

SELECT COMMITTEE ON ECONOMIC DEVELOPMENT

HOUSE OF REPRESENTATIVES

48TH LEGISLATURE

ATTENDANCE

DATE: Feb. 20, 1983 Executive Session

ROOM: Old Supreme Crt. Chambers

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

EXECUTIVE SESSION OF SELECT COMMITTEE ON
ECONOMIC DEVELOPMENT - FEBRUARY 20, 1983

CHAIRMAN VINCENT called the meeting to order at 9:10 a.m. on Sunday, February 20th, in Room 325, the former Supreme Court chambers. All members were present.

DISPOSITION OF HOUSE BILL 371

HARPER moved the following amendment proposed by the Credit Union Association:

- (1) Page 2, line 23
Following: "associations,"
Strike: "and"
Insert: ", credit unions"

Motion carried unanimously.

FABREGA moved proposed amendment by Representative Nordtvedt:

- (1) Page 4, line 7
Following: "that"
Insert: "this subsection does not include the investment of pension funds and"

Motion failed.

HARPER suggested striking prudent man language and replace with "benefit the long-term of economy of Montana" with regard to types of investments allowed. FABREGA agreed with deleting board's authority relative to prudent investments, but not with proposed additional language.

FABREGA moved to amend relative section of bill pertaining to prudent investments as follows:

- (1) Page 4, line 7
Following: "that"
Strike: remainder of line 7 through "(ii)" on line 10

Motion carried. Vinger, Harper and Ramirez voted against.

FABREGA moved House Bill 371 AS AMENDED, DO PASS.

Motion carried unanimously.

DISPOSITION OF HOUSE BILL 721

RAMIREZ expressed concern that they should set some standards for hospital authority and that a statement of intent was needed since rule-making authority is granted.

FAGG moved his proposed amendment defining eligible health facilities (see attached).

Motion carried. HARPER voted against.

DISPOSITION OF HOUSE BILL 100

HARPER moved the proposed amendment by the Development Credit Corporation of Montana, to better reflect investment preferences:

- (1) Page 3, line 21
Strike: "security"
Insert: "return"

Motion carried unanimously.

RAMIREZ moved the proposed amendments by Speaker Daniel Kemmis:

- (1) Page 3, line 6
Following: "principal"
Strike: "and interest"
- (2) Page 9, line 19
Following: "which"
Strike: "may"
Insert: "shall"
- (3) Page 10, line 15
Following: "which"
Strike: "men"
Insert: "people"

Motion carried unanimously.

HARPER moved a proposed amendment by AFL-CIO:

- (1) Page 4, following line 8, add:
"(6) pay the prevailing wage for that occupation, or utilize contractors who pay the prevailing wage, for any construction made possible by state investment;

Motion carried. VINGER and RAMIREZ voted against.

HARPER suggested changing proposed amendment by AFL-CIO pertaining to affirmative action in hiring and moved the following amendment:

- (1) Page 4, following line 8, add:

"(6) have demonstrable affirmative action plans for employing veterans, women, minorities and the handicapped; or"

Motion carried unanimously.

ASAY moved the proposed amendment by the Environmental Information Center:

(1) Page 4, following line 8, add following subsection

"(4) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products;"

Motion carried unanimously.

Amendments proposed by Steve Brown, attorney, were discussed and it was decided not to add language relative to environment as it was consensus of members that such is provided for in other statutes.

FAGG moved House Bill 100 AS AMENDED, DO PASS.

Motion carried unanimously.

HARPER moved the Statement of Intent to House Bill 100.

Motion carried unanimously.

DISPOSITION OF HOUSE BILL 700

HARPER discussed proposed amendment by Mae Nan Ellingson, Missoula Deputy City Attorney. If local governments think it is necessary to hold a public hearing for the sake of public interest, they can do so without specifying in this bill. This is covered in rule-making authority. This amendment would ensure local governments are notified when applications for bonds are made.

(1) Page 25, line 1

Following: "applications"

Insert: "and for notifying the local governments of the application for purposes of complying with (section 26)"

Motion carried unanimously.

RAMIREZ suggested drafting language to set forth procedure for counties to notify public and, with committee's approval, allow Greg Petesch to write & include the following: to set procedure for notifying county and then give local government 14 days to decide if they want to hold hearing or if they want board to hold hearing. HARPER commented that the purpose of the hearing is to make findings pursuant to subsection (1). He thinks rules should be adopted to do this.

ELLISON moved the amendment, as Petesch drafted it.

Motion carried unanimously.

FAGG moved the following amendment:

- (1) Page 25, lines 5 through 7
Strike: subsection (ii) in its entirety
Renumber: subsequent subsections

Motion carried unanimously.

HARPER moved proposed amendments by 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

Motion carried unanimously.

HARPER moved proposed amendments by Democratic Party.

Motion failed.

FAGG moved House Bill 700 AS AMENDED, DO PASS.

Motion carried unanimously.

HARPER moved that the Statement of Intent attached to House Bill 700 include rule-making authority for the local governments involved in conducting hearings.

Motion carried unanimously.

