

SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

HOUSE OF REPRESENTATIVES

48TH LEGISLATURE

ATTENDANCE

DATE: Feb. 15, 1983

ROOM: 224A

	PRESENT	ABSENT	OTHER
VINCENT, John - Chairman	X		
SCHYE, Ted - Vice-Chairman	X		
ASAY, Tom	X		
DARKO, Paula	X		
FABREGA, Jay	X		
FAGG, Harrison			EXCUSED
HANSEN, Stella Jean	X		
HARPER, Hal	X		
HARRINGTON, Dan	X		
METCALF, Jerry			EXCUSED
NEUMAN, Ted	X		
RAMIREZ, Jack	X		
VINGER, Orren	X		

MINUTES OF THE SELECT
COMMITTEE ON ECONOMIC DEVELOPMENT

February 15, 1983

The fifth meeting of the Select Committee on Economic Development was called to order by Chairman John Vincent at 7:38 p.m. in room 224A in the Capitol Building, Helena, Montana on February 15, 1983.

Roll call was taken and all members were present with the exception of Representative Fagg and Representative Metcalf, who were excused.

CHAIRMAN VINCENT opened the hearing on HB 700 and stated this would be the last bill in the economic development package. He informed the committee there will be a one and a half hour meeting on February 16th by the economist, Ken Peres. He will give an overview of the bills considered and answer any questions regarding these bills that the committee may have.

REPRESENTATIVE FABREGA, Sponsor of HB 700, stated this bill is also known as the umbrella bonding bill because two, three or more small businesses can get under the umbrella so that they become a viable group to obtain the benefits of issuing tax free bonds. He explained the maximum amount to be financed in this bill is \$800,000. He gave the example of an \$100,000 project, in which 90% would be the maximum amount that could be financed under this authority. In other words, the project would have to have 10% equity from other sources. The bond program would finance \$81,000 of the project, and the sponsoring bank or financial institution would finance \$9,000. He used reference 90-5-101 to explain what can be financed. He explained there are limitations as to what can be financed by industrial revenue bonds and that applies to the umbrella issue as well. He stated that you cannot finance any type of franchise if more than 25% of the project is going to be used for automobile sales or services, retail services of food and beverage or for entertainment. He explained the main points of the bill to the committee. See Exhibit A, Statement of Intent for HB 700 and Exhibit B, Definition of Terms in HB 700.

SENATOR MAZUREK, Co-Sponsor of HB 700, explained how HB 700 fits into place with the others recently reviewed. He stated this is the money input bill to sell the industrial revenue bonds in part out of the state, raise outside money and make available to small businesses in Montana. He further explained the bill to the committee.

CHAIRMAN VINCENT asked for Proponents to HB 700.

PROPONENTS

GARY BUCHANAN, Director of Department of Commerce, stated their support of HB 700. He felt a key point in HB 700 is the series of options built into the bill to help the marketability of the bond. He stated in their opinion, not all of the options should have to be involked at one particular time. He handed out Exhibit C, a Flowchart outlining the Development Finance Proposals.

ROD PAKONEN, Vice-President of Piper, Jaffray & Hopwood, expressed support of HB 700. He stated that he has worked in other cities and other states with the umbrella type of bond, and it has been a favorable experience. He wanted it to be known that it will be hard for small businesses to get financing, if they have bad credit.

JOHN OITZINGER, Helena, explained this type of bonding is based on a federal subsidy program and is in all 50 states. He stated it is of no benefit to us to sit back and let the other states do this. Under the federal tax law there is no refinancing, these have to be new loans and have to be for capital improvements.

GORDON HOVEN, Representing Piper, Jaffray & Hopwood, expressed support of HB 700.

JIM GILLETT, Legislative Auditor's Office, stated their support of HB 700 and offered Exhibit D, a proposed amendment to HB 700.

MAE NAN ELLINGSON, Deputy City Attorney for the City of Missoula, stated they heartily endorse the purpose of HB 700. They believe the bill should be amended, however, to recognize the role that local governments have played and should continue to play in the growth of their communities and in particular the issuance of industrial development revenue bonds. The amendment's objective is that the determination of public interest is made by local governing bodies which are locally elected rather than the appointed Economic Development Board. See Exhibit E. She asked the committee to review Exhibit F, a letter from the Missoula Board of County Commissioners regarding support of HB 700 and support for the proposed amendments suggested in Exhibit E.

AL THELEN, City Administrator of Billings, expressed support of the bill and also support of the amendment with some change. He referred to Page 28, add to Section 26 "(1) Before entering into any project as described herein or purchasing or insuring any loan or issuing any bond as authorized herein, there must be a finding by the local governing body in which the project is located that the project is in the public interest."

MIKE FITZGERALD, Representing the Montana Trade Commission, stated their support of HB 700 and also noted they would support the amendment that was proposed by Ms. Ellingson.

CAROL DALY, President of the Montana Economic Development Association, stated their support of HB 700. She explained while MEDA may have some concerns about how, specifically the umbrella bonding program would be administered, we feel the proper place to address those is during the proposed Economic Development Board's rule-making process. For the present, we urge your consideration and support of this bill. See Exhibit G.

BRUCE MONKING, Representing D.A. Davidson, stated support of HB 700. He said they also would support the amendment by both the City of Missoula and the City of Billings.

NANCY HARTE, Legislative Coordinator for the Montana Democratic Party, stated wholehearted support for HB 700. They feel that an important part of the bill is the creation of a seven-member board. In Section 29 of this bill, which appears on page 30, the board is established and criteria for the selection of board members is set out. Because of the broad support of I-95 from various groups, we would like to see specific language assuring that a wide range of interests are represented on the board. They would like to offer an amendment to increase the membership of the board to nine members, with specific criteria for their selection. See Exhibit H.

STEVE BROWN, Representing Montana Independent Bankers, expressed support of HB 700.

DICK BOURKE, Vice-President of the Development Credit Corporation of Montana, expressed their support of HB 700.

DON REED, Representing the Montana Environmental Information Center, stated their support of HB 700. He stated they would like to emphasize local control and involvement in determining the "Public Interest". They would like to also support the amendment proposed by Missoula County. See Exhibit I.

CHAIRMAN VINCENT asked if there were any Opponents to HB 700. Since there were no Opponents to HB 700, he asked for questions from the Committee.

REPRESENTATIVE FABREGA asked Mr. Oitzinger his reaction to the proposed Missoula amendment.

JOHN OITZINGER stated no matter where the hearing is held the highest elected officer has to sign off on the project, which means the governor has to approve the project. Perhaps it could be made optional to give the local governing board jurisdiction or the power to acquire the hearing if they so elect.

REPRESENTATIVE FABREGA stated it is his understanding the city or county would conduct the hearing for the purpose of determining the desirability of the program. The board would still have to conduct its hearing to determine all the other factors regarding the financial liability etc.

JOHN OITZINGER stated hopefully there would not be more than one public hearing. The question is who conducts the hearing and where. The bill as drafted provided the hearing could be held where the project is located so that people opposed or in favor of that particular project would have the opportunity to appear at that hearing and present their views. The question is who is ultimately responsible for evaluating the hearing record. These are state bonds being issued by a state agency to be approved by the governor no matter where the hearing is heard, and for those reasons we felt the hearing should be conducted by the state board. We feel the governing bodies of the cities and counties should have the power to request the hearing in their jurisdiction.

REPRESENTATIVE FABREGA stated his understanding of the Missoula and Billings amendment is they would hold a hearing, and first of all the board has to advise the city that the request has been made, they hold the hearing and within 10 days of the hearing they have to advise the board as to their decision. If the local entity decides the project is not in their best interest, that is as far as it would go. If they recommend the project, then the board would proceed with another hearing in Helena.

JOHN OITZINGER stated the idea of the original draft is if there were no great public demand for a hearing being held locally, the efficient thing to do would to be hold it in one central location. There are a number of jurisdictions that are not as capable financially or experienced to hold the hearings.

REPRESENTATIVE FABREGA asked if it were possible for the committee to contemplate language that would advise the city if they want to have it, to request it, and if they don't, to advise the board they are not interested. He asked Mr. Oitzinger if that would be a practical approach, to which Mr. Oitzinger stated it would. He then asked Mae Nan Ellingson if that option would work in her amendment.

MAE NAN ELLINGSON stated she felt two things needed to be clarified. Mr. Oitzinger's remark that local government wasn't equipped. The purpose of the amendment was not to get the local government involved in the criteria listed under Section 20 of the bill, but to help determine whether or not the project is in the public interest. They did not want to set up an additional public hearing, there would be one public hearing by the local government to determine if the project is in the public interest, and that recommendation would be made to the board. The board in the meeting with the person trying to get the financing, would go through the financial statements. Our proposal is more in line with the industrial development revenue bond policy.

REPRESENTATIVE FABREGA stated the difference is between the definition of a hearing and a meeting. The hearing takes place at the local level, without having to go to 25 people or 10% of the population as the bill is drafted. If the local governing body requests to have the hearing there would be a provision saying the hearing has taken place at the local level, then only a meeting is necessary at the state level. He asked if that would be satisfactory? Mr. Oitzinger stated Yes.

REPRESENTATIVE RAMIREZ stated that on Page 25, line 5 one of the rules to be adopted in the criteria to be established is the applicants inability to secure adequate financing from other sources. He has looked in the present industrial bond provisions, and he didn't recall any comparable section, and he wondered if that is a requirement from the Federal Enabling Act, or how did it come to be because it seems to be a self-defeating provision.

