8. NEW SECTION. 437A.7 REPLACEMENT TAX IMPOSED ON ELECTRIC TRANSMISSION.

1. A replacement transmission tax is imposed on every person owning or leasing transmission lines within this state and shall be equal to the sum of all of the following:

- a. Five hundred fifty dollars per pole mile of transmission line owned or leased by the taxpayer not exceeding one hundred kilovolts.
- b. Three thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred kilovolts but not exceeding one hundred fifty kilovolts.
- c. Seven hundred dollars per pole mile of transmission line owned or leased by the taxpayer greater than one hundred fifty kilovolts but not exceeding three hundred kilovolts.
- d. Seven thousand dollars per pole mile of transmission line owned or leased by the taxpayer greater than three hundred kilovolts.

The replacement transmission tax shall be calculated on the basis of pole miles of transmission line owned or leased by the taxpayer on the last day of the tax year.

2. The following shall not be subject to the replacement transmission tax:

- a. Transmission lines owned by or leased to a municipal utility when devoted to public use and not for pecuniary profit, except transmission lines of a municipally owned electric utility held under joint ownership and transmission lines of an electric power facility financed under chapter 28F.
- b. Transmission lines owned by or leased to a lessor when the lessee or sublessee of such transmission lines is subject to the replacement transmission tax.
- c. Any electric cooperative which owns, leases, or owns and leases in total more than fifty pole miles and less than

seven hundred fifty pole miles of transmission lines in this state. Chapter 437 shall apply to such electric cooperatives.

d. Transmission lines owned by or leased to a state university or university of science and technology, provided such transmission lines are used exclusively for the transmission of electricity consumed by such state university or university of science and technology.

e. Transmission lines owned by or leased to a person, other than a public utility, for which a franchise is not required under chapter 478.

3. For purposes of this section, if a transmission line is jointly owned or leased, the taxpayer shall compute the number of pole miles subject to the replacement transmission tax by multiplying the taxpayer's percentage interest in the jointly held transmission lines by the number of pole miles of such lines.

Sec. 9. NEW SECTION. 437A.8 RETURN AND PAYMENT REQUIREMENTS -- RATE ADJUSTMENTS.

1. Each taxpayer, on or before February 28 following a tax year, shall file with the director a return including, but not limited to, the following information:

- a. The total taxable kilowatt-hours of electricity delivered by the taxpayer to consumers within each electric competitive service area during the tax year, and the total taxable therms of natural gas delivered by the taxpayer to consumers within each natural gas competitive service area during the tax year.
- b. The total kilowatt-hours of electricity consumed by the taxpayer within each electric competitive service area during the tax year subject to tax under section 437A.4, subsection 2, and the total therms of natural gas consumed by the taxpayer within each natural gas competitive service area during the tax year subject to tax under section 437A.5, subsection 2.

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- c. The total taxable kilowatt-hours of electricity generated by the taxpayer in Iowa during the tax year.
 - d. The total taxable pole miles of electric transmission lines in Iowa, by kilovolt, owned or leased by the taxpayer on the last day of the tax year.
 - e. The tentative replacement taxes imposed by section 437A.4, subsection 1, paragraph "a", section 437A.4, subsection 2, section 437A.5, subsection 1, paragraph "a", section 437A.5, subsection 2, and sections 437A.6 and 437A.7, due for the tax year.
 - f. For purposes of a municipal utility which is a member of a municipal electric cooperative association, the occurrence on or before September 1 of the preceding calendar year of an event described in section 437A.4, subsection 9, paragraph "a" or "b", and the date on which the one-hundred-eighty-day requirement under such paragraph was met.
2. Each taxpayer subject to a municipal transfer replacement tax, on or before February 28 following a tax year, shall file with the chief financial officer of each city located within an electric or natural gas competitive service area served by a municipal utility as of January 1, 1999, a return including, but not limited to, the following information:
- a. The total taxable kilowatt-hours of electricity delivered by the taxpayer within each electric competitive service area described in section 437A.4, subsection 4, during the tax year and the total taxable therms of natural gas delivered by the taxpayer within each natural gas competitive service area described in section 437A.5, subsection 4, during the tax year.
 - b. For a municipal utility taxpayer, the total transfers made by the taxpayer under section 384.89 within each competitive service area during the preceding calendar year, allocated between electric-related transfers and natural gas-related transfers and total credits described in sections 437A.4, subsection 5, and 437A.5, subsection 5.

- c. The transfer replacement taxes imposed by sections 437A.4, subsection 1, paragraph "b", and 437A.5, subsection 1, paragraph "b", due for the tax year.
- 3. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with forms and rules prescribed by the director in the case of a return filed pursuant to subsection 1, and in accordance with forms and rules prescribed by the chief financial officer of the city in the case of a return filed pursuant to subsection 2.
- 4. At the time of filing the return required by subsection 1 with the director, the taxpayer shall calculate the tentative replacement tax due for the tax year. The director shall compute any adjustments to the replacement tax required by subsection 7 and by section 437A.4, subsection 8, and section 437A.5, subsection 8, and notify the taxpayer of any such adjustments in accordance with the requirements of such provisions. The director and the department of management shall compute the allocation of replacement taxes among local taxing districts and report such allocations to county treasurers pursuant to section 437A.15. Based on such allocations, the treasurer of each county shall notify each taxpayer on or before August 31 following a tax year of its replacement tax obligation to the county treasurer. On or before September 30, 2000, and on or before September 30 of each subsequent year, the taxpayer shall remit to the county treasurer of each county to which such replacement tax is allocated pursuant to section 437A.15, one-half of the replacement tax so allocated, and on or before the succeeding March 31, the taxpayer shall remit to the county treasurers the remaining replacement tax so allocated. If notification of a taxpayer's replacement tax obligation is not mailed by a county treasurer on or before August 31 following a tax year, such taxpayer shall have thirty days from the date the notification is mailed to remit one-half of the replacement

tax otherwise required by this subsection to be remitted to such county treasurer on or before September 30. If a taxpayer fails to timely remit replacement taxes as provided in this subsection, the county treasurer of each affected county shall notify the director of such failure.

5. At the time of filing the return required by subsection 2, the taxpayer shall calculate the municipal transfer replacement tax due for the tax year. Municipal transfer replacement taxes shall be paid to the chief financial officer of the city to which the taxes are allocated at such time and place as directed by the city council.

6. Notwithstanding subsections 1 through 5, a taxpayer shall not be required to file a return otherwise required by this section or remit any replacement tax for any tax year in which the taxpayer's replacement tax liability before credits is three hundred dollars or less.

7. Following the determination of electric and natural gas delivery tax rates by the director pursuant to section 437A.4, subsection 3, and section 437A.5, subsection 3, if an adjustment resulting from a taxpayer appeal is made to taxes levied and paid by a taxpayer with respect to any of the assessment years 1993 through 1997 used in determining such rates, the director shall recalculate the delivery tax rate for any affected electric or natural gas competitive service area to reflect the impact of such adjustment as if such adjustment had been reflected in the initial determination of average centrally assessed property tax liability allocated to electric or natural gas service pursuant to section 437A.4, subsection 3, paragraph "a", and section 437A.5, subsection 3, paragraph "a". Rate recalculations shall be made and published in the Iowa administrative bulletin by the director on or before March 31 following the calendar year in which a final determination of the adjustment is made. Taxpayers shall report to the director any increase or decrease in the tentative replacement tax required to be shown to be due

pursuant to subsection 1, paragraph "e", for any tax year with the return for the year in which the recalculated tax rates which gave rise to the adjustment are published in the Iowa administrative bulletin. The director and the department of management shall redetermine the allocation of replacement taxes pursuant to section 437A.15 for each affected tax year. If a taxpayer has overpaid replacement taxes, the overpayment shall be reported by the director to such taxpayer and to the appropriate county treasurers and shall be a credit against the replacement taxes owed by such taxpayer for the year in which the recalculated rates which gave rise to the overpayment are published in the Iowa administrative bulletin. If a taxpayer has overpaid centrally assessed property taxes for assessment years prior to tax year 1999, such overpayment shall be a credit against replacement taxes owed by such taxpayer for the year in which the overpayment is determined. Unused credits may be carried forward and used to reduce future replacement tax liabilities until exhausted.

Sec. 10. NEW SECTION. 437A.9 FAILURE TO FILE RETURN -- INCORRECT RETURN.

1. As soon as practicable after a return required by section 437A.8, subsection 1, is filed, and in any event within three years after such return is filed, the director shall examine the return, determine the tax due if the return is found to be incorrect, and give notice to the taxpayer of the determination as provided in subsection 2. The period for the examination and determination of the correct amount of tax is unlimited in the case of a false or fraudulent return made with the intent to evade any tax or in the case of a failure to file a return. The chief financial officer of a city shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

2. If a return required by section 437A.8, subsection 1, is not filed, or if such return when filed is incorrect or

insufficient and the taxpayer fails to file a corrected or sufficient return within twenty days after such return is required by notice from the director, the director shall determine the amount of tax due from information as the director may be able to obtain and, if necessary, may estimate the tax due on the basis of external indices. The director shall give notice of the determination to the taxpayer liable for the tax and to the county treasurers to whom the tax is owed. The determination shall fix the tax unless the taxpayer against whom it is levied, within sixty days after notice of the determination, applies to the director for a hearing. At the hearing evidence may be offered to support the determination or to prove that it is incorrect. After the hearing the director shall give notice of the decision to the person liable for the tax and to the county treasurers to whom the tax is owed.

3. The three-year period of limitation provided in subsection 1 may be extended by the taxpayer by signing a waiver agreement form provided by the department. The agreement shall stipulate the period of extension and the tax period to which the extension applies. The agreement shall also provide that a claim for refund may be filed by the taxpayer at any time during the period of extension.

Sec. 11. NEW SECTION. 437A.10 JUDICIAL REVIEW.

1. Judicial review of the actions of the director may be sought pursuant to chapter 17A, the Iowa administrative procedure Act.

2. For cause and upon a showing by the director that collection of the tax in dispute is in doubt, the court may order the petitioner to file with the clerk of the district court a bond for the use of the appropriate local taxing districts, with sureties approved by the clerk of the district court, in the amount of the tax appealed from, conditioned upon the performance by the petitioner of any orders of the court.

3. An appeal may be taken by the taxpayer or the director to the supreme court irrespective of the amount involved.

4. A person aggrieved by a decision of the chief financial officer of a city under this chapter may seek review by writ of certiorari within thirty days of the decision sought to be reviewed.

Sec. 12. NEW SECTION. 437A.11 LIEN -- ACTIONS AUTHORIZED.