HARPER moved to reconsider House Bill 700 for purpose of discussion of composition of Economic Development Board.

Motion carried.

HARPER moved that language be inserted to define who shall be considered for appointment to Board to include individuals from organized labor, the farming community, environmental community, and the like. Gary Buchanan, Director of the Department of Commerce, commented that setting too many criteria makes it difficult to find qualified individuals from these various groups. The interim ad-hoc committee discussed this and chose to select people with financial and business expertise. HARPER withdrew his motion.

FABREGA moved the following amendment:

- (1) Page 30, line 25
Following: "public"
Insert: "interest and"

Motion carried unanimously.

VINCENT moved House Bill 1, AS AMENDED, DO PASS.

Motion carried unanimously.

HARPER moved the Statement of Intent, as amended, to House Bill 1.

Motion carried unanimously.

VINCENT received report that the subcommittee made no changes to House Bill 733 and it was unanimously decided to submit Standing Committee Report dated February 19, 1983.

DISPOSITION OF HOUSE BILL 818

FABREGA moved the following amendment:

- (1) Page 1, line 13
Following: "exceed"
Strike: "\$2"
Insert: "\$10"

Motion carried unanimously.

Greg Petesch asked the committee's permission to add to other relative bills appropriate language to accurately reflect change from "reserve fund" to "guaranty funds", which the committee discussed and METCALF moved that the Legislative Researcher be given the authority to insert appropriate language in parallel bills.

Motion carried unanimously.

FAGG moved that House Bill 818, AS AMENDED, DO PASS.

Motion carried unanimously.

DISPOSITION OF HOUSE BILL 871

House Bill 871 is almost identical to House Bill 700; and it was decided to allow the Legislative Researcher to incorporate the necessary amendments to establish economic development guaranty fund.

FAGG moved House Bill 871, AS AMENDED, DO PASS.

Motion carried unanimously.

DISPOSITION OF HOUSE BILL 685

HARPER moved proposed amendments by Development Credit Corporation:

- (1) Page 2, line 24
Following: "Montana"
Strike: "businesses"
Insert: "capital companies"
- (2) Page 3, line 6
Following: "investments"
Strike: remainder of line 6 through "committed" on
line 7
Insert: "if capital companies in the order in which
they are qualified"

Motion carried. VINCENT, NEUMAN and SCHYE voted against.

HARPER made point that tourism is not covered under "qualified investment" and moved the following amendment:

- (1) Page 6, line 1
Following: "page 5"
Insert: "(ix) tourism; and"

Motion carried unanimously.

HARPER moved proposed amendment by Development Credit Corporation:

- (1) Page 6, lines 9 and 10
Following: "commencing"
Strike: "March"
Insert: "January"

Gary Buchanan spoke against the motion saying his department needed more time to establish rules for certification of Montana capital companies. HARPER withdrew his motion.

FAGG moved proposed amendment by Department of Revenue:

- (1) Page 11, line 1
Following: "company."
Insert: "The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (2) and the failure was not due to neglect on the part of the company."

Motion carried. NEUMAN voted against.

RAMIREZ moved proposed amendment by Women's Lobbyist Fund:

- (1) Page 4, line 4
Following: "sources"
Insert: ", including those owned and operated by

women and minorities"

Motion carried unanimously.

The second proposed amendment by the Women's Lobbyist Fund requested addition of section of preferences from House Bill 100 to give preference to firms with demonstrable affirmative action programs. It was decided this was not necessary to include in this bill.

HARPER moved amendments proposed by AFL-CIO:

- (1) Page 3, line 20
Following: "employment"
Insert: "of Montanans"
- (2) Page 3, line 25
Following: "businesses"
Insert: ", at least 60% of whose facilities and
personnel are"

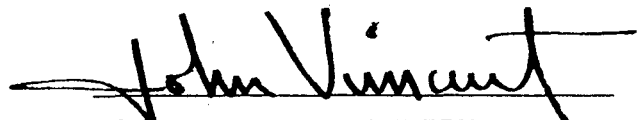
Motion carried unanimously.


METCALF moved House Bill 685, AS AMENDED, DO PASS.

Motion carried unanimously.

METCALF moved Statement of Intent to be attached to House Bill 685.

Motion carried unanimously.


JOHN VINCENT, CHAIRMAN


JOYCE ANDRUS, SECRETARY

Amendment TO HB 721

Delete SECTION 4, beginning on page 3, line 25 and ending on page 4, line 23 and replace with the following:

SECTION 4, Eligible health Facility.

(1) Eligible health Facility means any structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101 MCA; center for developmentally disabled; center for the handicapped; senior citizen residential center; chemical dependency treatment center; nursing school; medical teaching facility; laboratory; dental care facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility which is provided or operated by a health institution. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

(2) An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and eligible health facility does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

1 STATEMENT OF INTENT

2 HOUSE BILL 685

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4 A Statement of Intent is required for House Bill
5 685 because it grants rulemaking authority to the
6 Department of Commerce to implement the act.