REPRESENTATIVE MILLER explained this is typical banker language. About 10 to 15 years ago whenever the State Board of Investments set up their committee, they established rules for home loans and the people brought in to help with the rules were real estate bankers, savings and loan bankers. They put provisions on these that were so restrictive that a person couldn't make a loan unless they couldn't first get it from a bank. He feels in order for a prospective borrower to make a loan they first have to prove they aren't worthy, and thus creates a Catch 22.

ROD PAKONEN explained this is a standard language so that the state is not competing with a local banking institution. If the local banking institution can make the loan at the same rate as the state then the idea is that they should get their loan from the local institution. The whole idea of industrial revenue bond is to get an interest rate that will induce a company to do the project. This statement is really to make the federal regulator happy.

REPRESENTATIVE MILLER stated one of the reasons to make the bond loans for an extended period of time is that a banker cannot make a long term loan. These industrial revenue bonds will enable you to make a long term loan. He urged the committee not to drive away a good borrower and just pick up the ones that can't get loans anywhere else.

JOHN OITZINGER stated he would like to second the fact that in order to find there is a public interest in financing a particular project you have to find the guy couldn't do it any other way. If he can get his financing arranged somewhere else then that is the end of it.

REPRESENTATIVE FABREGA asked the committee's reaction to an amendment to say "the applicants inability to secure adequate financing from other sources at a fixed rate of interest and length of term that would allow reasonable prospect of repayment." He felt that was what is being addressed and that is what is not available.

REPRESENTATIVE MILLER stated the crux of the problem is to get the longer rate of bond and he feels that amendment would handle the problem.

GARY BUCHANAN stated both Representative Ramirez and Representative Miller made a good point and he feels it would be wise and productive to change the language based on their comments.


REPRESENTATIVE RAMIREZ asked on Page 6, line 3 the board can provide general technical services in the analysis planning and design and management of the projects considered appropriate. He wanted to know who is going to pay for this and is this what we want the board to be doing.

GARY BUCHANAN explained the bills looked at from other states have staff components. He feels this is general boiler plate language used and agreed the language could be fixed to avoid confusion in this area.

REPRESENTATIVE FABREGA stated in past discussions that small businesses besides lacking ability to finance through this method, also lack the technical know-how which Mr. Buchanan talked about, and the language could be cleaned up so the board is not involved in construction supervision.

CHAIRMAN VINCENT stated if there were no further questions than hearing on HB 700 would be closed.

The meeting adjourned at 8:50 p.m.


Representative John Vincent
Chairman


Mitzie Grover
Secretary

VISITORS' REGISTER

HOUSE SELECT ECONOMIC DEVEL. COMMITTEE

BILL HB 700

Date 2/15/83

SPONSOR

NAME	RESIDENCE	REPRESENTING	SUPPORT	OPPOS
Wesley [unclear]	Helena	MT Ind. Bank	✓	
Dick [unclear]	Helena	DCCM	✓	
Mae [unclear]	Missoula	City of Missoula	with amount \$5	
Glenn [unclear]	Billings	city	✓	
Jim Van Arsdale	Billings	City	✓	
Carol [unclear]	Helena	MT. Equip. Assn.	✓	
Don Reed	Helena	MEIC	✓	
John [unclear]	Helena		✓	
Mary [unclear]	Helena	Mont. Democratic Party	✓	
Bruce [unclear]	Great Falls	D.A. Dawson	✓	
Steve Brown	Helena	MT Ind. Bank	✓	
Bob [unclear]	Missoula	Piper, Johnson & [unclear]	✓	
[unclear]	Helena	Mont. Ind. Bank	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

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House Bill No. 200
Introduced by Vincent
BY REQUEST OF THE GOVERNOR'S OFFICE
Alarbo, Ramon, Selig, Stumptis, Vinson, Vukobratovic
 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA

ECONOMIC DEVELOPMENT BOARD; PROVIDING FOR THE POWERS,
 DUTIES, AND COMPOSITION OF THE BOARD; PROVIDING AUTHORITY TO
 ISSUE BONDS TO FINANCE DESIGNATED PROJECTS; CREATING
 NECESSARY FUNDS AND ACCOUNTS; AMENDING SECTION 90-6-104,
 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 SECTION 1. Short title. [Sections 1
 through 28] shall be known and may be cited as the "Montana
 Economic Development Bond Act of 1983".

SECTION 2. Legislative declaration. (1)
 It is the policy of the state of Montana, in the interest of
 promoting the health, safety, and general welfare of all the
 people of the state, to increase job opportunities and to
 retain existing jobs by making available, through the
 economic development board, funds for industrial,
 commercial, manufacturing, natural resource, agricultural,
 livestock, recreational, tourist, and health care
 development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is
 the basic source of job opportunities;
 (b) protection against unemployment and its economic
 burdens and the spread of economic stagnation can best be
 provided by promoting, attracting, stimulating, and
 revitalizing a diversified economy with contributions from
 industry, manufacturing, commerce, natural resource
 development, agriculture, livestock, recreation, tourism,
 and health care facilities; and

(c) the state of Montana has a responsibility to help
 create a favorable climate for new and improved job
 opportunities and a stable, growing, and healthy economy for
 its citizens by encouraging the development of business.

SECTION 3. Definitions. As used in
 [sections 1 through 28], unless the context requires
 otherwise, the following definitions apply:

- (1) "Board" means the Montana economic development board created in [section 29].
- (2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to [sections 1 through 28].
- (3) "Department" means the department of commerce provided for in 2-15-1801.
- (4) "Financial institution" means any bank, savings and loan association, credit union, development credit

HB 700

1 corporation, insurance company, investment company, trust
 2 company, savings institution, or other financial institution
 3 approved by the board and maintaining an office in the
 4 state.
 5 (5) "Project" means a project as defined in 90-5-101.
 6 (6) "Project costs" means the costs of acquiring or
 7 improving any project, including the following:
 8 (a) the actual cost of acquiring or improving real
 9 estate for any project;
 10 (b) the actual cost of construction of all or any part
 11 of a project, including architects' and engineers' fees;
 12 (c) all expenses in connection with the authorization,
 13 sale, and issuance of the bonds to finance such acquisition
 14 or improvement;
 15 (d) bond reserves and premiums for insurance or
 16 guaranty of loan payments or lease rentals pledged to pay
 17 the bonds; and
 18 (e) the interest on such bonds for a reasonable time
 19 prior to construction, during construction, and not
 20 exceeding 6 months after completion of construction.
 21 NEW SECTION. Section 4. Powers of the board. The
 22 board may:
 23 (1) sue and be sued;
 24 (2) have a seal;
 25 (3) adopt all procedural and substantive rules

1 necessary for the administration of [sections 1 through 28];
 2 (4) make contracts, agreements, and other instruments
 3 necessary or convenient for the exercise of its powers under
 4 [sections 1 through 28];
 5 (5) invest any funds not required for immediate use,
 6 as the board considers appropriate, subject to any
 7 agreements with its bondholders and noteholders;
 8 (6) arrange for lines of credit from and enter into
 9 participation agreements with any financial institution;
 10 (7) issue bonds for the purpose of defraying the cost
 11 of acquiring or improving any project or projects and
 12 securing the payment of the bonds as provided in [sections 1
 13 through 28];
 14 (8) enter into agreements or other transactions with
 15 and accept grants and the cooperation of any governmental
 16 agency in furtherance of [sections 1 through 28];
 17 (9) sell, purchase, or insure loans to finance the
 18 costs of projects;
 19 (10) accept services, appropriations, gifts, grants,
 20 bequests, and devises and utilize or dispose of them in
 21 carrying out [sections 1 through 28];
 22 (11) enter into agreements or other transactions with a
 23 federal agency, an agency or instrumentality of the state, a
 24 municipality, a private organization, or any other entity or
 25 organization in carrying out [sections 1 through 28];

- 1 (12) with regard to property:
- 2 (a) acquire real or personal property or any right,
- 3 interest, or easement therein by gift, purchase, transfer,
- 4 foreclosure, lease, or otherwise;
- 5 (b) hold, sell, assign, lease, encumber, mortgage, or
- 6 otherwise dispose of such property;
- 7 (c) hold, sell, assign, or otherwise dispose of any
- 8 lease, mortgage, or loan owned by it or in its control or
- 9 custody;
- 10 (d) release or relinquish any right, title, claim,
- 11 interest, easement, or demand, however acquired, including
- 12 any equity or right of redemption;
- 13 (e) make any disposition by public or private sale,
- 14 with or without public bidding;
- 15 (f) commence any action to protect or enforce any
- 16 right conferred upon it by any law, mortgage, contract, or
- 17 other agreement;
- 18 (g) bid for and purchase property at any foreclosure
- 19 or other sale or acquire or take possession of it in lieu of
- 20 foreclosure;
- 21 (h) operate, manage, lease, dispose of, and otherwise
- 22 deal with such property in any manner necessary or desirable
- 23 to protect its interests or the holders of its bonds or
- 24 notes, provided such action is consistent with any agreement
- 25 with such holders;
- 1 (13) service, contract, and pay for the servicing of
- 2 loans;
- 3 (14) provide general technical services in the
- 4 analysis, planning, design, processing, construction,
- 5 rehabilitation, and management of projects where considered
- 6 appropriate;
- 7 (15) consent, whenever it considers necessary or
- 8 desirable in fulfilling its purposes, to the modification of
- 9 the rate of interest, time, and payment of any installment
- 10 of principal, interest, security, or any other term of any
- 11 contract, lease agreement, loan agreement, mortgage,
- 12 mortgage loan, mortgage loan commitment, construction loan,
- 13 advance contract, or agreement of any kind, subject to any
- 14 agreement with bondholders and noteholders;
- 15 (16) collect reasonable interest, fees, and charges in
- 16 connection with making and servicing its lease agreements,
- 17 loan agreements, mortgage loans, notes, bonds, commitments,
- 18 and other evidences of indebtedness. Interest, fees, and
- 19 charges are limited to the amounts required to pay the costs
- 20 of the board, including operating and administrative
- 21 expenses and reasonable allowances for losses that may be
- 22 incurred.
- 23 (17) procure insurance or guaranties in amounts and in
- 24 the form the board considers desirable or necessary, from
- 25 any party, including a governmental agency, against any loss

1 in connection with its lease agreements, loan agreements,
 2 mortgage loans, and other assets or property; and
 3 (18) perform any other acts necessary and convenient to
 4 carry out the purposes of the board and [sections 1 through
 5 28].