Whenever a taxpayer who is liable to pay a tax imposed by subchapter 2 refuses or neglects to pay such tax, the amount, including any interest, penalty, or addition to such tax, together with the costs that may accrue, shall be a lien in favor of the chief financial officer of the city or the county treasurer to which the tax is owed upon all property and rights to property, whether real or personal, belonging to the taxpayer. The lien shall be prior to and superior over all subsequent liens upon any personal property within this state, or right to such personal property, belonging to the taxpayer, without the necessity of recording the lien. The requirement for recording, as applied to the tax imposed by subchapter 2, shall apply only to a lien upon real property. The lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, by the county treasurer to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien. For purposes of the replacement tax collected by a city, the lien may be preserved against subsequent mortgagees, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in the county, by the chief financial officer of the city to which replacement tax is owed by filing with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as the index of replacement tax liens, so ruled as to show in appropriate columns under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name of the county treasurer and county or the name of the chief financial officer and city as claimant.
3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The county treasurer or chief financial officer of the city shall pay a recording fee as provided in section 331.604, for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which a county treasurer or chief financial officer of a city has filed notice with a county recorder, the county treasurer or chief financial officer of the city shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Section 445.3 applies with respect to the replacement taxes and penalties imposed by this chapter, except for the provisions limiting the commencement of actions.

Sec. 13. NEW SECTION. 437A.12 SERVICE OF NOTICE.

1. A notice authorized or required under this chapter may be given by mailing the notice to the taxpayer, addressed to the taxpayer at the address given in the last return filed by

the taxpayer pursuant to this chapter, or if no return has been filed, then to the most recent address of the taxpayer obtainable. The mailing of the notice is presumptive evidence of the receipt of the notice by the taxpayer to whom the notice is addressed. A period of time within which some action must be taken for which notice is provided under this section commences to run from the date of mailing of the notice.

2. There is no limitation for the enforcement of a civil remedy pursuant to any proceeding or action taken to levy, appraise, assess, determine, or enforce the collection of any tax or penalty due under this chapter.

Sec. 14. NEW SECTION. 437A.13 PENALTIES -- OFFENSES -- LIMITATION.

1. A taxpayer is subject to the penalty provisions in section 421.27 with respect to any replacement tax due under this chapter. A taxpayer shall also pay interest on the delinquent replacement tax at the rate in effect under section 421.7 for each month computed from the date the payment was due, counting each fraction of a month as an entire month. The penalty and interest shall be paid to the county treasurer, or in the case of penalty and interest associated with a municipal transfer replacement tax to the city financial officer, and shall be disposed of in the same manner as other receipts under this chapter. Unpaid penalties and interest may be enforced in the same manner as provided for unpaid replacement tax under this chapter.

2. A taxpayer, or officer, member, or employee of the taxpayer, who willfully attempts to evade the replacement tax imposed or the payment of the replacement tax is guilty of a class "D" felony.

3. The issuance of a certificate by the director or a county treasurer stating that a replacement tax has not been paid, that a return has not been filed, or that information has not been supplied pursuant to this chapter is prima facie evidence of such failure.

service area shall not be divulged to any person or entity, other than the taxpayer, the department, or the internal revenue service for use in a matter unrelated to tax administration.

This prohibition precludes persons or entities other than the taxpayer, the department, or the internal revenue service from obtaining such information from the department. A subpoena, order, or process which requires the department to produce such information to a person or entity, other than the taxpayer, the department, or internal revenue service, for use in a nontax proceeding is void.

4. Notwithstanding subsections 2 and 3, the chief financial officer of any local taxing district and any designee of such officer shall have access to any computations made by the director pursuant to the provisions of this chapter, and any tax return or other information used by the director in making such computations, which affect the replacement tax owed by any such taxpayer.

Notwithstanding this section, providing information relating to the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area to the task force established in section 437A.15, subsection 7, or to the study committee established in section 476.5, subsection 23, is not a violation of this section.

5. Local taxing district employees are deemed to be officers and employees of the state for purposes of subsection 2.

6. Claims for refund or credit of municipal transfer replacement tax shall be filed with the appropriate city's chief financial officer. Subsection 1 applies with respect to the transfer replacement tax and the city's chief financial officer shall have the same authority as is granted to the director under this section with respect to a return filed pursuant to section 437A.8, subsection 2.

7. Claims for refund or credit of special utility property tax levies shall be filed with the appropriate county treasurer. Subsection 1 applies with respect to the special utility property tax levy and the county treasurer shall have the same authority as is granted to the director under this section.

Sec. 16. NEW SECTION. 437A.15 ALLOCATION OF REVENUE.

1. The director and the department of management shall compute the allocation of all replacement tax revenues other than transfer replacement tax revenues among the local taxing districts in accordance with this section and shall report such allocation by local taxing districts to the county treasurers on or before August 15 following a tax year.

2. The director shall determine and report to the department of management the total replacement taxes to be collected from each taxpayer for the tax year on or before July 30 following such tax year.

3. All replacement taxes owed by a taxpayer shall be allocated among the local taxing districts in which such taxpayer's property is located in accordance with a general allocation formula determined by the department of management on the basis of general property tax equivalents. General property tax equivalents shall be determined by applying the levy rates reported by each local taxing district to the department of management on or before June 30 following a tax year to the assessed value of taxpayer property allocated to each such local taxing district as adjusted and reported to the department of management in such tax year by the director pursuant to section 437A.19, subsection 2. The general allocation formula for a tax year shall allocate to each local taxing district that portion of the replacement taxes owed by each taxpayer which bears the same ratio as such taxpayer's general property tax equivalents for each local taxing district bears to such taxpayer's total general property tax equivalents for all local taxing districts in Iowa.

4. A taxpayer, or officer, member, or employee of the taxpayer, required to pay a replacement tax, or required to make, sign, or file an annual return or supplemental return, who willfully makes a false or fraudulent annual return, or who willfully fails to pay at least ninety percent of the replacement tax or willfully fails to make, sign, or file the annual return, as required, is guilty of a fraudulent practice.

5. For purposes of determining the place of trial for a violation of this section, the situs of an offense is in the county of the residence of the taxpayer, officer, member, or employee of the taxpayer charged with the offense, unless the taxpayer, officer, member, or employee of the taxpayer is a nonresident of this state or the residence cannot be established, in which event the situs of the offense is in Polk county.

6. Prosecution for an offense specified in this section shall be commenced within six years after the commission of the offense.

Sec. 15. NEW SECTION. 437A.14 CORRECTION OF ERRORS -- REFUNDS OR CREDITS OF REPLACEMENT TAX PAID -- INFORMATION CONFIDENTIAL -- PENALTY.

1. a. If an amount of replacement tax, penalty, or interest has been paid which was not due under this chapter, a city's chief financial officer or county treasurer to whom such erroneous payment was made shall do one of the following:

(1) Credit the amount of the erroneous payment against any replacement tax due, or to become due, from the taxpayer on the books of the city or county.

(2) Refund the amount of the erroneous payment to the taxpayer.

b. Claims for refund or credit of replacement taxes paid shall be filed with the director. A claim for refund or credit that is not filed with the director within three years after the replacement tax payment upon which a refund or

credit is claimed became due, or one year after the replacement tax payment was made, whichever time is later, shall not be allowed. A claim for refund or credit of tax alleged to be unconstitutional not filed with the director within ninety days after the replacement tax payment upon which a refund or credit is claimed became due shall not be allowed. As a precondition for claiming a refund or credit of alleged unconstitutional taxes, such taxes must be paid under written protest which specifies the particulars of the alleged unconstitutionality. Claims for refund or credit may only be made by, and refunds or credits may only be made to, the person responsible for paying the replacement tax, or such person's successors. The director shall notify affected county treasurers of the acceptance or denial of any refund claim. Section 421.10 applies to claims denied by the director.

2. It is unlawful for any present or former officer or employee of the state to divulge or to make known in any manner to any person the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive service area disclosed on a tax return, return information, or investigative or audit information. A person who violates this section is guilty of a serious misdemeanor. If the offender is an officer or employee of the state, such person, in addition to any other penalty, shall also be dismissed from office or discharged from employment. This section does not prohibit turning over to duly authorized officers of the United States or tax officials of other states such kilowatt-hours or therms pursuant to agreement between the director and the secretary of the treasury of the United States or the secretary's delegate or pursuant to a reciprocal agreement with another state.

3. Unless otherwise expressly permitted by a section referencing this chapter, the kilowatt-hours of electricity or therms of natural gas delivered by a taxpayer in a competitive

4. On or before August 31 following tax years 1999, 2000, and 2001, each county treasurer shall compute a special utility property tax levy or tax credit for each taxpayer for which a replacement tax liability for each such tax year is reported to the county treasurer pursuant to subsection 1, and shall notify the taxpayer of the amount of such tax levy or tax credit. The amount of the special utility property tax levy or credit shall be determined for each taxpayer by the county treasurer by comparing the taxpayer's total replacement tax liability allocated to taxing districts in the county pursuant to this section with the anticipated tax revenues from the taxpayer for all taxing districts in the county. If the taxpayer's total replacement tax liability allocated to taxing districts in the county is less than the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall levy a special utility property tax equal to the shortfall which shall be added to and collected with the replacement tax owed by the taxpayer to the county treasurer for the tax year pursuant to section 437A.8, subsection 4. If the taxpayer's total replacement tax liability allocated to taxing districts in the county exceeds the anticipated tax revenues from the taxpayer for all taxing districts in the county, the county treasurer shall issue a credit to the taxpayer which shall be applied to reduce the taxpayer's replacement tax liability to the county treasurer for the tax year. If the taxpayer's total replacement tax liability allocated to taxing districts in the county equals the anticipated tax revenues from the taxpayer for all taxing districts in the county, no levy or credit is required. Replacement tax liability for purposes of this subsection means replacement tax liability before credits allowed by section 437A.8, subsection 7. A recalculation of a special utility property tax levy or credit shall not be made as a result of a subsequent recalculation of replacement tax liability under section 437A.8, subsection 7, or adjustment to

assessed value under section 437A.19, subsection 2, paragraph "f". "Anticipated tax revenues from a taxpayer" means the product of the total levy rates imposed by the taxing districts and the value of taxpayer property allocated to the taxing districts and reported to the county auditor. Special utility property tax levies and credits shall be treated as replacement taxes for purposes of section 437A.11.

It is the intent of the general assembly that the general assembly evaluate the impact of the imposition of the replacement tax for purposes of determining whether this subsection shall remain in effect and whether a determination shall be made as to the necessity of a recalculation as provided in this subsection for tax years beginning after tax year 2000.

5. The replacement tax, as adjusted by any special utility property tax levy or credit and remitted to a county treasurer by each taxpayer, shall be treated as a property tax when received and shall be disposed of by the county treasurer as taxes on real estate. Notwithstanding the allocation provisions of this section, nothing in this section shall deny any affected taxing entity, as defined in section 403.17, subsection 1, which has enacted an ordinance or entered into an agreement for the division and allocation of taxes authorized under section 403.19 and under which ordinance or agreement the taxes collected in respect of properties owned by any of the taxpayers remitting replacement taxes pursuant to the provisions of this chapter are being divided and allocated, the right to receive its share of the replacement tax revenues collected for any year which would otherwise be paid to such affected taxing entity under the terms of any such ordinance or agreement had this chapter not been enacted. To the extent that adjustment must be made to the allocation described in this section to give effect to the terms of such ordinances or agreements, the department of management and the county treasurer shall make such adjustments.