7 It is the intention of the legislature that the
8 tax credits herein provided be applied only in the case
9 of properly qualified investments. It is therefore the
10 intention of the legislature that the department of
11 Commerce, in making rules to define a small business,
12 use whatever means necessary to arrive at a definition
13 of small business which takes into account the unique
14 nature of Montana small business. It is similarly the
15 intention of the legislature that in the development of
16 rules for certification and qualification of capital
17 companies, the department shall take into account the
18 capital needs of the state based upon such information
19 made available to it on its own initiative and through
20 such hearings as are necessary to achieve the purposes
21 of the act. It is further the intention of the legisla-
22 ture that in determining such rules as are necessary to
23 carry out the examination functions of the act, the
24 department shall take into account commonly accepted
25 principals of financial institution examinations currently

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1 in use in the examination of banks and other such
2 institutions. It is further the intention of the
3 legislature that the rules authorized in the act be
4 adopted in a timely fashion.

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-END-

STANDING COMMITTEE REPORT

February 21

19 83

MR. **Speaker**

We, your committee on **Select Economic Development**

having had under consideration **House Bill** Bill No. **685**

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A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That **House** Bill No. **685**

BE AMENDED AS FOLLOWS:

- (1) **Page 2, line 24**
Following: "Montana"
Strike: "businesses"
Insert: "capital companies"
- (2) **Page 3, line 6**
Following: "investments"
Strike: remainder of line 6 through "committed" on line 7
Insert: "if capital companies in the order in which they are qualified"
- (3) **Page 3, line 20**
Following: "employment"
Insert: "of Montanans"

(4)

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DO PASS

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- (4) Page 3, line 25
Following: "businesses"
Insert: ", at least 60 percent of whose facilities and personnel are"
- (5) Page 4, line 4
Following: "sources"
Insert: ", including those owned and operated by women and minorities"
- (6) Page 5, line 22
Strike: "and"
- (7) Page 6, line 1
Following: page 5
Insert: "(ix) tourism; and"
- (8) Page 7, line 9
Following: "(1)"
Strike: remainder of line 9 through "the" on line 11
Insert: "The"
- (9) Page 7, line 19
Following: "requires."
Strike: remainder of line 19 through line 21 in their entirety
- (10) Page 7, line 23
Following: "exceed"
Strike: remainder of line 23 through "or" on line 24
- (11) Page 7, line 24
Following: "\$375,000"
Strike: ", whichever is less"
- (12) Page 10, line 8
Following: "which"
Strike: remainder of line 8 through "investment" on line 9
Insert: "the certified company was designated as a qualified capital company by the department "
- (13) Page 10, line 11
Following: "which"
Strike: remainder of line 11 through "investment" on line 12
Insert: "the certified company was designated as a qualified capital company by the department"
- (14) Page 10, line 14
Following: "which"
Strike: remainder of line 14 through "investment" on line 15
Insert: "the certified company was designated as a qualified capital company by the department"

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- (15) Page 11, line 1
Following: "company."
Insert: "The department of revenue may abate the penalty if the capital company establishes reasonable cause for the failure to make qualified investments pursuant to subsection (2) and that the failure was not due to neglect on the part of the company."
- (16) Page 12, line 2
Following: "the"
Strike: "capital base of a Montana capital company"
Insert: "equity raised by a Montana capital company under this act "
- (17) Page 13, line 22
Following: "it."
Insert: "In the event of liquidation of the assets, any penalty imposed pursuant to section 7 of this act shall be included in the claims to be paid."
- (19) Page 15, line 6
Following: "(2)"
Strike: remainder of line 6 through line 7 in their entirety
Insert: "the condition that a tax credit will not be made available until the company raises at least \$200,000 in capital, and has been designated a qualified capital company,"

AND AS AMENDED

DO PASS

STATEMENT OF INTENT ATTACHED

STANDING COMMITTEE REPORT

February 21

19 83

MR. Speaker

We, your committee on Select Economic Development

having had under consideration House Bill No. 818

first reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE ISSUANCE AND SALE OF GENERAL OBLIGATION BONDS OF THE STATE OF MONTANA; TO PROVIDE FOR AN AGREEMENT BETWEEN THE BOARD OF EXAMINERS AND THE MONTANA ECONOMIC DEVELOPMENT BOARD; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That House Bill No. 818

BE AMENDED AS FOLLOWS:

- (1) Page 1, line 13
Following: "exceed"
Strike: "\$2"
Insert: "\$10"
- (2) Page 1, line 18
Following: line 17
Strike: "reserve fund"
Insert: "guaranty funds"
Following: " _____ Bill No. _____, LC 474 "
Insert: "or House Bills 760, 733, or 871 "
- (3) Page 2, line 3
Following: "of the"
Strike: "reserve fund"
Insert: "guaranty funds"

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- (4) Page 2, line 4
Following: "in"
Strike: " _____ Bill No. _____, LC 474 "
Insert: "House Bills 700, 733, or 871 "
- (5) Page 2, lines 14 through 17
Strike: Section 4 in its entirety
Renumber: subsequent sections
- (6) Page 2, line 20 and lines 22 and 23
Strike: "the above-referenced bill"
Insert in both lines: " House Bills 700, 733, or 871 "
- (7) Page 3, line 20
Strike: "is"
Insert: "are"

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

February 21

19 83

MR. Speaker

We, your committee on Select Economic Development

having had under consideration House Bill No. 700

first reading copy (white)
color

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."