6 NEW SECTION Section 5. Financing programs of the
 7 board. (1) The board may:

8 (a) invest in, purchase or make commitments to
 9 purchase, and take assignment from financial institutions of
 10 notes, mortgages, loan agreements, and other securities
 11 evidencing loans for the acquisition, construction,
 12 reconstruction, or improvement of projects located in the
 13 state, under terms and conditions determined by the board;
 14 (b) acquire, by construction, purchase, devise, gift,
 15 lease, or any combination of methods, from financial
 16 institutions, projects located in the state and lease such
 17 projects to others for such rentals and upon such terms and
 18 conditions as determined by the board; or

19 (c) make loans to financial institutions, under terms
 20 and conditions determined by the board, requiring the
 21 proceeds to be used by the financial institution for the
 22 purpose of financing the acquisition, construction,
 23 reconstruction, or improvement of projects located in the
 24 state.

25 (2) The board may not operate any project as a

1 business or in any other manner except as the lessor thereof
 2 or as may be necessary for a temporary period through the
 3 enforcement of its rights under a lease, loan agreement, or
 4 other security agreement.

5 NEW SECTION Section 6. Bonds and notes. (1) The
 6 board may by resolution issue negotiable notes and bonds in
 7 a principal amount as the board determines necessary to
 8 provide sufficient funds for achieving any of its purposes,
 9 including the payment of interest on notes and bonds of the
 10 board, establishment of reserves to secure the notes and
 11 bonds, including the reserve funds created under [section
 12 15], and all other expenditures of the board incident to and
 13 necessary or convenient to carry out [sections 1 through
 14 28].

15 (2) The board may by resolution, from time to time,
 16 issue notes to renew notes and bonds or to pay notes,
 17 including interest, and whenever it considers refunding
 18 expedient, refund any bonds by the issuance of new bonds,
 19 whether or not the bonds to be refunded have matured, or
 20 issue bonds partly to refund bonds outstanding and partly
 21 for any of its other purposes.

22 (3) Except as otherwise expressly provided by
 23 resolution of the board, every issue of its bonds is an
 24 obligation of the board payable out of any revenue, assets,
 25 or money of the board, subject only to agreements with the

1 holders of particular notes or bonds pledging particular
2 revenues, assets, or money.

3 (4) The notes and bonds shall be authorized by
4 resolutions of the board, bear a date, and mature at the
5 times the resolutions provide. A note may not mature more
6 than 5 years from the date of its issue. A bond may not
7 mature more than 40 years from the date of its issue. The
8 bonds may be issued as serial bonds payable in annual
9 installments, as term bonds, or as a combination thereof.
10 The notes and bonds shall bear interest at a stated rate or
11 rates or at a rate or rate determination as stated, be in
12 denominations, be in a form, either coupon or registered,
13 carry registration privileges, be executed in a manner, be
14 payable in a medium of payment, at places inside or outside
15 the state, and be subject to terms of redemption as provided
16 in resolutions. The notes and bonds of the board may be sold
17 at public or private sale, at prices above or below par, as
18 determined by the board, and in a manner such that interest
19 on the bonds is either exempt from or subject to federal
20 income tax.

21 (5) The bonds issued under [sections 1 through 28] are
22 exempt from the Montana Securities Act, but copies of all
23 prospectus and disclosure documents must be deposited with
24 the state securities commissioner for public inspection.

25 (6) The total amount of bonds outstanding at any one

1 time, except bonds as to which the board's obligations have
2 been satisfied and discharged by refunding or bonds for
3 which reserves for payment or other means of payment have
4 been provided, may not exceed \$25 million.

5 NEW SECTION. Section 7. Bond anticipation notes --
6 issuance -- payment of principal and interest. (1) The board
7 may, pending the issuance of bonds, issue temporary notes in
8 anticipation of the proceeds to be derived from the sale of
9 the bonds. The notes shall be designated as "bond
10 anticipation notes". The proceeds of the sale of the bond
11 anticipation notes must be used only for the purpose for
12 which the proceeds of the bonds could be used, including
13 costs of issuance. If, prior to the issuance of the bonds,
14 it becomes necessary to redeem outstanding notes, additional
15 bond anticipation notes may be issued to redeem the
16 outstanding notes. No renewal of any note may be issued
17 after the sale of bonds in anticipation of which the
18 original notes were issued.

19 (2) Bond anticipation notes or other short-term
20 evidences of indebtedness maturing not more than 3 years
21 after the date of issue may be issued from time to time as
22 the proceeds thereof are needed. The notes must be
23 authorized by the board and must have such terms and details
24 as may be provided by resolution of the board. However, each
25 resolution of the board authorizing notes must:

1 (a) describe the need for the proceeds of the notes to
 2 be issued; and
 3 (b) specify the principal amount of the notes or
 4 maximum principal amount of the notes which may be
 5 outstanding at any one time, the rate or rates of interest
 6 or maximum rate of interest or interest rate formula (to be
 7 determined in the manner specified in the resolution
 8 authorizing the notes to be incurred through the issuance of
 9 such notes), and the maturity date or maximum maturity date
 10 of the notes.

11 (3) Subject to the limitations contained in this
 12 section and the standards and limitations prescribed in the
 13 authorizing resolution, the board in its discretion may
 14 provide for the notes described in subsection (2) to be
 15 issued and sold, in whole or in part, from time to time. The
 16 board may delegate to the administrator of the board the
 17 power to determine the time or times of sale, the manner of
 18 sale, the amounts, the maturities, the rate or rates of
 19 interest, and such other terms and details of the notes as
 20 considered appropriate by the board or the administrator in
 21 the event of such delegation. The board in its discretion
 22 but subject to the limitations contained in this section may
 23 also provide in the resolution authorizing the issuance of
 24 notes for:

25 (a) the employment of one or more persons or firms to

1 assist the board in the sale of the notes;
 2 (b) the appointment of one or more banks or trust
 3 companies, either inside or outside the state of Montana, as
 4 depository for safekeeping and as agent for the delivery and
 5 payment of the notes;
 6 (c) the refunding of the notes from time to time,
 7 without further action by the board, unless and until the
 8 board revokes such authority to refund; and
 9 (d) such other terms and conditions as the board
 10 considers appropriate.

11 (4) In connection with the issuance and sale of notes
 12 as provided in this section, the board may arrange for lines
 13 of credit with any bank, firm, or person for the purpose of
 14 providing an additional source of repayment for notes issued
 15 pursuant to this section. Amounts drawn on such lines of
 16 credit may be evidenced by negotiable or nonnegotiable notes
 17 or other evidences of indebtedness, containing such terms
 18 and conditions as the board may authorize in the resolution
 19 approving the same.

20 ~~NEW SECTION~~ Section 8. Provisions of bond
 21 resolutions. A resolution authorizing notes or bonds or any
 22 issue thereof may contain provisions, which must be a part
 23 of the contract or contracts with the holders thereof, as
 24 to:

25 (1) pledging all or any part of the revenue or

1 property of the board to secure the payment of the notes or
 2 bonds or of any issue thereof, subject to existing
 3 agreements with noteholders or bondholders;
 4 (2) pledging all or any part of the assets of the
 5 board, including lease agreements, loan agreements,
 6 mortgages, and obligations securing them, to secure the
 7 payment of the notes or bonds or of any issue thereof,
 8 subject to existing agreements with noteholders or
 9 bondholders;
 10 (3) the use and disposition of the gross income from
 11 lease agreements, loan agreements, and mortgages owned by
 12 the board, and the payment of the principal of mortgages
 13 owned by the board;
 14 (4) the setting aside of reserves for sinking funds in
 15 the hands of trustees, paying agents, and other depositories
 16 and the regulation and disposition thereof;
 17 (5) limitations on the purpose for which the proceeds
 18 of the sale of notes or bonds may be applied and the pledge
 19 of the proceeds to secure the payment of the bonds or of any
 20 issue thereof;
 21 (6) limitations on the issuance of additional notes or
 22 bonds, the terms upon which additional notes or bonds may be
 23 issued and secured, and the refunding of outstanding notes
 24 or bonds;
 25 (7) the procedure, if any, by which the terms of any

1 contract with noteholders or bondholders may be amended or
 2 abrogated, the amount of notes or bonds the holders of which
 3 shall consent thereto, and the manner in which such consent
 4 may be given;
 5 (8) a commitment to employ adequate and competent
 6 personnel at reasonable compensation; to set salaries, fees,
 7 and charges as may be determined by the board in conjunction
 8 with the department; and to maintain suitable facilities and
 9 services for the purpose of carrying out its programs;
 10 (9) vesting in a trustee such property, rights,
 11 powers, and duties in trust as the authority determines to
 12 be necessary;
 13 (10) defining the acts or omissions that shall
 14 constitute a default in the obligations and duties of the
 15 board to the holders of the notes or bonds and providing for
 16 the rights and remedies of the holders of the notes or bonds
 17 in the event of such default, including as a matter of right
 18 the appointment of a receiver; and
 19 (11) any other matters of like or different character
 20 that in any way affect the security or protection of the
 21 holders of the notes or bonds.
 22 ~~NEW SECTION~~ Section 9. Personal liability. The board
 23 and employees of the department are not personally liable or
 24 accountable by reason of the issuance of or on any bond or
 25 note issued by the board.