5. In lieu of the adjustment provided for in subsection 5, the assessed value of property described in section 403.19, subsection 1, may be reduced by the city or county by the amount of the taxable value of the property described in section 437A.16 included in such area on January 1, 1997, pursuant to amendment of the ordinance adopted by such city or county pursuant to section 403.19.

7. On or before July 1, 1998, the department of management, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a task force and provide staffing assistance to the task force. It is the intent of the general assembly that the task force include representatives of the department of management, department of revenue and finance, electric companies, natural gas companies, municipal utilities, electric cooperatives, counties, cities, school boards, and industrial, commercial, and residential consumers, and other appropriate stakeholders.

The task force shall study the effects of the replacement tax on local taxing districts, consumers, and taxpayers and the department of management shall report to the general assembly by January 1 of each year through January 1, 2003, the results of the study and the specific recommendations of the task force for modifications to the replacement tax, if any, which will further the purposes of tax neutrality for local taxing districts, taxpayers, and consumers, consistent with the stated purposes of this chapter. The department of management shall also report to the legislative council by November 15 of each year through 2002, the status of the task force study and any recommendations.

Sec. 17. NEW SECTION. 437A.16 ASSESSMENT EXCLUSIVE.

All operating property and all other property that is primarily and directly used in the production, generation, transmission, or delivery of electricity or natural gas owned by or leased to a person subject to taxation under this chapter is exempt from taxation except as otherwise provided

by this chapter. This exemption shall not extend to taxes imposed under chapters 437, 438, and 468, taxpayers described in section 437A.8, subsection 6, or facilities or property described in section 437A.6, subsection 1, paragraphs "a" through "L", and section 437A.7, subsection 2.

Sec. 18. NEW SECTION. 437A.17 STATUTES APPLICABLE -- RATE CALCULATIONS.

1. The director shall administer and enforce the replacement tax imposed by this chapter in the same manner as provided in and subject to sections 422.68, 422.70, 422.71, and 422.75.

2. The calculation of tax rates and adjustments to such rates by the director pursuant to this chapter do not constitute rulemaking subject to the provisions of chapter 17A.

SUBCHAPTER 3
STATEWIDE PROPERTY TAX

Sec. 19. NEW SECTION. 437A.18 TAX IMPOSITION.

An annual statewide property tax of three cents per one thousand dollars of assessed value is imposed upon all property described in section 437A.16 on the assessment date of January 1.

Sec. 20. NEW SECTION. 437A.19 ADJUSTMENT TO ASSESSED VALUE -- REPORTING REQUIREMENTS.

1. a. A taxpayer whose property is subject to the statewide property tax shall report to the director by July 1, 1999, and by May 1 of each subsequent tax year, on forms prescribed by the director, the book value, as of the beginning and end of the preceding calendar year, of all of the following:

- (1) The local amount of any major addition by local taxing district.
- (2) The statewide amount of any major addition without notation of location.

(3) Any building in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(4) Any electric power generating plant in Iowa at acquisition cost of more than ten million dollars which was originally placed in service by the taxpayer prior to January 1, 1998, and which was transferred or disposed of in the preceding calendar year, without notation of location.

(5) All other taxpayer property without notation of location.

(6) The local amount of any major addition eligible for the urban revitalization exemption provided for in chapter 484, by situs.

b. For purposes of this section:

(1) "Book value" means acquisition cost less accumulated depreciation determined under generally accepted accounting principles.

(2) "Taxpayer property" means property described in section 437A.16.

(3) "To dispose of" means to sell, abandon, decommission, or retire an asset.

(4) "Transfer" means a transaction which results in a change of ownership of taxpayer property and includes a capital lease transaction.

c. For purposes of this subsection, "taxpayer" includes a person who would have been a taxpayer in calendar year 1998 had the provisions of this chapter been in effect for the 1998 assessment year.

d. If a taxpayer owns or leases pursuant to a capital lease less than the entire interest in a major addition, the local amount and statewide amount, if any, of such major addition shall be apportioned to the taxpayer on the basis of its percentage interest in such major addition.

2. Beginning January 1, 1999, the assessed value of taxpayer property shall be adjusted annually as provided in this section. The director, with respect to each taxpayer, shall do all of the following:

a. Adjust the assessed value of taxpayer property in each local taxing district by the change in book value during the preceding calendar year of the local amount of any major addition reported within such local taxing district.

b. (1) Adjust the assessed value of taxpayer property in each local taxing district by allocating the change in book value during the preceding calendar year of the statewide amount and all other taxpayer property described in subsection 1, paragraph "a", subparagraph (5), to the assessed value of all taxpayer property in the state pro rata according to its preadjustment value.

(2) If, during the preceding calendar year, a taxpayer transferred an electric power generating plant to a taxpayer who owned no other taxpayer property in this state as of the end of such preceding calendar year, in lieu of the adjustment provided in subparagraph (1), the director shall allocate the transferee taxpayer's change in book value of the statewide amount during such preceding calendar year, if any, among local taxing districts in proportion to the allocation of the transferor's assessed value among local taxing districts as of the end of such preceding calendar year.

c. In the case of taxpayer property described in subsection 1, paragraph "a", subparagraphs (3) and (4), decrease the assessed value of taxpayer property in each local taxing district by the taxable value of such property within each such local taxing district on January 1, 1998.

d. In the event of a merger or consolidation of two or more taxpayers, to determine the assessed value of the surviving taxpayer, combine the assessed values of such taxpayers immediately prior to the merger or consolidation.

e. In the event any taxpayer property is eligible for the urban revitalization tax exemption described in chapter 404, adjust the assessed value of taxpayer property within each affected local taxing district to reflect such exemption.

f. In the event the base year assessed value of taxpayer property is adjusted as a result of taxpayer appeals, reduce the assessed value of taxpayer property in each local taxing district to reflect such adjustment. The adjustment shall be allocated in proportion to the allocation of the taxpayer's assessed value among the local taxing districts determined without regard to this adjustment. If an adjustment to the base year assessed value of taxpayer property is finally determined on or before September 30, 1999, it shall be reflected in the January 1, 1999, assessed value. Otherwise, any such adjustment shall be made as of January 1 of the year following the date on which the adjustment is finally determined.

In no event shall the adjustments set forth in this subsection reduce the assessed value of taxpayer property in any local taxing district below zero.

The director, on or before October 31, 1999, in the case of January 1, 1999, assessed values, and on or before August 31 of each subsequent assessment year, shall report to the department of management and to the auditor of each county the adjusted assessed value of taxpayer property as of January 1 of such assessment year for each local taxing district. For purposes of this subsection, the assessed value of taxpayer property in each local taxing district subject to adjustment under this section by the director means the assessed value of such property as of the preceding January 1 as determined and allocated among the local taxing districts by the director.

Nothing in this chapter shall be interpreted to authorize local taxing districts to exclude from the calculation of levy rates the adjusted assessed value of taxpayer property reported to county auditors pursuant to this subsection.

Sec. 21. NEW SECTION. 437A.20 TAX EXEMPTIONS.

Except as provided in section 437A.16, all property tax exemptions in the Code do not apply to property subject to the statewide property tax unless such exemptions expressly refer to the statewide property tax, except that if property was exempt from property tax on January 1, 1999, such exemption shall continue until the exemption expires, is phased out, or is repealed. The property of a taxpayer who does not owe any replacement tax is exempt from the statewide property tax for the coinciding assessment year.

Sec. 22. NEW SECTION. 437A.21 RETURN AND PAYMENT REQUIREMENTS.

1. Each electric company, natural gas company, electric cooperative, municipal utility, and other person whose property is subject to the statewide property tax shall file with the director a return, on or before February 28 following the assessment year, including, but not limited to, the following information:

a. The assessed value of property subject to the statewide property tax.

b. The amount of statewide property tax computed on such assessed value.

2. The first return under subsection 1 is due on or before February 28, 2000.

3. If an electric company, natural gas company, electric cooperative, municipal utility, or person is not required to file a statewide property tax return on or before February 28, 2000, but is required to file a return after such date, the return shall be filed on or before the due date. This subsection also applies in the event of a consolidation.

4. A return shall be signed by an officer, or other person duly authorized by the taxpayer, and must be certified as correct and in accordance with rules and forms prescribed by the director.

5. At the time of filing the return with the director, the taxpayer shall calculate the statewide property tax owed for

the assessment year and shall remit to the director the statewide property tax required to be shown to be due on the return.

Sec. 23. NEW SECTION. 437A.22 STATUTES APPLICABLE.

Sections 437A.9, 437A.10, 437A.12, 437A.13, and 437A.14, subsection 1, are applicable to electric companies, natural gas companies, electric cooperatives, municipal utilities, and persons whose property is subject to the statewide property tax. However, a required credit or refund of overpaid statewide property tax pursuant to section 437A.14, subsection 1, as it applies to this subchapter, shall be made by the director and not by city chief financial officers or county treasurers.

Section 422.26 applies with respect to the statewide property tax and penalties imposed by this chapter, except that, as applied to any tax imposed by this chapter, the lien provided shall be prior to and superior over all subsequent liens upon any personal property within this state or right to such personal property belonging to the taxpayer, without the necessity of recording the lien as provided in section 422.26. The requirement for recording, as applied to the statewide property tax imposed by this chapter, shall apply only to a lien upon real property. In order to preserve such lien against subsequent mortgages, purchasers, or judgment creditors, for value and without notice of the lien, on any real property situated in a county, the director shall file with the recorder of the county in which the real property is located a notice of the lien.

The county recorder of each county shall prepare and keep in the recorder's office a book to be known as the index of statewide property tax liens, so ruled as to show in appropriate columns under the names of taxpayers arranged alphabetically, all of the following:

1. The name of the taxpayer.
2. The name "State of Iowa" as claimant.

3. Time the notice of lien was received.
4. Date of notice.
5. Amount of lien then due.
6. Date of assessment.
7. Date when the lien is satisfied.

The recorder shall endorse on each notice of lien the day, hour, and minute when received and preserve such notice, and shall promptly record the lien in the manner provided for recording real estate mortgages. The lien is effective from the time of the indexing of the lien.

The director, from moneys appropriated to the department of revenue and finance for this purpose, shall pay a recording fee as provided in section 331.604 for the recording of the lien, or for its satisfaction.

Upon the payment of the replacement tax as to which the director has filed notice with a county recorder, the director shall promptly file with the recorder a satisfaction of the replacement tax. The recorder shall enter the satisfaction on the notice on file in the recorder's office and indicate that fact on the index.

Sec. 24. NEW SECTION. 437A.23 DEPOSIT OF TAX PROCEEDS.

All revenues received from imposition of the statewide property tax shall be deposited in the general fund of the state. Fifty percent of the revenues shall be available to the department of management for salaries, support, services, and equipment to administer the replacement tax. The balance of the revenues shall be available to the department of revenue and finance for salaries, support, services, and equipment to administer and enforce the replacement tax and the statewide property tax.

SUBCHAPTER 4

GENERAL PROVISIONS

Sec. 25. NEW SECTION. 437A.24 RECORDS.