Respectfully report as follows: That House Bill No. 700

BE AMENDED AS FOLLOWS:

- (1) Page 6, line 3
Following: "provide"
Strike: remainder of line 3
Insert: "financial"
- (2) Page 6, line 4
Following: "planning,"
Strike: remainder of line 4 through "projects" on line 15
Insert: "and technical assistance"
- (3) Page 25, line 1
Following: "applications"
Insert: "and for notifying the local government of the application for purposes of complying with (section 24)"

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DO PASS

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- (4) Page 25, lines 5 through 7
Strike: subsection (ii) in its entirety
Renumber: subsequent subsections
- (5) Page 29, line 9
Following: "(1)"
Insert: "(a)"
Strike: "the board shall conduct hearings"
Insert: "a hearing must be conducted"
- (6) Page 29, line 12
Following: "located"
Strike: remainder of line 12 through line 16 in their entirety
Insert: "shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or"
Renumber: subsequent subsection
- (7) Page 29, line 18
Following: "hearing"
Strike: "in Helena"
- (8) Page 29, line 20
Following: line 19
Insert: "(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing."
Renumber: subsequent subsection
- (9) Page 30, line 14
Strike: "(1)"
- (10) Page 30, line 16
Following: "year"
Insert: "by or at the direction of the legislative auditor?"
The actual costs of the audit shall be paid from the board's funds"
- (11) Page 30, lines 17 through 19
Strike: subsection "(2)" in its entirety
- (12) Page 30, line 25
Following: "public"
Insert: "interest and"

AND AS AMENDED

DO PASS

STATEMENT OF INTENT ATTACHED

STATEMENT OF INTENT

HOUSE BILL NO. 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. The rules should also provide for a local hearing to be held to determine whether a proposed project is in the public interest.

STANDING COMMITTEE REPORT

February 21

19 83

MR. Speaker

We, your committee on Select Economic Development

having had under consideration House Bill No. 100

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A BILL FOR AN ACT ENTITLED: "AN ACT TO IMPLEMENT SECTION 3 OF INITIATIVE 95; CREATING AN INSTATE INVESTMENT FUND TO BE ADMINISTERED BY THE MONTANA ECONOMIC DEVELOPMENT BOARD; PROVIDING FOR TYPES OF INVESTMENTS TO BE MADE; AMENDING SECTIONS 17-6-201 AND 17-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Respectfully report as follows: That House Bill No. 100

BE AMENDED AS FOLLOWS:

- (1) Page 2, line ~~22~~ 13
Following: "that"
Strike: "diversifies and stabilizes"
Insert: "strengthens"
- (2) Page 3, line 6
Following: "principal"
Strike: "and interest"
- (3) Page 3, line 21
Following: "security"
Insert: "and return"
- (4) Page 4, line 6
Following: "production;"
Strike: "and"

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DO PASS

February 21

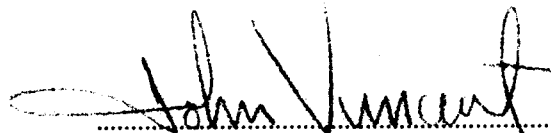
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- (5) Page 4, line 7
Following: line 6
Insert: "(4) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products;
(5) pay the prevailing wage for that occupation, or utilize contractors who pay the prevailing wage, for any construction made possible by state investment;
(6) have demonstrable affirmative action plans for employing veterans, women, minorities and the handicapped;
or"
Renumber: subsequent subsection
- (6) Page 9, line 16
Following: line 15
Insert: "interest and"
- (7) Page 9, line 19
Following: "board"
Strike: "may"
Insert: "shall"
- (8) Page 10, line 15
Following: "which"
Strike: "men"
Insert: "people"

AND AS AMENDED

DO PASS

STATEMENT OF INTENT ATTACHED



Chairman.

WE, YOUR SELECT COMMITTEE ON ECONOMIC DEVELOPMENT, ATTACH
TO HOUSE BILL NO. 100, THE FOLLOWING:

STATEMENT OF INTENT

HOUSE BILL NO. 100

(1) A statement of intent is required for this bill because it grants rulemaking authority to the Montana economic development board in section 16. These rules will include definitions of small and medium-sized businesses, a method of commitment of funds to financial institutions, setting service fees for loans, defining types of permissible investments, and procedural rules to govern the board's proceedings.

(2) It is the intent of the legislature that:

a) the definitions of small and medium-sized business be based on either the number of employees of the business, the level of capitalization of the business, or a combination of these factors;

b) the method of committing funds to financial institutions be similar to the method utilized by the board of housing for committing funds for housing developments to financial institutions;

c) the level of service fees be set to cover the costs associated with processing the investment and be similar to those charged by financial institutions;

d) the permissible investments adopted by rules be based on the long-term benefit to the Montana economy and adhere to the prudent-man rule. The investments should be aimed at diversifying, strengthening, and stabilizing the Montana economy and increasing employment opportunities while maintaining and improving a clean and healthful environment; and

e) the procedural rules be based on the Attorney General's model rules.