1 NEW_SECTION Section 10. Purchase of notes and bonds
 2 --- cancellation. The board may, subject to existing
 3 agreements with noteholders or bondholders and out of any
 4 funds available for that purpose, purchase notes or bonds of
 5 the board, which shall then be canceled, at a price not
 6 exceeding:
 7 (1) the current redemption price plus accrued interest
 8 to the next interest payment if the notes or bonds are then
 9 redeemable; or
 10 (2) the redemption price applicable on the first date
 11 after the purchase on which the notes or bonds become
 12 subject to redemption, plus accrued interest to that date,
 13 if the notes or bonds are not then redeemable.
 14 NEW_SECTION Section 11. Trust Indenture. (1) In the
 15 discretion of the board, the bonds may be secured by a trust
 16 indenture between the board and a corporate trustee, which
 17 may be a trust company or bank having the power of a trust
 18 company, either inside or outside the state. A trust
 19 indenture may contain provisions for protecting and
 20 enforcing bondholders' rights and remedies that are
 21 reasonable, proper, and not in violation of law, including
 22 covenants setting forth the duties of the authority in
 23 relation to the exercise of its powers and the custody,
 24 safeguarding, and application of all money. The authority
 25 may provide by a trust indenture for the payment of the

1 proceeds of the bonds and revenues to the trustee under the
 2 trust indenture of another depository and for the method of
 3 disbursement, with the safeguards and restrictions it
 4 considers necessary.
 5 (2) All expenditures incurred in carrying out a trust
 6 indenture may be treated as part of the operating expenses
 7 of the board.
 8 NEW_SECTION Section 12. Negotiability of bonds.
 9 Notes and bonds issued by the board are negotiable
 10 instruments under the Uniform Commercial Code, subject only
 11 to the provisions for registration of notes and bonds.
 12 NEW_SECTION Section 13. Signatures of board members.
 13 If board members whose signatures appear on notes, bonds, or
 14 coupons cease to be members before the delivery of the notes
 15 or bonds, their signatures shall nevertheless be valid and
 16 sufficient for all purposes the same as if the members had
 17 remained in office until delivery.
 18 NEW_SECTION Section 14. Accounts. The board may
 19 create funds and accounts necessary to complement [sections
 20 1 through 28]. The funds and accounts may include:
 21 (1) a bond proceeds fund into which bond proceeds are
 22 deposited;
 23 (2) a common bond fund consisting of:
 24 (a) a common debt service account;
 25 (b) a capital reserve account as provided in [section

1 15]; and
 2 (c) an operating account for defraying the operational
 3 costs of the board; and
 4 (3) other funds or accounts.
 5 NEW_SECTION Section 15. Reserve funds and
 6 appropriations. (1) The board may establish a capital
 7 reserve account and pay into it any:
 8 (a) funds appropriated and made available by the state
 9 for the purpose of the account;
 10 (b) proceeds of the sale of notes or bonds to the
 11 extent provided in the resolutions or indentures of the
 12 board authorizing their issuance; and
 13 (c) other funds which may be available to the board
 14 from any other source for the purpose of the account.
 15 (2) All funds held in the capital reserve account must
 16 be used solely for the payment of the principal of or
 17 interest on the bonds secured in whole or in part by the
 18 account or the sinking fund payments with respect to the
 19 bonds, the purchase or redemption of the bonds, the payment
 20 of interest on the bonds, or the payment of any redemption
 21 premium required to be paid when the bonds are redeemed
 22 prior to maturity. Funds in the account may not be withdrawn
 23 at any time in an amount that reduces the account to an
 24 amount less than the sum of minimum capital reserve
 25 requirements established in the resolutions or indentures of

1 the board for the account except, with respect to bonds
 2 secured in whole or in part by the account, for the purpose
 3 of making payments, when due, of principal, interest,
 4 redemption premiums, and sinking fund payments for the
 5 payment of which other money pledged is not available. Any
 6 income or interest earned by or incremental to the capital
 7 reserve account due to its investment may be transferred to
 8 other accounts of the board to an extent that does not
 9 reduce the amount of the capital reserve account below the
 10 sum of minimum capital reserve requirements for the account.
 11 NEW_SECTION Section 16. Maintenance of capital
 12 reserve account. (1) In order to assure the maintenance of
 13 the capital reserve account, the chairman of the board
 14 shall, on or before September 1 in each year preceding the
 15 convening of the legislature, deliver to the governor a
 16 certificate stating the sum, if any, required to restore the
 17 capital reserve account to the minimum capital reserve
 18 requirement. The governor shall include in the executive
 19 budget submitted to the legislature the sum required to
 20 restore the capital reserve account to the sum of minimum
 21 capital reserve requirement. All sums appropriated by the
 22 legislature shall be deposited in the capital reserve
 23 account.
 24 (2) All amounts appropriated to the board under this
 25 section constitute advances to the board and, subject to the

1 rights of the holders of any bonds or notes of the board,
 2 must be repaid to the state general fund without interest
 3 from available operating revenues of the board in excess of
 4 amounts required for the payment of bonds, notes, or other
 5 obligations of the board, for maintenance of the capital
 6 reserve account, and for operating expenses.

7 **NEW_SECTION.** Section 17. Refunding obligations. The
 8 board may provide for the issuance of refunding obligations
 9 for refunding any obligations then outstanding that have
 10 been issued under [sections 1 through 28], including the
 11 payment of any redemption of the obligations. The issuance
 12 of obligations, the maturities and other details, the rights
 13 of the holders, and the rights, duties, and obligations of
 14 the authority are governed by the appropriate provisions of
 15 [sections 1 through 28] that relate to the issuance of
 16 obligations. The proceeds of refunding obligations may be
 17 applied to the purchase, redemption, or payment of
 18 outstanding obligations. Pending the application of the
 19 proceeds of refunding obligations and other available funds
 20 to the payment of principal, accrued interests, and any
 21 redemption premium on the obligations being refunded and, if
 22 permitted in the resolution authorizing the issuance of the
 23 refunding obligations or in the trust agreement securing
 24 them, to the payment of interest on refunding obligations
 25 and expenses in connection with refunding, the proceeds may

1 be invested in such securities as the board considers
 2 appropriate.

3 **NEW_SECTION.** Section 18. Tax exemption of bonds.
 4 Bonds, notes, or other obligations issued by the board under
 5 [sections 1 through 28] and their transfer and income
 6 (including any profits made on their sale) are free from
 7 taxation by the state or any political subdivision or other
 8 instrumentality of the state, except for inheritance,
 9 estate, and gift taxes. The board is not required to pay
 10 recording or transfer fees or taxes on instruments recorded
 11 by it.

12 **NEW_SECTION.** Section 19. Project guaranty program.
 13 (1) The board may guarantee and make commitments to
 14 guarantee payment required by a loan, lease, or other credit
 15 arrangement for any project funded under [sections 1 through
 16 28] or under 90-5-101 through 90-5-112, upon such terms and
 17 conditions as the board may prescribe in accordance with
 18 [sections 1 through 28]. In administering the guaranty
 19 program, the board may require the payment of a fee or
 20 premium, establish application fees, and prescribe
 21 application, notification, contract and guaranty forms,
 22 rules, regulations, and guidelines.

23 (2) Guaranties by the board under [sections 1 through
 24 28] must:

25 (a) be made for a project which the board finds meets

1 the policies and objectives of [sections 1 through 28]:
2 (b) be made to an applicant for a guaranty approved by
3 the board;
4 (c) contain amortization provisions satisfactory to
5 the board; and
6 (d) be in such principal amount, be in such form, and
7 contain such terms and provisions with respect to payment of
8 property insurance, repairs, alterations, taxes,
9 assessments, delinquency charges, and default remedies as
10 the board determines to be necessary.
11 (3) The board is authorized from time to time to enter
12 into guaranties, insurance contracts, or any other
13 agreements or contracts with respect to the economic
14 development guaranty fund and any guaranteed loan lease or
15 other credit agreement. Any such agreement or contract may
16 contain terms and provisions necessary or desirable in
17 connection with the guaranty program, subject to the
18 requirements established, including without limitation terms
19 and provisions relating to loan documentation, review,
20 approval procedures, origination and servicing rights and
21 responsibilities, default obligations, procedures and
22 obligations, and obligations with respect to guaranty
23 contracts made under [sections 1 through 28].
24 (4) Any contract of guaranty made by the board under
25 the authorization of [sections 1 through 28] must provide

1 that claims payable thereunder must be paid from any amounts
2 available in the economic development guaranty fund and from
3 any amounts available under the terms of any applicable
4 contract or agreement with the financial institution which
5 originated the guaranteed loan. The obligation of the board
6 to make payments under any such contract is limited solely
7 to such sources and does not constitute a debt or liability
8 of the state. Any guaranty contract and any rule,
9 regulation, or guideline of the board implementing the
10 guaranty program may contain such other terms, provisions,
11 or conditions as the board considers necessary or
12 appropriate, including without limitation those relating to
13 the payment of guaranty premiums, the giving of notice,
14 claim procedure, the sources of payment for claims, the
15 priority of competing claims for payment, the release or
16 termination of loan security and borrower liability, the
17 timing of payment, the maintenance and disposition of
18 projects and the use of amounts received during periods of
19 loan delinquency or upon default, and any other provision
20 concerning the rights of insured parties or conditions to
21 the payment of guaranty claims. Any premiums for the
22 guarantee of loan payments under the provisions of [sections
23 1 through 28] may be determined on such basis and be payable
24 by such person in such amounts and at such times as the
25 board determines, and the amount of the premium need not be

1 uniform among the various loans, leases, or other credit
2 agreements guaranteed.