Each electric company, natural gas company, electric cooperative, municipal utility, and other person who is

subject to the replacement tax or the statewide property tax shall maintain records associated with the replacement tax and the assessed value of property subject to the statewide property tax for a period of ten years following the later of the original due date for filing a return pursuant to sections 437A.8 and 437A.21 in which such taxes are reported, or the date on which either such return is filed. Such records shall include those associated with any additions or dispositions of property, and the allocation of such property among local taxing districts.

Sec. 26. NEW SECTION. 437A.25 RULES.

The director of revenue and finance may adopt rules pursuant to chapter 17A for the administration and enforcement of this chapter.

Sec. 27. Section 257.3, subsection 1, Code 1997, is amended by adding the following unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. Replacement taxes under chapter 437A shall be regarded as property taxes for purposes of this chapter.

Sec. 28. Section 427.1, subsection 2, Code Supplement 1997, is amended to read as follows:

2. MUNICIPAL AND MILITARY PROPERTY. The property of a county, township, city, school corporation, levee district, drainage district or military company of the state of Iowa, when devoted to public use and not held for pecuniary profit, except property of a municipally owned electric utility held under joint ownership and property of an electric power facility financed under chapter 287 which shall be subject to assessment and taxation under provisions of chapters 428 and 437 chapter 437A. The exemption for property owned by a city or county also applies to property which is operated by a city or county as a library, art gallery or museum, conservatory, botanical garden or display, observatory or science museum, or as a location for holding athletic contests, sports or entertainment events, expositions, meetings or conventions, or

leased from the city or county for any such purposes. Food and beverages may be served at the events or locations without affecting the exemptions, provided the city has approved the serving of food and beverages on the property if the property is owned by the city or the county has approved the serving of food and beverages on the property if the property is owned by the county.

Sec. 29. Section 428.24, Code 1997, is amended to read as follows:

428.24 PUBLIC UTILITY PLANTS.

The lands, buildings, machinery, and mains belonging to individuals or corporations operating waterworks or gasworks or pipelines, ~~the lands, buildings, machinery, tracks, poles, and wires belonging to individuals, corporations or electric power agencies furnishing electric light or power, and the lands, buildings, machinery, poles, wires, overhead construction, tracks, cables, conduits, and fixtures belonging to individuals or corporations operating railways by cable or electricity, or operating elevated street railways,~~ except those natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue and finance. In the making of assessments of waterworks plants, the value of any interest in the property assessed, of the municipal corporation where it is situated, shall be deducted, whether the interest is evidenced by stock, bonds, contracts, or otherwise.

Sec. 30. Section 428.26, Code 1997, is amended to read as follows:

428.26 PERSONAL PROPERTY.

All the personal property of such individuals and corporations used or purchased by them for the purposes of such gas or waterworks, ~~electric light plants, electric or cable railways, elevated street railways or street railways operated by animal power, including the rolling stock of such railways and street railways, and the animals belonging to~~

~~such street-railways operated by animal power, other than natural gas pipelines permitted pursuant to chapter 479, shall be listed and assessed by the department of revenue and finance. In the making of any such assessment of waterworks plants, the value of any interest in the property so assessed, of the municipal corporation wherein in which the same waterworks is situated, shall be deducted, whether such interest be evidenced by stock, bonds, contracts, or otherwise.~~

Sec. 31. Section 428.28, Code 1997, is amended to read as follows:

428.28 ANNUAL REPORT BY UTILITY.

Every individual, copartnership, corporation, or association operating for profit, waterworks or gasworks or pipe lines, ~~electric light or power plants, railways operated by electricity, elevated street railways, shall other than natural gas pipelines permitted pursuant to chapter 479,~~ annually on or before the ~~first day of~~ May 1 of each calendar year, shall make a report on blanks to be provided by the department of revenue and finance of all of the property owned by such individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give such other information as the director of revenue and finance shall require.

Every individual, copartnership, corporation, or association which operates a public utility on a nonprofit basis other than a utility subject to tax under chapter 437A, as defined in section 428.24 shall annually, on or before the ~~first day of~~ May 1 of each calendar year, make a report on blanks to be provided by the department of revenue and finance of all of the property owned by the individual, copartnership, corporation, or association within the incorporated limits of any city in the state, and give other information the director of revenue and finance requires.

Sec. 32. Section 437.1, Code 1997, is amended by striking the section and inserting in lieu thereof the following:

437.1 DEFINITIONS.

As used in this chapter, unless the context otherwise requires:

1. "Company" means an electric cooperative referred to in section 437A.7, subsection 2, paragraph "c".
2. "Electric cooperative" means an electric utility provider formed or organized as an electric cooperative under the laws of this state or elsewhere.
3. "Transmission lines" means electric lines and associated facilities operating at thirty-four thousand five hundred volts or higher voltage, and substations, transformers, and associated facilities operated at thirty-four thousand five hundred or more volts on the low voltage side.

Sec. 33. Section 437.3, Code 1997, is amended to read as follows:

437.3 VERIFICATION.

The verification of any statement required by law shall ~~in the case of a person, be made by such person, in the case of a corporation, by the president or secretary thereof, and in case of a copartnership, association, or syndicate, by some member, officer, or agent thereof of the company having knowledge of the facts.~~

Sec. 34. Section 438.1, Code 1997, is amended to read as follows:

438.1 TAXATION PROCEDURE.

Every person, copartnership, association, corporation, or syndicate engaged in the business of transporting or transmitting gas, gasoline, oils, or motor fuels by means of pipelines other than natural gas pipelines permitted pursuant to chapter 479, whether such pipelines be owned or leased, shall be taxed as herein provided in this chapter.

Sec. 35. Section 438.2, Code 1997, is amended to read as follows:

438.2 DEFINITIONS DEFINITION.

The words "~~pipeline~~ "Pipeline company"", as used in this chapter shall be deemed and construed to mean, means any person, copartnership, association, corporation, or syndicate that may own or operate or be engaged in operating or utilizing pipelines, other than natural gas pipelines permitted pursuant to chapter 479, for the purposes described in section 438.1.

Sec. 36. Section 441.73, subsection 1, Code Supplement 1997, is amended to read as follows:

1. A litigation expense fund is created in the state treasury. The litigation expense fund shall be used for the payment of litigation expenses incurred by the state to defend property valuations established by the director of revenue and finance pursuant to section 428.24 and chapters 430A, 431, 434, 436, 437, 437A, and 438, and for the payment of litigation expenses incurred by the state to defend the imposition of replacement taxes and statewide property taxes under chapter 437A.

Sec. 37. Section 476.6, Code 1997, is amended by adding the following new subsections:

NEW SUBSECTION. 22. The costs of the replacement tax imposed pursuant to chapter 437A shall be reflected in the charges of utilities subject to rate regulation, in lieu of the utilities' costs of property taxes. The imposition of the replacement taxes pursuant to chapter 437A is not intended to initiate any change in the rates and charges for the sale of electricity, the sale of natural gas, or the transportation of natural gas that is subject to regulation by the board and in effect on the effective date of chapter 437A.

The cost of the replacement taxes imposed by chapter 437A shall be allocated among and within customer classes in a manner that will replicate the tax cost burden of the current

property tax on individual customers to the maximum extent practicable.

Upon the restructuring of the electric industry in this state so that individual consumers are given the right to choose their electric suppliers, replacement tax costs shall be assigned to the service corresponding to the individual generation, transmission, and delivery taxes. In all other respects, the allocation of the replacement tax costs among and within the customer classes shall remain the same to the maximum extent practicable.

Notwithstanding this subsection, the board may determine the amount of replacement tax properly included in retail rates subject to its jurisdiction. The board may determine whether the base rates or some other form of rate is most appropriate for recovery of the costs of the replacement tax, subject to the requirement that utility rates be reasonable and just. The board may also determine the appropriate allocation of the tax. Any significant modification to rate design relating to the replacement tax shall be made in a manner consistent with this subsection unless made in a contested case proceeding where the impact of such modification on competition and consumer costs is considered.

NEW SUBSECTION. 23. On or before July 1, 2000, the utilities board, in consultation with the department of revenue and finance, shall initiate and coordinate the establishment of a replacement tax study committee and provide staffing assistance to the committee. It is the intent of the general assembly that the committee include representatives of the utilities board, department of revenue and finance, department of management, investor-owned utilities, municipal utilities, cooperative utilities, local governments, major customer classes, and other stakeholders.

The committee shall study the effects of the replacement tax on both restructuring and the development of competition in the gas and electric industries in this state. The board

shall report to the general assembly by January 1 of each year through 2003, the results of the study, and the committee's recommendations as to whether the replacement tax, in its then present form, should be continued, whether a different form of taxation of electric and gas utilities should be adopted in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, whether a different basis for determination of the generation, transmission, and delivery taxes should be adopted or whether the relative share of the total replacement tax burden imposed on each of the generation, transmission, and delivery functions should be modified in order to allow free and fair competition in the electric and gas industries, and fair competitive prices for all classes of consumers, and whether the replacement tax in its then present form, appropriately accounts for the decline in value of electric power generating plants. The replacement tax study committee shall reconvene by January 1, 2006, to further study these same issues, and the board shall report the results of the study and the committee's recommendations to the general assembly by January 1, 2008.

Upon recommendation of the committee, the board may contract for services necessary to the implementation of this subsection with persons who are not state employees, including, but not limited to, facilitators, consultants, and other experts required to assist the committee. The cost of contracted services shall not be paid from appropriated funds, but shall be assessed to entities paying replacement tax pursuant to chapter 437A, subchapter 2, pro rata, based on the amount of tax paid.

Sec. 38. SPECIAL REPORTING REQUIREMENTS. Within ninety days of the effective date of this Act, each electric company, electric cooperative not described in section 437A.7, subsection 2, paragraph "c", municipal utility, and natural gas company shall report to the director, by certified statement subject to audit, the following information:

1. The entity's liability for centrally assessed property tax, as defined in section 437A.3, subsection 2, allocated to electric service for the assessment years 1993 through 1997 on the basis of property tax payments made.

2. The entity's liability for centrally assessed property tax, as defined in section 437A.3, subsection 2, allocated to natural gas service for the assessment years 1993 through 1997 on the basis of property tax payments made.

3. The entity's total kilowatt-hours of electricity generated which would have been subject to taxation under section 437A.6 for the 1998 assessment year had such taxation been in effect for assessment year 1998. Kilowatt-hours of electricity generated by a facility which was jointly owned or leased in assessment year 1998 shall be calculated and reported pursuant to section 437A.6, subsection 2, as if such subsection had been in effect for 1998.

4. The entity's total pole miles of electric transmission lines owned or leased on December 31, 1998, by line voltage, which would have been subject to taxation under section 437A.7 for the 1998 assessment year had such taxation been in effect for assessment year 1998. Pole miles of electric transmission lines which were jointly owned or leased in assessment year 1998 shall be calculated and reported pursuant to section 437A.7, subsection 3, as if such subsection had been in effect for assessment year 1998.

5. The entity's total kilowatt-hours of electricity delivered to consumers which would have been subject to taxation under section 437A.4 for the assessment years 1994 through 1998 had such taxation been in effect for such assessment years.