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19 83

MR. Speaker

We, your committee on Select Economic Development

having had under consideration House Bill No. 371

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A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE BOARD OF INVESTMENTS TO PRUDENTLY INVEST IN MONTANA BUSINESS ACTIVITIES UP TO 10 PERCENT OF ANY FUND; AMENDING SECTION 17-6-211, MCA."

Respectfully report as follows: That House Bill No. 371

BE AMENDED AS FOLLOWS:

- (1) Page 2, line 23
Following: "associations,"
Strike: "and"
Following: "and loan associations"
Insert: ", and credit unions"
- (2) Page 4, line 7
Following: "that"
Strike: remainder of line 7 through "(1)" on line 10

AND AS AMENDED

DO PASS

STANDING COMMITTEE REPORT

February 21

19 83

MR. **Speaker**

Select
We, your committee on **Economic Development**

having had under consideration **House** Bill No. **871**

first reading copy (**white**)
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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC DEVELOPMENT AUTHORITY; CREATING AN ECONOMIC DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE PROGRAMS; AND PROVIDING RULEMAKING AUTHORITY."

Respectfully report as follows: That **House** Bill No. **871**

BE AMENDED AS FOLLOWS:

- (1) **Title, line 11**
Following: "AUTHORITY"
Insert: ", AMENDING SECTION 90-6-104, MCA"

AMENDMENTS 2 and 3 ON ATTACHED SHEETS

AND AS AMENDED

-DO-PASS
STATEMENT OF INTENT ATTACHED

Amendments to HB 811

1. Title, line 7.

Following: "DEVELOPMENT"

Strike: "AUTHORITY"

Insert: "BOARD"

2. Strike everything after the enacting clause and insert:

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in [section 27].

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to [sections 1 through 26].

(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 corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Project" means a project as defined in 90-5-101.

(6) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction.

NEW SECTION. Section 2. Powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 1 through 26];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 26];

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in [sections 1

through 26];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 26];

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out [sections 1 through 26];

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out [sections 1 through 26];

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from

any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and [sections 1 through 26].

NEW SECTION. Section 3. Financing programs of the board. (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board; or

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

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

NEW SECTION. Section 4. Bonds and notes for major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under [section 13], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 26].

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

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof.

The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under [sections 1 through 26] are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed \$50 million.

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

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

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of

interest, and such other terms and details of notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

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

NEW SECTION. Section 6. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be abrogated, the amount of notes or bonds that shall consent thereto, and the manner of such consent.

may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

NEW SECTION. Section 7. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

NEW SECTION. Section 8. Purchase of notes and bonds -- cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

NEW SECTION. Section 9. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

NEW SECTION. Section 10. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

NEW SECTION. Section 11. Signatures of board members. If board members whose signatures appear on notes, bonds, or

coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

NEW SECTION. Section 12. Accounts. The board may create funds and accounts necessary to complement [sections 1 through 26]. The funds and accounts may include:

- (1) a bond proceeds fund into which bond proceeds are deposited;
- (2) a common bond fund consisting of:
 - (a) a common debt service account;
 - (b) a capital reserve account as provided in [section 15]; and
 - (c) an operating account for defraying the operational costs of the board; and
- (3) other funds or accounts.

NEW SECTION. Section 13. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

- (a) funds appropriated and made available by the state for the purpose of the account;
- (b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and
- (c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

NEW SECTION. Section 14. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

NEW SECTION. Section 15. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 1 through 26], including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 1 through 26] that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

NEW SECTION. Section 16. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under [sections 1 through 26] and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

NEW SECTION. Section 17. Project guaranty program. (1) The board may guarantee and make commitments to guarantee payment required by a loan, lease, or other credit arrangement for any project funded under [sections 1 through 26] or under 90-5-101 through 90-5-112, upon such terms and conditions as the board may prescribe in accordance with [sections 1 through 26]. In administering the guaranty program, the board may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, regulations, and guidelines.

(2) Guaranties by the board under [sections 1 through 26] must:

(a) be made for a project which the board finds meets the policies and objectives of [sections 1 through 26];

(b) be made to an applicant for a guaranty approved by the board;

(c) contain amortization provisions satisfactory to the board; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes,

assessments, delinquency charges, and default remedies as the board determines to be necessary.

(3) The board is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the economic development guaranty fund and any guaranteed loan lease or other credit agreement. Any such agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under [sections 1 through 26].

(4) Any contract of guaranty made by the board under the authorization of [sections 1 through 26] must provide that claims payable thereunder must be paid from any amounts available in the economic development guaranty fund and from any amounts available under the terms of any applicable contract or agreement with the financial institution which originated the guaranteed loan. The obligation of the board to make payments under any such contract is limited solely to such sources and does not constitute a debt or liability of the state. Any guaranty contract and any rule, regulation, or guideline of the board implementing the guaranty program may contain such other terms, provisions, or conditions as the board considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of [sections 1 through 26] may be determined on such basis and be payable by such person in such amounts and at such times as the board determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

~~NEW SECTION.~~ Section 18. Economic development guaranty fund. (1) The board shall create an economic development guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under [sections 1 through 26]. The board may borrow from and deposit in the economic development guaranty fund up to \$2.5 million from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan, lease, or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the board in accordance

with guaranty contracts with financial institutions entered into pursuant to [sections 1 through 26], including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the economic development guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under [sections 1 through 26], but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the economic development guaranty fund would be less than the minimum reserve requirement.