3 NEW_SECTION. Section 20. Economic development
4 guaranty fund. (1) The board shall create an economic
5 development guaranty fund. The fund must be held by a
6 trustee or other fiduciary designated by the board. There
7 must be deposited into the fund amounts, insurance fees,
8 premiums, and such other revenues and assets as the board
9 considers necessary to comply with any contract or agreement
10 entered into by the board under [sections 1 through 28]. The
11 board may borrow from and deposit in the economic
12 development guaranty fund up to \$2.5 million from any
13 available state funds, including funds of the Montana board
14 of housing.

15 (2) The amounts in the fund must be used to satisfy
16 any claim resulting from a defaulted loan, lease, or other
17 credit agreement. The amounts in the fund may also be used
18 for any other purpose prescribed by the board in accordance
19 with guaranty contracts with financial institutions entered
20 into pursuant to [sections 1 through 28], including without
21 limitation the protection of the interest of the board in
22 projects during periods of delinquency or upon default.

23 (3) The minimum reserve requirement for the economic
24 development guaranty fund must be such amount as may be
25 provided in an agreement, resolution, or indenture with the

1 holders of bonds issued under [sections 1 through 28], but
2 not in excess of the aggregate annual payments due under the
3 loans, leases, or other credit agreements guaranteed by the
4 board. No loan, lease, or other credit agreement may be
5 guaranteed by the board if the amount of money available in
6 the economic development guaranty fund would be less than
7 the minimum reserve requirement.

8 (4) In order to assure the maintenance of the economic
9 development guaranty fund, the chairman of the board shall,
10 on or before September 1 in each year preceding the
11 convening of the legislature, deliver to the governor a
12 certificate stating the sum, if any, required to restore the
13 economic development guaranty fund to the minimum reserve
14 requirement. The governor shall include in the executive
15 budget submitted to the legislature the sum required to
16 restore the economic development guaranty fund to the
17 minimum reserve requirement.

18 (5) All amounts remitted to the board under this
19 section constitute loans to the board and must be repaid to
20 the state treasury without interest from available operating
21 revenues of the board in excess of amounts required for the
22 guarantee of loans.

23 NEW_SECTION. Section 21. Adoption of rules. (1) The
24 board shall adopt rules to establish:

25 (a) procedures for soliciting and evaluating

1 applications; and
 2 (b) a system for evaluating applications, considering
 3 the following criteria:
 4 (i) the applicant's net worth;
 5 (ii) the applicant's inability to secure adequate
 6 financing from other sources at an interest rate that will
 7 allow a reasonable prospect for repayment;
 8 (iii) the applicant's training and experience in the
 9 industry involved in the proposed project;
 10 (iv) the applicant's prospects for succeeding in the
 11 proposed project;
 12 (v) the degree to which the new or increased business
 13 resulting from the loan will meet the objectives of [section
 14 2]; and
 15 (vi) any other factors the board may prescribe.
 16 (2) The board shall adopt rules for the:
 17 (a) organization, approval, standards, and regulation
 18 of project applicants;
 19 (b) approval, standards, and regulation of financial
 20 institutions under [sections 1 through 28];
 21 (c) assessment, collection, and payment of all fees
 22 and charges in connection with making, purchasing, and
 23 servicing of its bonds and notes, mortgage lending,
 24 construction lending, temporary lending, and guaranty
 25 programs; and

1 (d) such other matters as the board considers
 2 necessary or desirable.
 3 NEW SECTION. Section 22. Pledge of the state. In
 4 accordance with the constitutions of the United States and
 5 the state of Montana, the state pledges that it will not in
 6 any way impair the obligations of any agreement between the
 7 board and the holders of notes and bonds issued by the
 8 board, including but not limited to an agreement to
 9 administer a loan program financed by the issuance of bonds
 10 and to employ a staff sufficient and competent for this
 11 purpose.
 12 NEW SECTION. Section 23. Credit of state not pledged.
 13 Obligations issued under the provisions of [sections 1
 14 through 28] do not constitute a debt, liability, obligation,
 15 or pledge of the faith and credit of the state but are
 16 payable solely from the revenues or assets of the board. An
 17 obligation issued under this part must contain on the face
 18 thereof a statement to the effect that the state of Montana
 19 is not liable on the obligation, the obligation is not a
 20 debt of the state, and neither the faith and credit nor the
 21 taxing power of the state is pledged to the payment of the
 22 principal or interest on the obligation.
 23 NEW SECTION. Section 24. Taxation of projects. (1)
 24 Notwithstanding the fact that title to a project may be in
 25 the board, such projects are subject to taxation to the same

1 extent, in the same manner, and under the same procedures as
 2 privately owned property in similar circumstances if such
 3 projects are leased to or held by private interests on both
 4 the assessment date and the date the levy is made in that
 5 year. Such projects are not subject to taxation in any year
 6 if they are not leased to or held by private interests on
 7 both the assessment date and the date the levy is made in
 8 that year.

9 (2) When personal property owned by the board is taxed
 10 under this section and such personal property taxes are
 11 delinquent, levy by warrant for distraint for collection of
 12 such delinquent taxes may be made only on personal property
 13 against which such taxes were levied.

14 NEW-SECTION Section 25. Bonds as legal investment.
 15 (1) Bonds issued by the board under the provisions of
 16 [sections 1 through 28] are securities in which all funds
 17 may be legally and properly invested, including capital in
 18 the control of or belonging to:

- 19 (a) public officers and public bodies of the state and
- 20 its political subdivisions;
- 21 (b) insurance companies;
- 22 (c) credit unions, building and loan associations,
- 23 investment companies, savings banks, banking associations,
- 24 and trust companies;
- 25 (d) executors, administrators, trustees, and other

1 fiduciaries; and
 2 (a) pension, profit-sharing, and retirement funds.

3 (2) Bonds issued under [sections 5 through 28] are
 4 securities which may properly and legally be deposited with
 5 and received by any state or municipal officer or any agency
 6 or municipality of the state for any purpose for which the
 7 deposit of bonds or obligations of the state is now or may
 8 hereafter be authorized by law.

9 NEW-SECTION Section 26. Procedure prior to financing
 10 projects. (1) The board may finance projects under [sections
 11 1 through 28] only when it finds that:

12 (a) the financing is in the public interest and is
 13 consistent with the legislative purposes and findings set
 14 forth in [section 2];

15 (b) the financing to be provided by the board for a
 16 project does not exceed either \$800,000 or 90% of the
 17 appraised value of the project, whichever is less;

18 (c) a financial institution will participate in
 19 financing the project, either directly or through a letter
 20 of credit, to the extent of at least 10% of the financing to
 21 be provided by the board;

22 (d) the financing for the project is insured or
 23 guaranteed in whole or in part by a private governmental
 24 insurer or guarantor, including but not limited to a
 25 guaranty by the board pursuant to [section 19]; and

1 (a) adequate provision is made in the loan agreement,
 2 lease, or other credit arrangement regarding a project or
 3 projects being financed to provide for payment of debt
 4 service on bonds of the board issued to finance such project
 5 or projects, to create and maintain reserves therefor, and
 6 to meet all costs and expenses of issuing and servicing the
 7 bonds.

8 (2) In order to make the findings as described in
 9 subsection (1), the board shall conduct hearings in the
 10 following manner:

11 (a) the city or county in which the project will be
 12 located may request that the board hold a hearing if it
 13 feels such a hearing is appropriate;

14 (b) 10% of the population of the city or county or 25
 15 persons, whichever is less, may petition for a hearing at
 16 the local level; or

17 (c) if no request for a local hearing is received, the
 18 board may hold the hearing in Helena at a time and place it
 19 prescribes.

20 (3) When a hearing is required either locally or at
 21 the state level, notice must be given, at least once a week
 22 for 3 weeks prior to the date set for the hearing, by
 23 publication in a newspaper of general circulation in the
 24 city or county where the hearing will be held. The notice
 25 must include the time and place of the hearing; the general

1 nature of the project; the name of the lessee, borrower, or
 2 user of the project; and the estimated cost of the project.
 3 NEW-SECTION. Section 27. Validity of pledge. Any
 4 pledge made by the board is valid and binding from the time
 5 the pledge is made. Revenue, money, or property pledged and
 6 received by the board is immediately subject to the lien of
 7 the pledge without any physical delivery or further act. The
 8 lien of any pledge is valid and binding against all parties
 9 having claims of any kind, whether in tort, contract, or
 10 otherwise, against the board, irrespective of whether such
 11 parties have notice thereof. Neither the resolution nor any
 12 other instrument by which a pledge is created is required to
 13 be recorded.