6. The entity's total therms of natural gas delivered to consumers which would have been subject to taxation under section 437A.5 for the assessment years 1994 through 1998 had such taxation been in effect for such assessment years.

7. For each generation and transmission electric cooperative, the excess property tax liability assignable to each electric competitive service area principally served by its distribution electric cooperative and municipal electric cooperative association members pursuant to section 437A.4, subsection 3, paragraph "c", subparagraph (4).

8. For each municipal electric cooperative association, the excess property tax liability assignable to each electric competitive service area principally served by its municipal utility members on January 1, 1999.

If information necessary to compute the delivery tax rate for any electric or natural gas competitive service area is not timely reported, the director shall estimate a delivery tax rate for such electric or natural gas competitive service area which shall not be lower than the highest electric or natural gas delivery tax rate computed for other electric or natural gas competitive service areas. However, if such information is provided within thirty days after the director has published in the Iowa administrative bulletin the delivery tax rates computed pursuant to section 437A.4, subsection 3, paragraph "d", and section 437A.5, subsection 3, paragraph "c", the director shall recalculate the electric or natural gas delivery tax rate for such electric or natural gas competitive service area and notify the taxpayers of the new electric or natural gas delivery tax rate by publication in the Iowa administrative bulletin on or before January 31, 2000.

Sec. 39. Sections 428.37 and 437.14, Code 1997, are repealed.

Sec. 40. EFFECTIVE AND APPLICABILITY DATES -- DIRECTIONS TO CODE EDITOR.

1. Except as provided in subsection 2, this Act takes effect January 1, 1999, and is applicable to property tax assessment years beginning on or after January 1, 1999, and to replacement tax years beginning on or after January 1, 1999.

2. Notwithstanding subsection 1, section 437A.15, subsection 7, as enacted in this Act and which provides for the establishment of a task force to study the effects of the replacement tax, takes effect upon enactment.

MARY B. KRASER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2416, Seventy-seventh General Assembly.

MARY PAT GUNDERSON
Secretary of the Senate

Approved May 14, 1998

TERRY E. BRANSTAD
Governor

56th Legislature

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AN ACT GENERALLY REVISING THE TAXATION OF ELECTRICAL GENERATION FACILITIES TO COMPORT WITH THE EMERGING COMPETITIVE MARKETS IN THE SUPPLY OF ELECTRICITY; CREATING CLASS THIRTEEN PROPERTY TO INCLUDE ELECTRICAL GENERATION FACILITIES; PROVIDING A DEFINITION OF "ELECTRICAL GENERATION FACILITIES"; PROVIDING AN EXCEPTION FOR QUALIFYING SMALL POWER PRODUCTION FACILITIES; TAXING ALL ELECTRICAL GENERATION FACILITIES THAT WERE PREVIOUSLY TAXED UNDER CLASS NINE AS CLASS THIRTEEN PROPERTY; TAXING CLASS THIRTEEN PROPERTY AT 6 PERCENT OF ITS MARKET VALUE; IMPOSING A 0.015 CENT PER KILOWATT-HOUR WHOLESALE ENERGY TRANSACTION TAX ON THE TRANSMISSION OF ELECTRICITY IN THE STATE; PROVIDING EXEMPTIONS FROM THE WHOLESALE ENERGY TRANSACTION TAX; ALLOWING THE ELECTRIC ENERGY PRODUCERS' LICENSE TAX TO BE ITEMIZED ON A CUSTOMER'S BILL; PROVIDING FOR THE DISTRIBUTION OF WHOLESALE ENERGY TRANSACTION TAX REVENUE TO TAXING JURISDICTIONS; PROVIDING A STATUTORY APPROPRIATION FOR THE DISTRIBUTION OF TAX REVENUE TO TAXING JURISDICTIONS; REVISING THE CLASSIFICATION OF COUNTIES; REVISING THE DEBT LIMITS OF TAXING JURISDICTIONS; AMENDING SECTIONS 7-1-2111, 7-7-107, 7-7-2101, 7-7-2203, 7-7-4201, 7-7-4202, 7-14-2524, 7-14-2525, 7-16-2327, 7-16-4104, 15-6-141, 15-51-102, 17-7-502, 20-9-406, AND 69-8-211, MCA; AND PROVIDING EFFECTIVE DATES, APPLICABILITY DATES, AND A TERMINATION DATE.

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

Section 1. Short title. [Sections 1 through 14] may be cited as the "Electrical Generation Tax Reform Act".

Section 2. Legislative findings and declaration of purpose. (1) The legislature finds that the restructuring of the electric utility industry in Montana implemented by Chapter 505, Laws of 1997, including the unbundling of services and the provision that allows Montana customers to choose their

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supplier of electricity and related services in a competitive market, renders the existing method of property taxation of the electric utility industry an impediment to competition.

(2) The legislature further finds that the restructuring of the electric utility industry necessitates changes to the existing system of property taxation that include reducing the tax rate applied to electrical generation facilities and imposing a replacement tax in order to:

(a) avoid placing a supplier engaged in the business of generating, supplying, or selling electricity at a competitive advantage or disadvantage;

(b) preserve the revenue base of the existing property tax system for taxing jurisdictions in the state;

(c) minimize the shift in tax burden and the imposition of a higher tax burden on consumers of electricity; and

(d) minimize additional administrative costs and the burden of compliance.

(3) The legislature further finds that a reduction in the property tax rates applied to electrical generation facilities must be replaced by a wholesale energy transmission tax imposed on each kilowatt hour of electricity transmitted in the state.

(4) The legislature further finds that existing property tax rates applied to electrical transmission and distribution systems are appropriate for a regulated function.

(5) The legislature therefore declares that there is a compelling public need to modify the existing system of property taxation of electrical generation facilities and to impose a wholesale energy transaction tax on kilowatt hours of electricity transmitted in the state to ensure competitive neutrality and to provide replacement revenue to taxing jurisdictions in the state.

Section 3. Definitions. As used in [sections 1 through 14], unless the context requires otherwise, the following definitions apply:

(1) "Customer" or "purchaser" means a person who acquires for consideration electricity for use or consumption and not for resale.

(2) "Distribution services provider" means a person controlling or operating distribution facilities for distribution of electricity to the public. A distribution services provider includes a purchaser who takes electricity directly from a transmission line and a purchaser who generates electricity for the purchaser's

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own use but does not include electricity generated by the purchaser for noncommercial use or for agricultural use.

(3) "Person" means an individual, estate, trust, receiver, cooperative association, corporation, limited liability company, firm, partnership, joint venture, syndicate, or other entity, including any gas or electric utility owned or operated by a county, municipality, or other political subdivision of the state.

(4) "Transmission services provider" means a person controlling or operating transmission facilities as that term is defined in 69-8-103.

Section 4. Wholesale energy transaction tax -- rate of tax -- exemptions -- cost recovery. (1) (a) Except as provided in subsection (3), a wholesale energy transaction tax is imposed upon electricity transmitted within the state as provided in this section. The tax is imposed at a rate of 0.015 cent per kilowatt hour of electricity transmitted by a transmission services provider in the state.

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

(c) For electricity produced in the state for delivery within the state, the taxpayer is the distribution services provider. The transmission services provider shall collect the tax based upon the amount of kilowatt hours of electricity delivered to the distribution services provider. The taxpayer may apply for a refund for overpayment of taxes pursuant to [section 13].

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

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

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

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

(b) If the transmission services provider is an agency of the United States government, the distribution services provider receiving the electricity shall self-assess the tax subject to the provisions of [sections 1 through 14].

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

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

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

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

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

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

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(4) A distribution services provider is allowed to recover the tax imposed by this section and the administrative costs to comply with [sections 1 through 14] in its rates.

Section 5. Multistate exemption. A person, upon proof that the person has paid a tax in another state on the transmission of electricity, is allowed a credit against the tax imposed by [sections 1 through 14] if the tax has been paid in another state.

Section 6. Collection of wholesale energy transaction tax -- disposition of revenue. (1) A transmission services provider shall collect the tax imposed under [section 4] from the taxpayer and pay the tax collected to the department. If the transmission services provider collects a tax in excess of the tax imposed by [section 4], both the tax and the excess must be remitted to the department.

(2) A self-assessing distribution services provider is subject to the provisions of [sections 1 through 14].

(3) The wholesale energy transaction tax collected under [sections 1 through 14] must be deposited in the general fund.

Section 7. Returns -- payment -- authority of department. (1) On or before the 30th day of the month following the end of the calendar quarter in which the tax imposed by [sections 1 through 14] is payable, a return, on a form provided by the department, and payment of the tax for the preceding calendar quarter must be filed with the department.

(2) Each person engaged in transmitting electricity in this state that is subject to the tax under [sections 1 through 14] shall file a return.

(3) (a) A person required to collect and pay to the department the tax imposed by [sections 1 through 14] shall keep records, render statements, make returns, and comply with the provisions of [sections 1 through 14] and the rules prescribed by the department. Each return or statement must include the information required by the rules of the department.

(b) For the purpose of determining compliance with the provisions of [sections 1 through 14], the department is authorized to examine or cause to be examined any books, papers, records, or memoranda relevant to making a determination of the amount of tax due, whether the books, papers, records, or

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memoranda are the property of or in the possession of the person filing the return or another person. In determining compliance, the department may use statistical sampling and other sampling techniques consistent with generally accepted auditing standards. The department may also:

- (i) require the attendance of a person having knowledge or information relevant to a return;
 - (ii) compel the production of books, papers, records, or memoranda by the person required to attend;
 - (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or may be jeopardized because of delay;
 - (iv) take testimony on matters material to the determination; and
 - (v) administer oaths or affirmations.
- (4) Pursuant to rules established by the department, returns may be computer-generated and electronically filed.

Section 8. Examination of return – adjustments – delivery of notices and demands. (1) If the department determines that the amount of tax due is different from the amount reported, the amount of tax computed on the basis of the examination conducted pursuant to [section 7] constitutes the tax to be paid.

(2) If the tax due exceeds the amount of tax reported as due on the taxpayer's return, the excess must be paid to the department within 30 days after notice of the amount and demand for payment is mailed or delivered to the person making the return unless the taxpayer files a timely objection as provided in 15-1-211. If the amount of the tax found due by the department is less than that reported as due on the return and has been paid, the excess must be credited or, if no tax liability exists or is likely to exist, refunded to the person making the return.

(3) The notice and demand provided for in this section must contain a statement of the computation of the tax and interest and must be:

(a) sent by mail to the taxpayer at the address given in the taxpayer's return, if any, or to the taxpayer's last-known address; or

(b) served personally upon the taxpayer.

(4) A taxpayer filing an objection to the demand for payment is subject to and governed by the

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uniform tax review procedure provided in 15-1-211.

Section 9. Penalties and interest for violation. (1) (a) A person who fails to file a return as required by [section 7] must be assessed a penalty as provided in [section 1 of House Bill No. 132]. The department may waive the penalty as provided in 15-1-206.