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

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

NEW SECTION. Section 19. Adoption of rules. (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with [section 24]; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of [section 2]; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under [sections 1 through 26];

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

NEW SECTION. Section 20. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in

any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

NEW SECTION. Section 21. Credit of state not pledged. Obligations issued under the provisions of [sections 1 through 26] do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

NEW SECTION. Section 22. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

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

NEW SECTION. Section 23. Bonds as legal investment. (1) Bonds issued by the board under the provisions of [sections 1 through 26] are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

- (a) public officers and public bodies of the state and its political subdivisions;
- (b) insurance companies;
- (c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;
- (d) executors, administrators, trustees, and other fiduciaries; and
- (e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under [sections 3 through 26] are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

NEW SECTION. Section 24. Procedure prior to financing projects. (1) The board may finance major projects under [sections 1 through 26] only when it finds that:

- (a) the financing is in the public interest and is consistent with legislative purposes and findings;
- (b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the

appraised value of the project, whichever is less;

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

(d) the financing for the project is insured or guaranteed in whole or in part by a private governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to [section 17]; and

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

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must 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 must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

NEW SECTION. Section 25. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

NEW SECTION. Section 26. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

NEW SECTION. Section 27. Montana economic development board. (1) There is a Montana economic development board.

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

accountability.

(3) Members must be appointed within 60 days of [the effective date of this act] in accordance with the manner prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 28].

NEW SECTION. Section 28. Meetings and acts of the board and personnel. (1) All meetings of the board are open to the public.

(2) All official acts of the board must be taken in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board must be in accordance with the Montana Administrative Procedure Act.

(4) The board may employ an administrator, who shall have general responsibility for the selection and management of the board's staff and direction of its activities. The administrator serves at the pleasure of the board.

(5) The board may prescribe the duties and annual salary for professional staff positions.

Section 29. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or

demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

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

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

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

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

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

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; and

~~(21) lend money to the economic development board to establish the Montana economic development guaranty fund created by [section 18]."~~

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

NEW SECTION. Section 31. Effective date. This act is effective on passage and approval.

NEW SECTION. Section 32. Coordination instruction. House Bill 871 as amended by the legislature is nearly identical to House Bill 700 except for the provisions relating to the financing of major projects. If both House Bill 871 and House Bill 700 are passed and approved, the code commissioner shall not codify both bills in their entirety, but shall only codify those parts of House Bill 871 that differ from the companion parts of House Bill 700.

WE, YOUR SELECT COMMITTEE ON ECONOMIC DEVELOPMENT, ATTACH TO HOUSE BILL NO. 871, THE FOLLOWING:

STATEMENT OF INTENT

HOUSE BILL NO. 871

A statement of intent is required for House Bill 871 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. The rules should also provide for a local hearing to be held to determine whether a proposed project is in the public interest.

Amendments to HB 871

2. Title, line 7.

Following: "DEVELOPMENT"

Strike: "AUTHORITY"

Insert: "BOARD"

3. Strike everything after the enacting clause and insert:

NEW_SECTION. Section 1. Definitions. As used in [sections 1 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana economic development board created in [section 27].

(2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to [sections 1 through 26].

(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 corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board and maintaining an office in the state.

(5) "Project" means a project as defined in 90-5-101.

(6) "Project costs" means the costs of acquiring or improving any project, including the following:

(a) the actual cost of acquiring or improving real estate for any project;

(b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

(c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;

(d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds; and

(e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction.

NEW_SECTION. Section 2. Powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 1 through 26];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 26];

(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;

(6) arrange for lines of credit from and enter into participation agreements with any financial institution;

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in [sections 1

through 26];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 26];

(9) sell, purchase, or insure loans to finance the costs of projects;

(10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out [sections 1 through 26];

(11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out [sections 1 through 26];

(12) with regard to property:

(a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;

(b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;

(c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control or custody;

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

(e) make any disposition by public or private sale, with or without public bidding;

(f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement;

(g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure;

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;

(13) service, contract, and pay for the servicing of loans;

(14) provide financial analysis and technical assistance where considered appropriate;

(15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

(17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from

any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and

(18) perform any other acts necessary and convenient to carry out the purposes of the board and [sections 1 through 26].

NEW SECTION. Section 3. Financing programs of the board. (1) The board may:

(a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board; or

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

(2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

NEW SECTION. Section 4. Bonds and notes for major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount as the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under [section 13], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 26].

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

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets, or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

(4) The notes and bonds shall be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof.

The notes and bonds shall bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner such that interest on the bonds is either exempt from or subject to federal income tax.