14 NEW-SECTION. Section 28. Annual audit. (1) The
 15 board's books and records must be audited at least once each
 16 fiscal year.

17 (2) The legislative auditor may conduct an audit at
 18 any time upon the request of the legislative audit
 19 committee.

20 NEW-SECTION. Section 29. Montana economic development
 21 board. (1) There is a Montana economic development board.

22 (2) The board consists of seven members, who shall be
 23 appointed by the governor as prescribed in 2-15-124. The
 24 board must be broadly representative of the state, seeking
 25 to balance professional expertise and public accountability.

1 (3) Members must be appointed within 60 days of [the
2 effective date of this act] in accordance with the manner
3 prescribed in 2-15-124.
4 (4) The board is designated as a quasi-judicial board
5 for the purposes of 2-15-124.
6 (5) The board is allocated to the department of
7 commerce for administrative purposes only as provided in
8 2-15-121. The board has authority over its own personnel as
9 provided in [section 30].
10 ~~MEM_SECTION~~ Section 30. Meetings and acts of the
11 board and personnel. (1) All meetings of the board are open
12 to the public.
13 (2) All official acts of the board must be taken in a
14 regular or special meeting and by a majority of the board.
15 (3) All rules adopted by the board must be in
16 accordance with the Montana Administrative Procedure Act.
17 (4) The board may employ an administrator, who shall
18 have general responsibility for the selection and management
19 of the board's staff and direction of its activities. The
20 administrator serves at the pleasure of the board.
21 (5) The board may prescribe the duties and annual
22 salary for professional staff positions.
23 Section 31. Section 90-6-104, MCA, is amended to read:
24 "90-6-104. General powers of the board. The board may:
25 (1) sue and be sued;

1 (2) have a seal;
2 (3) adopt all procedural and substantive rules
3 necessary for the administration of this part, including
4 rules concerning its mortgage, construction, and temporary
5 lending programs;
6 (4) make contracts, agreements, and other instruments
7 necessary or convenient for the exercise of its powers under
8 this part;
9 (5) enter into agreements or other transactions with
10 any federal, state, or local governmental agency, any
11 persons, and any domestic or foreign partnership,
12 corporation, association, or organization in carrying out
13 this part;
14 (6) enter into agreements under its rules with
15 sponsors, mortgagors, or lending institutions for the
16 purpose of regulating the analysis, planning, development,
17 and management of housing developments financed in whole or
18 in part by the proceeds of its loans or securities and
19 mortgage purchase programs;
20 (7) enter into agreements or other transactions with,
21 and accept grants and the cooperation of, any governmental
22 agency in furtherance of this part, including but not
23 limited to the development, leasing, maintenance, operation,
24 and financing of any housing development;
25 (8) accept services, appropriations, gifts, grants,

1 bequests, and devises and utilize or dispose of them in
 2 carrying out this part;

3 (9) acquire real or personal property or any right,
 4 interest, or easement therein by gift, purchase, transfer,
 5 foreclosure, lease, or otherwise; hold, sell, assign, lease,
 6 encumber, mortgage, or otherwise dispose thereof; hold,
 7 sell, assign, or otherwise dispose of any mortgage or loan
 8 owned by it or in its control or custody; release or
 9 relinquish any right, title, claim, interest, easement, or
 10 demand, however acquired, including any equity or right of
 11 redemption; do any of the foregoing by public or private
 12 sale, with or without public bidding; commence any action to
 13 protect or enforce any right conferred upon it by any law,
 14 mortgage, contract, or other agreement; bid for and purchase
 15 property at any foreclosure or other sale or acquire or take
 16 possession of it in lieu of foreclosure; and operate,
 17 manage, lease, dispose of, and otherwise deal with such
 18 property in any manner necessary or desirable to protect its
 19 interests and the holders of its bonds or notes and
 20 consistent with any agreement with such holders;

21 (10) service and contract and pay for the servicing of
 22 loans;

23 (11) provide general technical services in the
 24 analysis, planning, design, processing, construction,
 25 rehabilitation, and management of housing developments for

1 persons and families of lower income where these services
 2 are not otherwise available;

3 (12) provide general consultative services to housing
 4 developments for persons and families of lower income and
 5 the residents thereof with respect to counseling and
 6 training in management, home ownership, and maintenance
 7 where these services are not otherwise available;

8 (13) invest any funds not required for immediate use,
 9 subject to any agreements with its bondholders and
 10 noteholders, as provided in Title 17, Chapter 6, except all
 11 investment income from funds of the board less the cost for
 12 investment as prescribed by law shall be deposited in the
 13 housing finance account;

14 (14) sell its loans or securities to the federal
 15 national mortgage association or any other agency or
 16 instrumentality of the United States and invest in the
 17 capital stock issued by the association or other agency or
 18 instrumentality to the extent, if any, required as a
 19 condition of such sale;

20 (15) consent, whenever it deems it necessary or
 21 desirable in fulfilling its purposes, to the modification of
 22 the rate of interest, time, and payment of any installment
 23 of principal or interest, security, or any other term of any
 24 contract, mortgage, mortgage loan, mortgage loan commitment,
 25 construction loan, advance contract, or agreement of any

1 kind, subject to any agreement with bondholders and
 2 noteholders;
 3 (16) collect reasonable interest, fees, and charges in
 4 connection with making and servicing its loans, notes,
 5 bonds, commitments, and other evidences of indebtedness and
 6 in connection with providing technical, consultative, and
 7 project assistance services. Interest fees and charges shall
 8 be limited to the amounts required to pay the costs of the
 9 board, including operating and administrative expenses and
 10 reasonable allowances for losses which may be incurred.
 11 (17) procure insurance against any loss in connection
 12 with its mortgages and mortgage loans and other assets or
 13 property in amounts and from insurers as the board considers
 14 desirable or necessary;
 15 (18) act as agent for governmental agencies concerning
 16 acquisition, construction, leasing, operation, or management
 17 of a housing development;
 18 (19) issue notes and bonds and replace lost, destroyed,
 19 or mutilated notes and bonds; and
 20 (20) develop special programs for housing developments
 21 for veterans of the armed forces of the United States who
 22 are unable to acquire safe and sanitary housing through
 23 lending institutions by conventional means; and
 24 (21) lend money to the economic development board to
 25 establish the Montana economic development guaranty fund

1 created by ~~Section 20J~~.
 2 ~~NEW SECTION~~ Section 32. Severability. If a part of
 3 this act is invalid, all valid parts that are severable from
 4 the invalid part remain in effect. If a part of this act is
 5 invalid in one or more of its applications, the part remains
 6 in effect in all valid applications that are severable from
 7 the invalid applications.
 8 ~~NEW SECTION~~ Section 33. Effective date. This act is
 9 effective on passage and approval.
 10 ~~NEW SECTION~~ Section 34. Coordination instruction.
 11 (1) If ~~Bill No. LC 557~~, including the section of
 12 that bill creating the Montana economic development board,
 13 is passed and approved, the board created in this act is the
 14 same board as created in ~~Bill No. LC 557~~. The
 15 code commissioner is instructed to note this and codify
 16 accordingly.
 17 (2) If section 17 of HB 100 is passed and approved,
 18 the economic development oversight committee has full
 19 oversight of the implementation of this act.

-End-

STATE OF MONTANA

REQUEST NO. 404-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 700 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 700 authorizes issuance of composite industrial revenue bonds with individual loans limited to \$800,000. Program is administered by same 7 member economic development board created in House Bill 100 and financed in House Bill 1.

ASSUMPTIONS:

- 1) That House Bill 100 will be approved and the basic expenses of the board, \$5,200, will be provided under the basic appropriation for implementing House Bill 100. The 3 member staff in the fiscal note for House Bill 100 will also be available to staff House Bill 700.
- 2) That board will ussue \$20 million in bonds during the biennium.
- 3) That one loan officer will be necessary in FY 83 and a second added in FY 85.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>	<u>BIENNIUM TOTAL</u>
Personal Services	58,766	103,736	162,502
Operating Expenses	29,479	41,093	70,522
Capital	<u>1,500</u>	<u>900</u>	<u>2,400</u>
Total Expenditures	<u>\$89,745</u>	<u>\$145,729</u>	<u>\$235,424</u>
Appropriations Under House Bill 1			\$ 62,000
General Fund Loan			<u>173,424</u>
Total			<u>\$235,424</u>

Continued

David M. Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

COMMENT ON REVENUE IMPACT:

House Bill 1 proposes a general fund appropriation of \$470,000 for the Montana Economic Development Board, \$408,000 for House Bill 100 and \$62,000 for House Bill 700. House Bill also includes authority for a \$150,000 loan for House Bill 700. Total authorized expenses for the biennium would be \$235,424. An optimistic estimate of income for the biennium would be \$192,000 in administrative fees, insurance fees, etc. The loan would be repaid in 4 to 5 years and the program would be self-supporting.

COMMENT:

The bill also authorizes the board to borrow and repay up to \$2.5 million from any state fund to establish a loan insurance fund for bond issues.