(b) A person who fails to file the return required by [section 7] and to pay the tax before the due date must be assessed penalty and interest as provided in [section 1 of House Bill No. 132]. The department may waive any penalty pursuant to 15-1-206.

(2) A person who purposely fails to pay the tax when due must be assessed an additional penalty as provided in [section 1 of House Bill No. 132].

Section 10. Authority to collect delinquent taxes. (1) (a) The department shall collect taxes that are delinquent as determined under [sections 1 through 14].

(b) If a tax imposed by [sections 1 through 14] or any portion of the tax is not paid when due, the department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

(2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has expired, the department may direct the offset of tax refunds or other funds that are due to the taxpayer from the state, except wages subject to the provisions of 25-13-614 and retirement benefits.

(3) As provided in 15-1-705, the taxpayer has the right to a review on the tax liability prior to any offset by the department.

(4) The department may file a claim for state funds on behalf of the taxpayer if a claim is required before funds are available for offset.

Section 11. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes as provided in [section 1 of House Bill No. 132]. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and if the deficiency is due to negligence on the part of the taxpayer but without fraud, the penalty imposed by [section 1(1)(c) of House Bill No. 132] must be added to the amount of the deficiency.

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Section 12. Limitations. (1) Except in the case of a person who purposely or knowingly, as those terms are defined in 45-2-101, files a false or fraudulent return violating the provisions of [sections 1 through 14], a deficiency may not be assessed or collected with respect to a month or quarter for which a return is filed unless the notice of additional tax proposed to be assessed is mailed to or personally served upon the taxpayer within 5 years from the date on which the return was filed. For purposes of this section, a return filed before the last day prescribed for filing is considered to be filed on the last day.

(2) If, before the expiration of the 5-year period prescribed in subsection (1) for assessment of the tax, the taxpayer consents in writing to an assessment after expiration of the 5-year period, a deficiency may be assessed at any time prior to the expiration of the period consented to.

Section 13. Refunds -- interest -- limitations. (1) A claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 14] must be filed within 5 years of the date on which the return was due, without regard to any extension of time for filing.

(2) (a) Interest on an overpayment must be paid or credited at the same rate as the interest rate charged on [unpaid taxes as provided in [section 1 of House Bill No. 132]].

(b) Except as provided in subsection (2)(c), interest must be paid from the date on which the return was due or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

(c) The department is not required to pay interest if:

(i) the overpayment is refunded or credited within 6 months of the date on which a claim was filed; or

(ii) the amount of overpayment and interest does not exceed \$1.

Section 14. Administration -- rules. The department shall:

(1) administer and enforce the provisions of [sections 1 through 14];

(2) cause to be prepared and distributed forms and information that may be necessary to administer the provisions of [sections 1 through 14]; and

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(3) adopt rules that may be necessary or appropriate to administer and enforce the provisions of [sections 1 through 14].

Section 15. Electrical generation property tax reduction – reimbursement to local taxing jurisdictions – statutory appropriation. (1) (a) The department shall calculate the amount of revenue lost to each local taxing jurisdiction, using previous year mill levies, because of the reduction in the tax rate from 12% to 6% applied to electrical generation facilities described in [section 27]. The department shall total the amounts for all taxing jurisdictions within the county that had electrical generation facilities on January 1, 1997.

(b) The calculation must be based on the number of mills levied in each jurisdiction for the previous tax year. The amount of the reimbursement is equal to the difference of the amount determined by multiplying 12% of the assessed value of the electrical generation facilities described in [section 27] in tax year 1999 in the local taxing jurisdiction by the previous tax year mill levy in the jurisdiction and the amount determined by multiplying 6% of the assessed value of the electrical generation facilities described in [section 27] in the current tax year in the taxing jurisdiction by the previous tax year mill levy in the jurisdiction.

(2) Each fiscal year, beginning in the fiscal year beginning July 1, 2000, the department shall biannually remit to each county treasurer 50% of the amount of county property tax revenue lost because of the rate reduction of electrical generation facilities from 12% to 6%, as determined under subsection (1). The payment must be made on or before November 30 and May 31 of each fiscal year, as adjusted by the result of dissolved or combined taxing jurisdictions, as provided for in subsection (5).

(3) Upon receipt of the reimbursement from the department, the county treasurer shall distribute the reimbursement to each taxing jurisdiction as calculated by the department.

(4) (a) For the purposes of this section and subject to subsection (5), "local taxing jurisdiction" means a jurisdiction levying mills against electrical generation facilities and includes but is not limited to a county, city, consolidated county and city government, school district, community college district, tax increment financing district, and miscellaneous taxing district. The term includes countywide mills levied for equalization of retirement under 20-9-501 or transportation under Title 20, chapter 10, part 1.

(b) The term does not include county or state school equalization levies provided for in 20-9-331.

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20-9-333, and 20-9-360 or the 6-mill university levy. It also does not include any state levy for welfare programs provided for in 53-2-813.

(5) The following apply to taxing jurisdictions that were altered after tax year 1999:

(a) A taxing jurisdiction that existed in tax year 1999 and that no longer exists is not entitled to reimbursement under this section.

(b) A taxing jurisdiction that existed in tax year 1999 and that is split into two or more taxing jurisdictions or that is annexed to or is consolidated with another taxing jurisdiction is entitled to reimbursement based on the portion of 1999 taxable value within each new taxing jurisdiction. The department shall determine the portion of 1999 taxable value located in each taxing jurisdiction.

(c) A taxing jurisdiction that did not exist in tax year 2000 is not entitled to reimbursement under this section unless the jurisdiction was created as described in subsection (5)(b).

(6) The amounts necessary for the administration of this section are statutorily appropriated, as provided in 17-7-502, from the general fund to reimburse eligible taxing jurisdictions for reductions in tax rates on electrical generation facilities.

Section 16. Section 7-1-2111, MCA, is amended to read:

"7-1-2111. Classification of counties. (1) For the purpose of regulating the compensation and salaries of all county officers, not otherwise provided for, and for fixing the penalties of officers' bonds, the counties of this state must be classified according to the taxable valuation of the property in the counties upon which the tax levy is made, except for vehicles subject to taxation under 61-3-504, as follows:

- (a) first class--all counties having a taxable valuation of \$50 million or more;
- (b) second class--all counties having a taxable valuation of \$30 million or more and less than \$50 million;
- (c) third class--all counties having a taxable valuation of \$20 million or more and less than \$30 million;
- (d) fourth class--all counties having a taxable valuation of \$15 million or more and less than \$20 million;
- (e) fifth class--all counties having a taxable valuation of \$10 million or more and less than \$15 million;

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million;

(f) sixth class--all counties having a taxable valuation of \$5 million or more and less than \$10 million;

(g) seventh class--all counties having a taxable valuation of less than \$5 million.

(2) As used in this section, "taxable valuation" means the taxable value of taxable property in the county as of the time of determination plus:

(a) that portion of the taxable value of the county on December 31, 1981, attributable to automobiles and trucks having a rated capacity of three-quarters of a ton or less;

(b) that portion of the taxable value of the county on December 31, 1989, attributable to automobiles and trucks having a manufacturer's rated capacity of more than three-quarters of a ton but less than or equal to 1 ton;

(c) that portion of the taxable value of the county on December 31, 1997, attributable to buses, trucks having a manufacturer's rated capacity of more than 1 ton, and truck tractors;

(d) that portion of the taxable value of the county on December 31, 1997, attributable to trailers, pole trailers, and semitrailers with a declared weight of less than 26,000 pounds;

(e) the value provided by the department of revenue under 15-36-324(13); and

(f) 50% of the taxable value in the county on December 31, 1999, attributable to electrical generation property under 15-6-141; and

~~(f)~~(g) 6% of the taxable value of the county on January 1 of each tax year."

Section 17. Section 7-7-107, MCA, is amended to read:

"7-7-107. Limitation on amount of bonds for city-county consolidated units. (1) Except as provided in 7-7-108, no a city-county consolidated local government may not issue bonds for any purpose which that, with all outstanding indebtedness, may exceed exceed 39% of the taxable value of the property therein in the local government subject to taxation, as ascertained by the last assessment for state and county taxes, plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the local government for tax year 1999, multiplied by 39%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of

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outstanding indebtedness."

Section 18. Section 7-7-2101, MCA, is amended to read:

"7-7-2101. Limitation on amount of county indebtedness. (1) A county may not become indebted in any manner or for any purpose in an amount, including existing indebtedness, in the aggregate exceeding 23% of the total of the taxable value of the property in the county subject to taxation; plus;

(a) the value provided by the department of revenue in 15-36-324(13), as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness; plus;

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 23%; and

(c) for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 23%.

(2) A county may not incur indebtedness or liability for any single purpose to an amount exceeding \$500,000 without the approval of a majority of the electors of the county voting at an election to be provided by law, except as provided in 7-7-2402, 7-21-3413, and 7-21-3414.

(3) This section does not apply to the acquisition of conservation easements as set forth in Title 76, chapter 6."

Section 19. Section 7-7-2203, MCA, is amended to read:

"7-7-2203. Limitation on amount of bonded indebtedness. (1) Except as provided in subsections (2) through ~~(4)~~ and (3), a county may not issue general obligation bonds for any purpose that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county; plus;

(a) the value provided by the department of revenue under 15-36-324(13), to be ascertained by the last assessment for state and county taxes prior to the proposed issuance of bonds; plus;

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~~(b) for general obligation bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, for general obligation bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995, and for general obligation bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the county for tax year 1995, in each case of class eight property, multiplied by 11.25%; and~~

(c) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

~~(2) In addition to the bonds allowed by subsection (1), a county may issue bonds that, with all outstanding bonds and warrants, will not exceed 27.75% of the total of the taxable value of the property in the county subject to taxation, plus the value provided by the department of revenue under 15-36-324(13), when necessary to do so, to be ascertained by the last assessment for state and county taxes, plus, for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the county for tax year 1995, and for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the county for tax year 1995.~~

~~(3)(2)~~ In addition to the bonds allowed by subsections subsection (1) and (2), a county may issue bonds for the construction or improvement of a jail detention center that will not exceed 12.5% of the taxable value of the property in the county subject to taxation, plus the adjustments permitted by ~~7-7-2101~~ subsection (1).

~~(4)(3)~~ The limitation in subsection (1) does not apply to refunding bonds issued for the purpose of paying or retiring county bonds lawfully issued prior to January 1, 1932, or to bonds issued for the repayment of tax protests lost by the county."

Section 20. Section 7-7-4201, MCA, is amended to read:

"7-7-4201. Limitation on amount of bonded indebtedness. (1) Except as otherwise provided, a city or town may not issue bonds or incur other indebtedness for any purpose in an amount that with all outstanding and unpaid indebtedness will exceed 28% of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus;

(a) for bonds to be issued or other indebtedness to be incurred during fiscal year 1997, an

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~~additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for bonds to be issued or other indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town for tax year 1995, and for bonds to be issued or other indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 28%; and~~

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 28%.

(2) The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness.

(3) The limitation in subsection (1) does not apply to bonds issued for the repayment of tax protests lost by the city or town."