(5) The bonds issued under [sections 1 through 26] are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds outstanding at any one time for major projects, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed \$50 million.

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

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

(a) describe the need for the proceeds of the notes to be issued; and

(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of

interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;

(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and

(d) such other terms and conditions as the board considers appropriate.

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

NEW SECTION. Section 6. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

(3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;

(4) the setting aside of reserves for sinking funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent

may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;

(9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;

(10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

NEW SECTION. Section 7. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

NEW SECTION. Section 8. Purchase of notes and bonds -- cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

(1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

NEW SECTION. Section 9. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

NEW SECTION. Section 10. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

NEW SECTION. Section 11. Signatures of board members. If board members whose signatures appear on notes, bonds, or

Members cease to be members before the delivery of the notes and bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

NEW SECTION. Section 12. Accounts. The board may create funds and accounts necessary to complement [sections through 26]. The funds and accounts may include:

- (1) a bond proceeds fund into which bond proceeds are deposited;
- (2) a common bond fund consisting of:
 - (a) a common debt service account;
 - (b) a capital reserve account as provided in [section 15]; and
 - (c) an operating account for defraying the operational costs of the board; and
- (3) other funds or accounts.

NEW SECTION. Section 13. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

- (a) funds appropriated and made available by the state for the purpose of the account;
- (b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and
- (c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the sinking fund payments with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and sinking fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

NEW SECTION. Section 14. Maintenance of capital reserve account. (1) In order to assure the maintenance of the capital reserve account, the chairman of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature shall be deposited in the capital reserve

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenues of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

NEW SECTION. Section 15. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under [sections 1 through 26], including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of [sections 1 through 26] that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

NEW SECTION. Section 16. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under [sections 1 through 26] and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for inheritance, estate, and gift taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

NEW SECTION. Section 17. Project guaranty program.

(1) The board may guarantee and make commitments to guarantee payment required by a loan, lease, or other credit arrangement for any project funded under [sections 1 through 26] or under 90-5-101 through 90-5-112, upon such terms and conditions as the board may prescribe in accordance with [sections 1 through 26]. In administering the guaranty program, the board may require the payment of a fee or premium, establish application fees, and prescribe application, notification, contract and guaranty forms, rules, regulations, and guidelines.

(2) Guaranties by the board under [sections 1 through 26] must:

(a) be made for a project which the board finds meets the policies and objectives of [sections 1 through 26];

(b) be made to an applicant for a guaranty approved by the board;

(c) contain amortization provisions satisfactory to the board; and

(d) be in such principal amount, be in such form, and contain such terms and provisions with respect to payment of property insurance, repairs, alterations, taxes,

assessments, delinquency charges, and default remedies as the board determines to be necessary.

(3) The board is authorized from time to time to enter into guaranties, insurance contracts, or any other agreements or contracts with respect to the economic development guaranty fund and any guaranteed loan lease or other credit agreement. Any such agreement or contract may contain terms and provisions necessary or desirable in connection with the guaranty program, subject to the requirements established, including without limitation terms and provisions relating to loan documentation, review, approval procedures, origination and servicing rights and responsibilities, default obligations, procedures and obligations, and obligations with respect to guaranty contracts made under [sections 1 through 26].

(4) Any contract of guaranty made by the board under the authorization of [sections 1 through 26] must provide that claims payable thereunder must be paid from any amounts available in the economic development guaranty fund and from any amounts available under the terms of any applicable contract or agreement with the financial institution which originated the guaranteed loan. The obligation of the board to make payments under any such contract is limited solely to such sources and does not constitute a debt or liability of the state. Any guaranty contract and any rule, regulation, or guideline of the board implementing the guaranty program may contain such other terms, provisions, or conditions as the board considers necessary or appropriate, including without limitation those relating to the payment of guaranty premiums, the giving of notice, claim procedure, the sources of payment for claims, the priority of competing claims for payment, the release or termination of loan security and borrower liability, the timing of payment, the maintenance and disposition of projects and the use of amounts received during periods of loan delinquency or upon default, and any other provision concerning the rights of insured parties or conditions to the payment of guaranty claims. Any premiums for the guarantee of loan payments under the provisions of [sections 1 through 26] may be determined on such basis and be payable by such person in such amounts and at such times as the board determines, and the amount of the premium need not be uniform among the various loans, leases, or other credit agreements guaranteed.

NEW SECTION. Section 18. Economic development guaranty fund. (1) The board shall create an economic development guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under [sections 1 through 26]. The board may borrow from and deposit in the economic development guaranty fund up to \$2.5 million from any available state fund, including funds of the Montana board of housing.

(2) The amounts in the fund must be used to satisfy any claim resulting from a defaulted loan, lease, or other credit agreement. The amounts in the fund may also be used for any other purpose prescribed by the board in accordance

with guaranty contracts with financial institutions entered into pursuant to [sections 1 through 26], including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the economic development guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under [sections 1 through 26], but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the economic development guaranty fund would be less than the minimum reserve requirement.