NOTE:

If House Bill 100 is not adopted, expenses under this bill would be:

	<u>FY84</u>	<u>FY85</u>	<u>BIENNIUM TOTAL</u>
Expenditures under proposed law:			
Personal Services	\$122,984	\$122,521	\$245,505
Operating Expenses	77,401	80,389	157,790
Equipment	<u>\$ 5,010</u>	<u>\$ -0-</u>	<u>\$ 5,010</u>
Total Expenditures Under Proposal	<u>\$205,395</u>	<u>\$202,090</u>	<u>\$408,305</u>

There would be no increase in revenue

FISCAL NOTE 15:P/2

STATEMENT OF INTENT

HOUSE BILL 700

A statement of intent is required for House Bill 700 because it provides rulemaking authority for the Montana economic development board in Section 21 of the Bill.

It is the intention of the legislature that in implementing the rulemaking provisions of the bill, the board will examine the procedures used in other states to take advantage of proven methods of soliciting and reviewing applications for loans. It is further the intention of the legislature that the board will maintain close contact and solicit the opinions of the investment businesses in Montana and the financial institutions of the state. It is further the intention of the legislature that in the examination of the rules provided for assessment of a collection of fees in connection with its programs, the board shall make a concerted effort to consider not only the needs of the board, but the needs of the potential borrowers of the state and the general need for capital investment in Montana. Where possible, the board shall use proven methods of operation which have been provided through the experience of other boards in the state and the experience of other states.

- 90-5-202. Board member appointed by governor — compensation.
90-5-203. Bylaws and amendments filed with secretary of state.

Part 1

Industrial Development Projects

90-5-101. Definition of terms. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Agricultural enterprises" include but are not limited to producing, warehousing, storing, fattening, treating, handling, distributing, or selling farm products or livestock.

(2) "Bonds" means bonds, refunding bonds, notes, or other obligations issued by a municipality or county under the authority of this part, including without limitation short-term bonds or notes issued in anticipation of the issuance of long-term bonds or notes.

(3) "Governing body" means the board or body in which the general legislative powers of the municipality or county are vested.

(4) "Mortgage" means a mortgage or deed of trust or other security device.

(5) "Municipality" means any incorporated city or town in the state.

(6) "Project" means any land; any building or other improvement; and any other real or personal properties deemed necessary in connection therewith, whether or not now in existence, which shall be suitable for use for commercial, manufacturing, agricultural, or industrial enterprises; recreation or tourist facilities; local, state, and federal governmental facilities; multifamily housing, hospitals, long-term care facilities, or medical facilities; small-scale hydroelectric production facilities with a capacity of 50 megawatts or less; and any combination of these projects.

History: En. Sec. 1, Ch. 51, L. 1965; amd. Sec. 1, Ch. 50, L. 1969; amd. Sec. 1, Ch. 386, L. 1971; amd. Sec. 1, Ch. 234, L. 1975; amd. Sec. 1, Ch. 374, L. 1975; R.C.M. 1947, 11-4101; amd. Sec. 1, Ch. 656, L. 1979; amd. Sec. 1, Ch. 318, L. 1981; amd. Sec. 1, Ch. 376, L. 1981.

Compiler's Comments

1981 Amendments: Chapter 318 inserted "small-scale hydroelectric production facilities with a capacity of 50 megawatts or less" near the end of (6).

Chapter 376 inserted subsection (2).

Source: Chapter 318, L. 1981 (SB 138), was introduced at the request of the Environmental Quality Council as a result of an interim study

conducted by EQC and the National Conference of State Legislatures. See 1980 report available from Environmental Quality Council.

Effective Date: Section 4, Ch. 376, L. 1981, provided: "This act is effective on passage and approval." Approved April 15, 1981. (The amendments made by Ch. 318 were effective October 1, 1981.)

90-5-102. General municipal and county powers. (1) In addition to any other powers which it may now have, each municipality and each county may:

(a) acquire, by construction, purchase, devise, gift, or lease or any combination of such methods, one or more projects located within this state. The projects may be located within, without, or partially within and partially without the municipality or county.

PROPOSED AMENDMENT TO HB 700

LEGISLATIVE AUDITOR

- (1) Page 30, line 16
Following: "Year" Strike: "."
Insert: "by or at the direction of the legislative auditor.
The actual costs of the audit shall be paid from
the board's funds."
- (2) Page 30, lines 17 through 19
Strike: subsection (2) in its entirety

TO: JOHN VINCENT, CHAIR
MEMBERS OF SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

FROM: MAE NAN ELLINGSON, DEPUTY CITY ATTORNEY FOR THE
CITY OF MISSOULA

RE: HOUSE BILL 700

DATE: FEBRUARY 15, 1983 Memo 83-24

My comments on the proposed Umbrella Revenue Bond Act are based on the 1st draft of the Bill. At this writing, I have not seen the final draft and so my comments may be more or less pertinent upon your hearing them than when they were written.

The City of Missoula has either closed or has in the "works" eight industrial development revenue bonds and we are familiar with not only the process of this type of bond but the rationale behind it. The largest bond we have issued was \$27 million and our smallest has been \$1 million.

We recognize that due to the preparation and the marketing expenses associated with this type of bond, projects of less than a million dollars are economically unfeasible. Consequently we believe our small business people are not able to obtain the favorable financing that is available to larger businesses. The purpose of the Umbrella Revenue Bond Act is to remedy that inequity and we heartily endorse the purpose of the Bill. We believe the Bill should be amended, however, to recognize the role that local governments have played and should continue to play in the growth of their communities and in particular the issuance of industrial development revenue bonds.

The amendment I have prepared with the assistance of the staff of the Missoula County Commissioners has as its objective that the determination of public interest be made by local governing bodies which are locally elected rather than the appointed Economic Development Board. I believe the amendment or some variation of the amendment is preferable to the draft for the following reasons:

- (1) The determination of public interest would be made by locally elected public officials rather than by the Board of Economic Development whose members are appointed and may have no understanding of each community's needs or peculiar characteristics. Having local governments conduct the public hearing is more practical and logical in that those governing bodies meet regularly in each jurisdiction and are set up and familiar with conducting this type of public hearing and making a determination of public interest. Under the Committee's proposal, a public hearing would only be required if requested by a local governing body or 25 residents and could be held either locally or in Helena. If the public hearing is requested to be held locally, the state Board members would have to travel at either their own or the State's expense to the various communities to conduct the public hearing. It seems a lot more practical to utilize the local governmental bodies to conduct the public hearing.
- (2) The criteria for determining the public interest suggested in the amendment are broader and take into consideration more factors relevant to the public interest. The Bill as drafted provides that the test of public interest is met by a flow of capital to Montana business and the creation of jobs in Montana. It is difficult to imagine a project that

would not meet these two criteria. Almost every project results in some jobs, even if they are temporary construction jobs. The value of construction jobs is not to be undermined, but some consideration needs to be given whether there will be a net increase in jobs or where the new business may simply drive an existing business out of business. A couple of years ago, the County of Ravalli or the City of Hamilton determined that it was not in the public interest to finance a K-Mart with industrial development revenue bonds because of its negative impact on locally owned businesses. The criteria contained in the proposed amendment allows factors like this to be considered in determining the public interest. Likewise a highly polluting industry would satisfy those two requirements, yet there is no basis in the Bill for not approving the project if it created jobs.

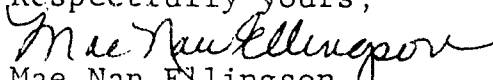
- (3) The amendment specifically allows the public testimony elicited at the public hearing to be considered in arriving at the public interest. While the introduced Bill allows for a public hearing, it does not require the Board to consider that testimony in determining the public interest.
- (4) The procedure for conducting the public hearing in the proposed amendment closely mirrors the provision of all other industrial development revenue bonds. M.C.A. 90-5-104 requires that a municipal or county governing body hold a public hearing after giving three weeks' notice and make a finding that the project is in the public interest before authorizing the issuance of the bond.

The effect of the amendment would be to apply the same type of procedure for small as well as large industrial development revenue bonds.

- (5) The introduced bill states that a public hearing will be held if requested by a local governing body or members of the public but does not contain any mechanism by which the public or governing body is informed of the project the Board is considering. Consequently the right to request a public hearing is meaningless.

The crucial difference between the issuance of a regular industrial development revenue bond and the issuance of a bond under the umbrella policy is that in the latter instance the state is the issuer, rather than the governing body. Consequently, the proposed amendment does not seek to substitute the judgment of the local government as to the financial feasibility of the project for that of the Board. For purposes of practicality and responsible policy, it is suggested that locally elected representatives determine whether a project is in the public interest.

Thank you for your consideration of this amendment.

Respectfully yours,

Mae Nan Ellingson
Deputy City Attorney
City of Missoula

MNE/jd

Suggested Amendment
To Umbrella Revenue Bond Act

Section 16. Determination of Public Interest

(1) Before entering into any project as described herein or purchasing or insuring any loan or issuing any bond as authorized herein, there must be a finding by the local governing body in which the project is located that the project is in the public interest as herein described.

(2) For purposes of this section local governing body in which the project is located means the city, if the project is located within an incorporated municipality, and the county if the project is located outside the boundaries of the incorporated municipality or there is no incorporated municipality.

(3) Upon receipt of request for financing a "project", the Board shall notify the local governing body in which the project will be located of the request. The notification shall specify the nature of the project; the amount of financing sought; the lessee, borrower or user of the project; and any other information relevant to criteria set out in subsection (5).