Section 21. Section 7-7-4202, MCA, is amended to read:

"7-7-4202. Special provisions relating to water and sewer systems. (1) Notwithstanding the provisions of 7-7-4201, for the purpose of constructing a sewer system, procuring a water supply, or constructing or acquiring a water system for a city or town that owns and controls the water supply and water system and devotes the revenue from the water supply and water system to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds.

(2) The additional total indebtedness that may be incurred by borrowing money or issuing bonds for the construction of a sewer system, for the procurement of a water supply, or for both of the purposes, including all indebtedness that is contracted and that is unpaid or outstanding, may not in the aggregate exceed ~~55% over and above~~ of the 28%, debt limitation referred to in 7-7-4201; of the taxable value of the property in the city or town subject to taxation, to be ascertained by the last assessment for state and county taxes, plus;

~~(a) for indebtedness to be incurred during fiscal year 1997, an additional 11% of the taxable value of class eight property within the city or town for tax year 1995, for indebtedness to be incurred during fiscal year 1998, an additional 22% of the taxable value of class eight property within the city or town~~

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~~for tax year 1995, and for indebtedness to be incurred during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the city or town for tax year 1995, in each case of class eight property, multiplied by 55%; and~~

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 55%.

Section 22. Section 7-14-2524, MCA, is amended to read:

"7-14-2524. Limitation on amount of bonds issued -- excess void. (1) Except as otherwise provided in 7-7-2203, 7-7-2204, and this section, a county may not issue bonds that, with all outstanding bonds and warrants except emergency bonds, will exceed 11.25% of the total of the taxable value of the property in the county; plus:

(a) the value provided by the department of revenue under 15-36-324(13). The taxable property and the amount of taxes levied on new production, production from horizontally completed wells, and incremental production must be ascertained by the last assessment for state and county taxes prior to the issuance of the bonds.

(b) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 11.25%.

(2) A county may issue bonds that, with all outstanding bonds and warrants, will exceed 11.25% but will not exceed 22.5% of the total of the taxable value of the property; plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by the amount that exceeds 11.25% but does not exceed 22.5%, plus the value provided by the department of revenue under 15-36-324(13) when necessary for the purpose of replacing, rebuilding, or repairing county buildings, bridges, or highways that have been destroyed or damaged by an act of God or by a disaster, catastrophe, or accident.

(3) The value of the bonds issued and all other outstanding indebtedness of the county may not exceed 22.5% of the total of the taxable value of the property within the county, ~~plus the value provided by the department of revenue under 15-36-324(13), as ascertained by the last preceding general assessment as adjusted in this section.~~

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Section 23. Section 7-14-2525, MCA, is amended to read:

"7-14-2525. Refunding agreements and refunding bonds authorized. (1) Whenever the total indebtedness of a county exceeds 22.5% of the total of the taxable value of the property in the county, ~~plus the value provided by the department of revenue under 15-36-324(13)~~ as adjusted in 7-14-2524, and the board determines that the county is unable to pay the indebtedness in full, the board may:

(a) negotiate with the bondholders for an agreement under which the bondholders agree to accept less than the full amount of the bonds and the accrued unpaid interest in satisfaction of the bonds;

(b) enter into the agreement;

(c) issue refunding bonds for the amount agreed upon.

(2) These bonds may be issued in more than one series, and each series may be either amortization or serial bonds.

(3) The plan agreed upon between the board and the bondholders must be embodied in full in the resolution providing for the issuance of the bonds."

Section 24. Section 7-16-2327, MCA, is amended to read:

"7-16-2327. Indebtedness for park purposes. (1) Subject to the provisions of subsection (2), a county park board, in addition to powers and duties now given under law, may contract an indebtedness in behalf of a county, upon the credit of the county, in order to carry out its powers and duties.

(2) (a) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 13% of the total of the taxable value of the taxable property in the county, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus:

(i) ~~the value provided by the department of revenue under 15-36-324(13), ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness; and~~

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the county for tax year 1999, multiplied by 13%.

(b) Money may not be borrowed on bonds issued for the purchase of lands and improving the land for any purpose until the proposition has been submitted to the vote of those qualified under the provisions of the state constitution to vote at the election in the affected county and a majority vote is

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cast in favor of the bonds."

Section 25. Section 7-16-4104, MCA, is amended to read:

"7-16-4104. Authorization for municipal indebtedness for various cultural, social, and recreational purposes. (1) A city or town council or commission may contract an indebtedness on behalf of the city or town, upon the credit of the city or town, by borrowing money or issuing bonds:

- (a) for the purpose of purchasing and improving lands for public parks and grounds;
- (b) for procuring by purchase, construction, or otherwise swimming pool facilities, athletic fields, skating rinks, playgrounds, museums, a golf course, a site and building for a civic center, a youth center, or any combination of these facilities; and
- (c) for furnishing, equipping, repairing, or rehabilitating a swimming pool facility, athletic field, skating rink, playground, museum, golf course, civic center, or youth center.

(2) The total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, may not at any time exceed 16.5% of the taxable value of the taxable property of the city or town, as ascertained by the last assessment for state and county taxes previous to the incurring of the indebtedness, plus an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the city or town for tax year 1999, multiplied by 16.5%. Money may not be borrowed for any purpose on bonds issued for the purchase of lands and improving the land until the proposition has been submitted to the vote of the qualified electors of the city or town and a majority vote is cast in favor of the proposition."

Section 26. Section 15-6-141, MCA, is amended to read:

"15-6-141. Class nine property – description – taxable percentage. (1) Class nine property includes:

- (a) centrally assessed allocations of an electric power companies' allocations company or centrally assessed allocations of an electric power company that owns or operates transmission or distribution facilities or both, including, if congress passes legislation that allows the state to tax property owned by an agency created by congress to transmit or distribute electrical energy, allocations of properties constructed, owned, or operated by a public agency created by the congress to transmit or distribute

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electric energy produced at privately owned generating facilities, not including rural electric cooperatives. However, rural electric cooperatives' property used for the sole purpose of serving customers representing less than 95% of the electric consumers located within the incorporated limits of a city or town of more than 3,500 persons in which a centrally assessed electric power company also owns property is included. For purposes of this subsection (1)(a), "property used for the sole purpose" does not include a headquarters, office, shop, or other similar facility.

(b) allocations for centrally assessed natural gas companies having a major distribution system in this state; and

(c) centrally assessed companies' allocations except:

(i) ~~electric power and natural gas companies'~~ electrical generation facility property included in class thirteen;

(ii) property owned by cooperative rural electric and cooperative rural telephone associations and classified in class five;

(iii) property owned by organizations providing telephone communications to rural areas and classified in class seven;

(iv) railroad transportation property included in class twelve; and

(v) airline transportation property included in class twelve.

(2) Class nine property is taxed at 12% of market value."

Section 27. Class thirteen property – description – taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(d), class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a; and

(c) noncentrally assessed electrical generation facilities owned or operated by any electric energy producer.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under

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15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141; and

(d) electrical generation facilities included in another class of property.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value.

Section 28. Section 15-51-102, MCA, is amended to read:

"15-51-102. Payment of tax -- ~~not to~~ may be set out itemized on customers' bills. The license tax ~~shall~~ must be remitted with the statement and paid on or before the 30th day of the month after each calendar quarter. ~~No A customer's bill, or statement, or account rendered or given any customer by any organization affected by the provisions of this chapter shall set out or contain as a separate item any amount on account or by reason of the license tax imposed by this chapter~~ may contain an itemized amount of the tax imposed by 15-51-101."

Section 29. Section 17-7-502, MCA, is amended to read:

"17-7-502. (Temporary) Statutory appropriations -- definition -- requisites for validity. (1) A

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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; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; section 15; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-406; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 53-6-703; 53-24-206; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 77-1-131; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-161; 85-20-402; 87-1-513; 90-3-301; 90-4-215; 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. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001; pursuant to sec. 5, Ch. 461, L. 1997, the inclusion of 77-1-131 terminates October 1, 2003; and pursuant to secs. 13, 16(1), Ch. 549, L. 1997, the inclusion of 90-3-301 terminates July 1, 1999.)

17-7-502. (Effective July 1, 2008) Statutory appropriations -- definition -- requisites for validity.

(1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a

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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; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; [section 15]; 15-23-706; 15-30-195; 15-31-702; 15-36-324; 15-36-325; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; [16-1-406;] 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-3-222; 17-5-404; 17-5-804; 17-6-101; 17-7-304; 18-11-112; 19-3-319; 19-6-709; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-9-361; 20-26-1503; 22-3-1004; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 42-2-105; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-5-1108; 75-6-214; 75-11-313; 77-1-505; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 87-1-513; 90-4-215; 90-6-331; 90-7-220; 90-7-221; 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. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 68(2), Ch. 422, L. 1997, this version becomes effective July 1, 2008.)"

Section 30. Section 20-9-406, MCA, is amended to read:

"20-9-406. Limitations on amount of bond issue. (1) (a) Except as provided in subsection ~~(1)(e)~~

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(1)(d), the maximum amount for which an elementary district or a high school district may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the taxable value of the property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus;

~~(i) for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, in each case of class eight property, multiplied by 45%; and~~

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 45%.

(b) Except as provided in subsection ~~(c)~~ (1)(d), the maximum amount for which a K-12 school district, as formed pursuant to 20-6-701, may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is up to 90% of the taxable value of the property subject to taxation, to be ascertained by the last-completed assessment for state, county, and school taxes previous to the incurring of the indebtedness, plus;

~~(i) for bonds to be issued during fiscal year 1997, an additional 11% of the taxable value of class eight property within the district for tax year 1995, for bonds to be issued during fiscal year 1998, an additional 22% of the taxable value of class eight property within the district for tax year 1995, and for bonds to be issued during fiscal years 1999 through 2008, an additional 33% of the taxable value of class eight property within the district for tax year 1995, in each case of class eight property, multiplied by 90%; and~~

(ii) an additional 50% of the taxable value attributable to electrical generation property under 15-6-141 within the district for tax year 1999, multiplied by 90%.

(c) The total indebtedness of the high school district with an attached elementary district must be limited to the sum of 45% of the taxable value of the property for elementary school program purposes and 45% of the taxable value of the property for high school program purposes, adjusted as provided in

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this section.

~~(c)~~(d) (i) The maximum amount for which an elementary district or a high school district with a district mill value per elementary ANB or per high school ANB that is less than the corresponding statewide mill value per elementary ANB or per high school ANB may become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is 45% of the corresponding statewide mill value per ANB times 1,000 times the ANB of the district. For a K-12 district, the maximum amount for which the district may become indebted is 45% of the sum of the statewide mill value per elementary ANB times 1,000 times the elementary ANB of the district and the statewide mill value per high school ANB times 1,000 times the high school ANB of the district.

(ii) If mutually agreed upon by the affected districts, for the purpose of calculating its maximum bonded indebtedness under this subsection ~~(c)~~ (1)(d), a district may include the ANB of the district plus the number of students residing within the district for which the district or county pays tuition for attendance at a school in an adjacent district. The receiving district may not use out-of-district ANB for the purpose of calculating its maximum indebtedness if the out-of-district ANB has been included in the ANB of the sending district pursuant to the mutual agreement.