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

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

NEW SECTION. Section 19. Adoption of rules. (1) The board shall adopt rules to establish:

(a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with [section 24]; and

(b) a system for evaluating applications, considering the following criteria:

(i) the applicant's net worth;

(ii) the applicant's training and experience in the industry involved in the proposed project;

(iii) the applicant's prospects for succeeding in the proposed project;

(iv) the degree to which the new or increased business resulting from the loan will meet the objectives of [section 2]; and

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

(a) organization, approval, standards, and regulation of project applicants;

(b) approval, standards, and regulation of financial institutions under [sections 1 through 26];

(c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and

(d) such other matters as the board considers necessary or desirable.

NEW SECTION. Section 20. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in

any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

NEW_SECTION. Section 21. Credit of state not pledged. Obligations issued under the provisions of [sections 1 through 26] do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

NEW_SECTION. Section 22. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

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

NEW_SECTION. Section 23. Bonds as legal investment. (1) Bonds issued by the board under the provisions of [sections 1 through 26] are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

(a) public officers and public bodies of the state and its political subdivisions;

(b) insurance companies;

(c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;

(d) executors, administrators, trustees, and other fiduciaries; and

(e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under [sections 3 through 26] are securities which may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

NEW_SECTION. Section 24. Procedure prior to financing projects. (1) The board may finance major projects under [sections 1 through 26] only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the

appraised value of the project, whichever is less;

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

(d) the financing for the project is insured or guaranteed in whole or in part by a private governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to [section 17]; and

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

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located shall be notified, and within 14 days must advise the board if it elects to conduct the hearing; or

(b) if no request for a local hearing is received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government must notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must 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 must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

NEW SECTION. Section 25. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

NEW SECTION. Section 26. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

NEW SECTION. Section 27. Montana economic development board. (1) There is a Montana economic development board.

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

accountability.

(3) Members must be appointed within 60 days of [the effective date of this act] in accordance with the manner prescribed in 2-15-124.

(4) The board is designated as a quasi-judicial board for the purposes of 2-15-124.

(5) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in [section 28].

~~NEW SECTION.~~ Section 28. Meetings and acts of the board and personnel. (1) All meetings of the board are open to the public.

(2) All official acts of the board must be taken in a regular or special meeting and by a majority of the board.

(3) All rules adopted by the board must be in accordance with the Montana Administrative Procedure Act.

(4) The board may employ an administrator, who shall have general responsibility for the selection and management of the board's staff and direction of its activities. The administrator serves at the pleasure of the board.

(5) The board may prescribe the duties and annual salary for professional staff positions.

Section 29. Section 90-6-104, MCA, is amended to read:

"90-6-104. General powers of the board. The board may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this part, including rules concerning its mortgage, construction, and temporary lending programs;

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;

(5) enter into agreements or other transactions with any federal, state, or local governmental agency, any persons, and any domestic or foreign partnership, corporation, association, or organization in carrying out this part;

(6) enter into agreements under its rules with sponsors, mortgagors, or lending institutions for the purpose of regulating the analysis, planning, development, and management of housing developments financed in whole or in part by the proceeds of its loans or securities and mortgage purchase programs;

(7) enter into agreements or other transactions with, and accept grants and the cooperation of, any governmental agency in furtherance of this part, including but not limited to the development, leasing, maintenance, operation, and financing of any housing development;

(8) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

(9) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise; hold, sell, assign, lease, encumber, mortgage, or otherwise dispose thereof; hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control or custody; release or relinquish any right, title, claim, interest, easement, or

demand, however acquired, including any equity or right of redemption; do any of the foregoing by public or private sale, with or without public bidding; commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract, or other agreement; bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in lieu of foreclosure; and operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests and the holders of its bonds or notes and consistent with any agreement with such holders;

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

(11) provide general technical services in the analysis, planning, design, processing, construction, rehabilitation, and management of housing developments for persons and families of lower income where these services are not otherwise available;

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

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

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

(15) consent, whenever it deems it necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal or interest, security, or any other term of any contract, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

(16) collect reasonable interest, fees, and charges in connection with making and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness and in connection with providing technical, consultative, and project assistance services. Interest fees and charges shall be limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses which may be incurred.

(17) procure insurance against any loss in connection with its mortgages and mortgage loans and other assets or property in amounts and from insurers as the board considers desirable or necessary;

(18) act as agent for governmental agencies concerning acquisition, construction, leasing, operation, or management of a housing development;

(19) issue notes and bonds and replace lost, destroyed, or mutilated notes and bonds; and

(20) develop special programs for housing developments for veterans of the armed forces of the United States who are unable to acquire safe and sanitary housing through lending institutions by conventional means; and

~~(21) lend money to the economic development board to establish the Montana economic development guaranty fund created by [section 18]."~~

NEW SECIION. Section 30. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECIION. Section 31. Effective date. This act is effective on passage and approval.

NEW SECIION. Section 32. Coordination instruction. House Bill 871 as amended by the legislature is nearly identical to House Bill 700 except for the provisions relating to the financing of major projects. If both House Bill 871 and House Bill 700 are passed and approved, the code commissioner shall not codify both bills in their entirety, but shall only codify those parts of House Bill 871 that differ from the companion parts of House Bill 700."