(4) The local governing body in which the project will be located shall conduct a public hearing for purposes of determining the public interest. Notice of the hearing shall be given at least once a week for 3 weeks prior to the date set for the hearing by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice shall include the time and place of the hearing; the general nature of the project; the name of lessee, borrower or user of the project; and the estimated costs of the project.

(5) The local governing body shall make a determination of whether the project is in the public interest, considering among other things the following:

- a) The testimony elicited at the public hearing;
- b) The number of employees that will be employed by the project and the effect of the project on employment in the city or county;
- c) Whether the project is in keeping with the community's comprehensive plan and whether the project furthers the goals of or is consistent with the community's urban renewal plan, if any;
- d) Impact of the project on new and existing public services and facilities;
- e) Impact on the environment, including air and water quality;

f) Potential for long-term net economic growth and employment.

(6) Within ten (10) days of the completion of the public hearing, the local governing body shall notify the Board of its finding of public interest or the lack thereof.



MISSOULA COUNTY

BOARD OF COUNTY COMMISSIONERS

• Missoula County Courthouse • Missoula, Montana 59802
(406) 721-5700

February 15, 1983
BCC-83-89

The Honorable John Vincent, Chairman
House Select Committee on Economic Development
House of Representatives
Capitol Station
Helena, Montana 59620

Dear Chairman Vincent and Other Members of the Committee:

We are writing in support of the proposed Umbrella Industrial Development Revenue Bond Act. We particularly would like to stress our support of the proposed amendments which are being presented to you by Mae Nan Ellingson, Deputy City Attorney of Missoula. Our Staff has worked very closely with the Staff of the City of Missoula in developing these amendments. We believe that the amendments, which call for a local public hearing and review of proposed projects that would be included in the Umbrella Industrial Revenue Bond issue are a definite improvement over the original language. In the first place, holding the hearing locally would make the review process congruent with the way industrial revenue bonds are now reviewed. Local governments which have issued industrial revenue bonds, such as both the City and County of Missoula, are completely prepared and fully conversant with industrial revenue bond procedure, and are able to deal with them rapidly and knowledgably.

Second, Missoula County only last year passed a new Industrial Revenue Bond Policy. It makes no sense to us for the State to be reviewing industrial revenue bond applications for projects located in Missoula when the Missoula County Commissioners already have a policy in regard to the use of industrial revenue bonds in place. If the State were to do so, it would make it possible for a conflict to develop between State and local definitions of public interest.

Third, local review assures that the people most affected by the possible consequences of the project will have an opportunity to be heard. In order for a State program of economic development to succeed, it must be done in harmony with the feelings of citizens in the various localities in the State.

We believe that the Umbrella Revenue Bond Act provides an excellent mechanism

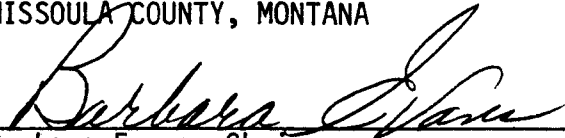
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Page 2
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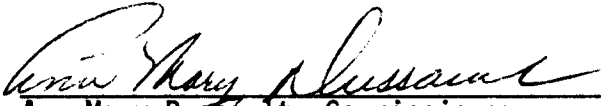
for the stimulation of small business in Montana. We hope you pass it with the amendment requiring local review.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
MISSOULA COUNTY, MONTANA


Barbara Evans, Chairman


Bob Palmer, Commissioner


Ann Mary Dussault, Commissioner

BCC:HS:11

cc: All Missoula Legislators
Mae Nan Ellingson, Deputy City Attorney



ECONOMIC DEVELOPMENT ASSOCIATION
Post Office Box 1093 • Helena, Montana 59624 • February 15, 1983

TESTIMONY IN SUPPORT OF THE
MONTANA ECONOMIC DEVELOPMENT BOND ACT OF 1983

Over the past few weeks I have testified several times before this Committee about a number of development finance proposals included in the Governor's Build Montana program. Tonight you are considering the last of them, a proposal which would, among other things, make industrial development revenue bonding available for smaller (\$800,000 or less) projects under an "umbrella" created by the State.

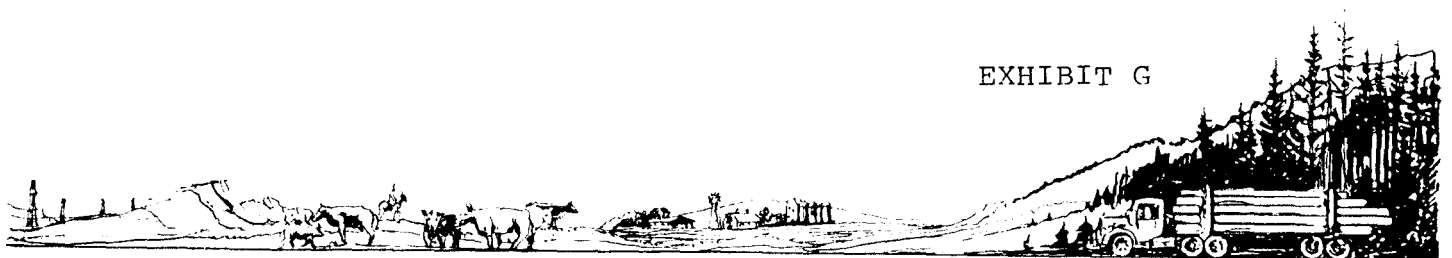
While the bill appears much more complex than those which preceeded it, it really embraces a very simple and straight-forward idea -- making available and accessible to smaller businesses and industries the advantages already enjoyed by many of their larger competitors under existing IDR legislation. IDRs are not new in Montana, and their general worthiness has been debated at length, and recently reaffirmed, by the U. S. Congress after substantial study by both the Congressional Budget Office and the Department of the Treasury.

The adoption of this bill would complete the puzzle, fill in the last missing piece of the package of interlocking, complementary programs which would enable viable, aggressive, expanding Montana small businesses and industries to obtain needed financing at the same rates, on the same terms, and in the proper mix of debt and equity as are available to companies elsewhere.

While MEDA may have some concerns about how, specifically, the umbrella bonding program would be administered, we feel the proper place to address those is during the proposed Economic Development Board's rule-making process. For the present, we simply commend this bill to you for your consideration and respectfully urge your support of it.

Thank you.

EXHIBIT G





February 15, 1983

TESTIMONY PRESENTED TO THE SELECT COMMITTEE ON ECONOMIC DEVELOPMENT IN SUPPORT OF HOUSE BILL 700, TO CREATE THE MONTANA ECONOMIC DEVELOPMENT BOARD.

Mr. Chairman and members of the committee, for the record my name is Nancy Harte, legislative coordinator for the Montana Democratic Party.

We wholeheartedly support House Bill 700. This bill, and others, set up the mechanism for carrying out the directives of Initiative 95 to invest coal tax money in Montana.

The concept of investing in Montana that is contained in this bill, as it was contained in Initiative 95, is an idea that gained support from a large majority of Montana voters, and a great number of interest groups throughout the state. Because of I-95's broad-based support, we would like to see that the mechanism of handling investment in Montana continue to have input and support from a great number of people.

An important part of House Bill 700 is the creation of a seven-member board. In Section 29 of this bill, which appears on page 30, the board is established and criteria for the selection of board members is set out. The bill says that the board shall be appointed by the governor and be "broadly representative of the state, seeking to balance professional expertise and public accountability."

EXHIBIT H

MORE

Montana Democratic Central Committee • Steamboat Block, Room 303 • P.O. Box 802 • Helena, MT 59624 • (406) 442-9520

Executive Board

Ron Richards Chairman	Sharon Peterson Vice Chairman	N. J. Dougherty Secretary	Ralph Dixon Treasurer	Joe Lamson Executive Secretary	James Pasma Nat'l Committeeman	Dorothy Bradley Nat'l Committeewoman
Phil Campbell	Jerry Hudspeth	Wilma Jodsaas	Sally Jordan	Don McKee	Rich Pavlonnis	Bob Wilkins
Helen Christensen	Chas Jeniker	Junne Johnsrud	Helen Kerr	Bruce Nelson	Howard Toote	Bobbie Wolfe
Sen Chet Blaylock		Rep. Dan Kemmis		Phillis Moore		Sherril Stieg

Because of the broad support of Initiative 95 from various groups, we would like to see specific language assuring that a wide range of interests are represented on the board. We ask that the committee consider an amendment to increase the membership of the board to nine members, with specific criteria for their selection.

We would suggest that the board consist of members from these areas:

- two members representing the financial community, including one member from nonbanking institutions such as savings and loans and credit unions,
- two members representing small business and manufacturing that emphasizes the use of Montana renewable resources,
- one member from the farming or ranching community,
- one member from the conservation community,
- one member from the Board of Investments,
- one member representing organized labor, and
- one member representing nontraditional owners of Montana businesses, including, for example, women and minorities.

Many of Montana's boards require that specific interests are represented, and we would like to see that done on this board. Defining the interests on the economic development board will insure that a broad cross-section of Montanans are represented.

We understand that there may also be an amendment offered to include local review of investment projects, and we would support such an amendment as well to keep local communities involved in the decision-making and planning process.

We ask that you consider the amendments offered and give a "do pass" recommendation to House Bill 700.

WITNESS STATEMENT

Name DON REED Committee on ECON DEV
Address P.O. Box 1187 Date 2/16/85
Representing MELC Support
Bill No. HB 700 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1. Support the bill.
2. Emphasize local control and involvement in determining the "public interest."
3. Support the amendment proposed by Missoula county.
- 4.

EXHIBIT I

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.