(2) The maximum amounts determined in subsection (1), however, may not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district or to bonds issued for the repayment of tax protests lost by the district. All bonds issued in excess of the amount are void, except as provided in this section.

(3) When the total indebtedness of a school district has reached the limitations prescribed in this section, the school district may pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this chapter.

(4) Whenever bonds are issued for the purpose of refunding bonds, any money to the credit of the debt service fund for the payment of the bonds to be refunded is applied toward the payment of the bonds and the refunding bond issue is decreased accordingly."

Section 31. Section 69-8-211, MCA, is amended to read:

"69-8-211. Public utilities -- transition costs and charges -- rate moratorium. (1) Subject to the

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provisions of this section, the commission shall allow recovery of the following categories of transition costs:

(a) the unmitigable costs of qualifying facility contracts, including reasonable buyout or buydown costs, for which the contract price of generation is above the market price for generation;

(b) the unmitigable costs of energy supply-related regulatory assets and deferred charges that exist because of current regulatory practices and that can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan, including costs, expenses, and reasonable fees related to issuing of transition bonds;

(c) the unmitigable transition costs related to public utility-owned generation and other power purchase contracts, except that recovery of those costs is limited to the amount accruing during the first 4 years after the commission enters an order pursuant to 69-8-202(3); and

(d) other transition costs as may qualify for recovery under this section.

(2) Transition costs as determined by the commission upon an affirmative showing by a public utility must meet the following requirements:

(a) Transition costs must reflect all reasonable mitigation by the public utility, including but not limited to good faith efforts to renegotiate contracts, buying out or buying down contracts, and refinancing through transition bonds.

(b) The value of all generation-related assets and liabilities and electricity supply costs must be reasonably demonstrable and must be considered on a net basis, and methods for determining value must include but are not limited to:

(i) estimating future market values of electricity and ancillary services provided by the assets;

(ii) appraisal by independent third-party professionals; or

(iii) a competitive bid sale.

(c) Investments and power purchase contracts must have been previously allowed in rates or, if not previously in rates, must be determined to be used and useful to ratepayers in connection with the commission's approval of the utility's transition plan.

(d) Unless otherwise provided for in this chapter, only costs related to existing investments and power purchase contracts identified in subsection (2)(c) and costs arising from those investments and power purchase contracts may be included as transition costs.

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(3) (a) On commission approval of the amount of a public utility's transition costs, those costs must be recovered through the imposition of a transition charge.

(b) A transition charge may not be collected from customers for:

(i) new or additional loads of 1,000 kilowatts or greater that were first served by the public utility after December 31, 1996; or

(ii) loads served by that customer's own generation.

(c) Subject to commission approval, a utility and a customer may agree to alter the customer's transition charge payment schedule. Public utilities may file with the commission tariffs for electric service rates that foster economic development or retention of existing customers within the state, including generally available rate schedules. Transition charges are the only charges that may be imposed upon a customer class to recover transition costs under this section. A separate exit fee may not be charged.

(4) Transition charges must be imposed within a transition cost recovery period approved by the commission on a case-by-case basis. Except for transition costs recovered under subsection (1)(c), categories of transition costs may have varying transition cost recovery periods.

(5) Approval of transition costs and collection of those transition costs through transition charges is a settlement of all transition costs claims by a public utility. A public utility seeking to recover transition costs through any means not authorized by this chapter may not collect transition charges with respect to these transition costs.

(6) Except as provided in subsection (7), public utilities shall implement a rate moratorium during the transition period as follows:

(a) From July 1, 1998, through June 30, 2000, public utilities may not charge rates higher than those rates in effect on July 1, 1998.

(b) From July 1, 2000, through June 30, 2002, and only for those customers subject to the provisions of 69-8-201(1)(b), public utilities may not increase that increment of rates normally allocated to electric supply-related costs above the increment associated with electric supply-related costs reflected in rates in effect on July 1, 1998. Beginning on July 1, 2000, public utilities may propose increases to those increments of rates normally allocated to transmission and distribution costs.

(7) Excepted from the provisions of subsection (6) are:

(a) increased costs related to universal system benefits programs greater than those currently in

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rates, including the treatment of universal system benefits program costs as an expense;

(b) increased costs necessary to implement full customer choice, including but not limited to metering, billing, and technology. Those costs must be recovered from the customers on whose behalf the increased costs are incurred.

(c) subject to commission approval, an extraordinary event resulting in either:

(i) a 4% annual revenue requirement increase from July 1, 1998, through June 30, 2000; or

(ii) an 8% power supply-related annual revenue requirement increase from July 1, 2000, through June 30, 2002;

(d) ~~portions of the increase or decrease in the annual state and local property tax expense that are greater than the payment or adjustment that results from applying the industry recognized rates of inflation to the increase or decrease in the state and local property tax expense reflected in rates as of~~ has occurred since May 2, 1997.

(8) Notwithstanding subsections (6) and (7), during the transition period, public utilities may not charge rates or collect costs that include costs reallocated to transition costs at a level higher than the public utility would reasonably expect to recover in rates had the current regulatory system remained intact.

(9) Public utilities shall apply savings resulting under 69-8-503 toward the rate moratorium pursuant to subsection (6).

(10) During the 4-year transition period, public utilities may accelerate the amortization of accumulated deferred investment tax credits associated with transmission, distribution, and the general plant as an adjustment to earnings if electric earnings fall below 9.5% earned return on average equity. The public utility may include the flow through of investment tax credits so that the public utility's earned return on equity is maintained at 9.5%. Accumulated deferred investment tax credits amortized under this subsection may not be reflected in operating income for ratemaking purposes.

(11) The commission shall issue the accounting orders necessary to align rate moratorium timing and requirements to actual transition bonds savings."

Section 32. Codification instruction. (1) [Sections 1 through 14] are intended to be codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 14].

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(2) [Section 15] is intended to be codified as an integral part of Title 15, chapter 1, part 1, and the provisions of Title 15, chapter 1, part 1, apply to [section 15].

(3) [Section 27] is intended to be codified as an integral part of Title 15, chapter 6, part 1, and the provisions of Title 15, chapter 6, part 1, apply to [section 27].

Section 33. Coordination instruction. If House Bill No. 132 is not passed and approved then:

(1) the bracketed language referring to unpaid taxes in [section 13(2)(a) of this act] is void and the phrase "delinquent taxes" must be inserted; and

(2) [sections 9 and 11 of this act] must read as follows:

"NEW SECTION. Section 9. Penalties and interest for violation. (1) (a) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 14], fails to file a return and pay the tax on or before the due date, there must be imposed a penalty of 5% of the balance of debt unpaid with respect to the return as of the date due, but the penalty for failure to file a return by its due date may not be less than \$20. The department may abate the penalty if the person establishes that the failure to file on time was due to reasonable cause and was not due to neglect by the taxpayer.

(b) If a person, without purposely or knowingly violating any requirement imposed by [sections 1 through 14], fails to pay a debt on or before the due date, there must be added to the debt a penalty of 10% of the debt, but not less than \$20, and interest must accrue on the debt at a rate of 1% for each month or fraction of a month for the entire period that the debt remains unpaid. The department may abate the penalty if the person establishes that the failure to pay was due to reasonable cause and was not due to neglect by the taxpayer. The department shall adopt rules that define reasonable cause.

(2) If a person purposely or knowingly violates any requirement imposed by [sections 1 through 14] by failing to file a return or to pay a debt, there must be added to the debt an additional amount equal to 25% of the debt, but not less than \$50, and interest at 1% for each month or fraction of a month during which the debt remains unpaid."

"NEW SECTION. Section 11. Interest on deficiency -- penalty. (1) Interest accrues on unpaid or delinquent taxes at the rate of 1% for each month or fraction of a month during which the taxes remain unpaid. The interest must be computed from the date on which the return and tax were originally due.

(2) If the payment of a tax deficiency is not made within 60 days after it is due and payable and

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if the deficiency is due to negligence on the part of the taxpayer but without fraud, there must be added to the amount of the deficiency a penalty of 10% of the tax, but in no case less than \$25."

Section 34. Coordination instruction. If House Bill No. 128 and [this act] are both passed and approved, then:

(1) [section 35] of House Bill No. 128, relating to the creation of class thirteen property, is void; and

(2) [section 27 of this act] must read as follows:

"NEW SECTION. Section 27. Class thirteen property – description – taxable percentage. (1) Except as provided in subsections (2)(a) through (2)(f), class thirteen property includes:

(a) electrical generation facilities of a centrally assessed electric power company;

(b) electrical generation facilities owned or operated by an exempt wholesale generator or an entity certified as an exempt wholesale generator pursuant to section 32 of the Public Utility Holding Company Act of 1935, 15 U.S.C. 79z-5a;

(c) noncentrally assessed electrical generation facilities owned or operated by any electrical energy producer; and

(d) allocations of centrally assessed telecommunications services companies.

(2) Class thirteen property does not include:

(a) property owned by cooperative rural electric cooperative associations classified under 15-6-135;

(b) property owned by cooperative rural electric cooperative associations classified under 15-6-137;

(c) allocations of electric power company property under 15-6-141;

(d) electrical generation facilities included in another class of property;

(e) property owned by cooperative rural telephone associations and classified in class five; and

(f) property owned by organizations providing telecommunications services and classified in class five.

(3) (a) For the purposes of this section, "electrical generation facilities" means any combination of a physically connected generator or generators, associated prime movers, and other associated

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property, including appurtenant land and improvements and personal property, that are normally operated together to produce electric power. The term includes but is not limited to generating facilities that produce electricity from coal-fired steam turbines, oil or gas turbines, or turbine generators that are driven by falling water.

(b) The term does not include electrical generation facilities used for noncommercial purposes or exclusively for agricultural purposes.

(c) The term also does not include a qualifying small power production facility, as that term is defined in 16 U.S.C. 796(17), that is owned and operated by a person not primarily engaged in the generation or sale of electricity other than electric power from a small power production facility and classified under 15-6-134 and 15-6-138.

(4) Class thirteen property is taxed at 6% of its market value."

Section 35. Coordination instruction. If House Bill No. 128 and [this act] are both passed and approved, then:

(1) [section 44] of House Bill No. 128 is void; and

(2) [section 42] of House Bill No. 128 must read as follows:

"NEW SECTION. Section 42. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2000.

(2) For the purposes of promulgating administrative rules under [section 17], [section 17] and this section are effective on passage and approval."

Section 36. 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].

Section 37. 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.

Section 38. Effective dates. (1) Except as provided in subsection (2), [this act] is effective

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January 1, 2000.

(2) For the purposes of promulgating administrative rules under [section 14], [section 14 and this section] are effective on passage and approval.

Section 39. Applicability. (1) [Sections 1 through 14, 26 through 29, and 31] apply to tax years beginning after December 31, 1999.

(2) [Sections 15 through 25 and 30] apply to fiscal years beginning after June 30, 2000.

Section 40. Termination. [Section 4(3)(e)] terminates January 1, 2003.

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