

HOUSE BILL NO. 700

INTRODUCED BY FABREGA, MAZUREK, CRIPPEN, FAGG, VINCENT,
KEMMIS, METCALF, HARPER, DARKO, RAMIREZ, SCHYE, ASAY,
HARRINGTON, VINGER, NEUMAN, VAN VALKENBURG, HANSEN, TOWE

BY REQUEST OF THE GOVERNOR'S OFFICE

IN THE HOUSE

February 12, 1983	Introduced and referred to Select Committee on Economic Development.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass as amended. Correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Business and Industry.
March 23, 1983	Committee recommend bill be concurrred in as amended. Report adopted.
March 25, 1983	Second reading, pass consideration.
March 26, 1983	Second reading, concurrred in.
March 28, 1983	Third reading, concurrred in. Ayes, 40; Noes, 6.

IN THE HOUSE

March 28, 1983

Returned to House with amendments.

April 1, 1983

Second reading, amendments not concurred in.

On motion, Conference Committee requested and appointed.

April 20, 1983

Conference Committee dissolved.

On motion, Free Conference Committee requested and appointed.

April 21, 1983

Free Conference Committee reported.

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted.

Free Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House Bill No. 700*
 2 INTRODUCED BY *Alarico Vincent* *Ramon* *Montcal* *FAG*
 3 BY REQUEST OF THE GOVERNOR'S OFFICE *Alarico Vincent* *Ramon* *Montcal* *FAG*
 4 *Ramon* *Montcal* *FAG*
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA
 6 ECONOMIC DEVELOPMENT BOARD; PROVIDING FOR THE POWERS,
 7 DUTIES, AND COMPOSITION OF THE BOARD; PROVIDING AUTHORITY TO
 8 ISSUE BONDS TO FINANCE DESIGNATED PROJECTS; CREATING
 9 NECESSARY FUNDS AND ACCOUNTS; AMENDING SECTION 90-6-104,
 10 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 13 NEW SECTION. Section 1. Short title. [Sections 1
 14 through 28] shall be known and may be cited as the "Montana
 15 Economic Development Bond Act of 1983".
 16 NEW SECTION. Section 2. Legislative declaration. (1)
 17 It is the policy of the state of Montana, in the interest of
 18 promoting the health, safety, and general welfare of all the
 19 people of the state, to increase job opportunities and to
 20 retain existing jobs by making available, through the
 21 economic development board, funds for industrial,
 22 commercial, manufacturing, natural resource, agricultural,
 23 livestock, recreational, tourist, and health care
 24 development.
 25 (2) The legislature finds that:

1 (a) a vigorous, diversified, and growing economy is
 2 the basic source of job opportunities;
 3 (b) protection against unemployment and its economic
 4 burdens and the spread of economic stagnation can best be
 5 provided by promoting, attracting, stimulating, and
 6 revitalizing a diversified economy with contributions from
 7 industry, manufacturing, commerce, natural resource
 8 development, agriculture, livestock, recreation, tourism,
 9 and health care facilities; and
 10 (c) the state of Montana has a responsibility to help
 11 create a favorable climate for new and improved job
 12 opportunities and a stable, growing, and healthy economy for
 13 its citizens by encouraging the development of business.
 14 NEW SECTION. Section 3. Definitions. As used in
 15 [sections 1 through 28], unless the context requires
 16 otherwise, the following definitions apply:
 17 (1) "Board" means the Montana economic development
 18 board created in [section 29].
 19 (2) "Bond" means any bond, note, debenture, interim
 20 certificate, or other evidence of financial indebtedness
 21 issued by the board pursuant to [sections 1 through 28].
 22 (3) "Department" means the department of commerce
 23 provided for in 2-15-1801.
 24 (4) "Financial institution" means any bank, savings
 25 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 4. 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 28];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 28];

(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 institutions;

(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 28];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 28];

(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 28];

(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 28];

1 (12) with regard to property:

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

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

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

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

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

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

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

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

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

3 (14) provide general technical services in the
4 analysis, planning, design, processing, construction,
5 rehabilitation, and management of projects where considered
6 appropriate;

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

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

23 (17) procure insurance or guaranties in amounts and in
24 the form the board considers desirable or necessary, from
25 any party, including a governmental agency, against any loss

1 in connection with its lease agreements, loan agreements,
2 mortgage loans, and other assets or property; and

3 (18) perform any other acts necessary and convenient to
4 carry out the purposes of the board and [sections 1 through
5 28].

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

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

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

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

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

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

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

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

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

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 28] 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, 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 \$25 million.

NEW SECTION. Section 7. 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:

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

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

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

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

1 assist the board in the sale of the notes;

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

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

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

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

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

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

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 9. 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.

1 **NEW_SECTION.** Section 10. Purchase of notes and bonds
 2 -- cancellation. The board may, subject to existing
 3 agreements with noteholders or bondholders and out of any
 4 funds available for that purpose, purchase notes or bonds of
 5 the board, which shall then be canceled, at a price not
 6 exceeding:

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

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

14 **NEW_SECTION.** Section 11. Trust indenture. (1) In the
 15 discretion of the board, the bonds may be secured by a trust
 16 indenture between the board and a corporate trustee, which
 17 may be a trust company or bank having the power of a trust
 18 company, either inside or outside the state. A trust
 19 indenture may contain provisions for protecting and
 20 enforcing bondholders' rights and remedies that are
 21 reasonable, proper, and not in violation of law, including
 22 covenants setting forth the duties of the authority in
 23 relation to the exercise of its powers and the custody,
 24 safeguarding, and application of all money. The authority
 25 may provide by a trust indenture for the payment of the

1 proceeds of the bonds and revenues to the trustee under the
 2 trust indenture of another depository and for the method of
 3 disbursement, with the safeguards and restrictions it
 4 considers necessary.

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

8 **NEW_SECTION.** Section 12. Negotiability of bonds.
 9 Notes and bonds issued by the board are negotiable
 10 instruments under the Uniform Commercial Code, subject only
 11 to the provisions for registration of notes and bonds.

12 **NEW_SECTION.** Section 13. Signatures of board members.
 13 If board members whose signatures appear on notes, bonds, or
 14 coupons cease to be members before the delivery of the notes
 15 or bonds, their signatures shall nevertheless be valid and
 16 sufficient for all purposes the same as if the members had
 17 remained in office until delivery.

18 **NEW_SECTION.** Section 14. Accounts. The board may
 19 create funds and accounts necessary to complement [sections
 20 1 through 28]. The funds and accounts may include:

21 (1) a bond proceeds fund into which bond proceeds are
 22 deposited;

23 (2) a common bond fund consisting of:

24 (a) a common debt service account;

25 (b) a capital reserve account as provided in [section

1 15]; and

2 (c) an operating account for defraying the operational
3 costs of the board; and

4 (3) other funds or accounts.

5 ~~NEW SECTION.~~ Section 15. Reserve funds and
6 appropriations. (1) The board may establish a capital
7 reserve account and pay into it any:

8 (a) funds appropriated and made available by the state
9 for the purpose of the account;

10 (b) proceeds of the sale of notes or bonds to the
11 extent provided in the resolutions or indentures of the
12 board authorizing their issuance; and

13 (c) other funds which may be available to the board
14 from any other source for the purpose of the account.

15 (2) All funds held in the capital reserve account must
16 be used solely for the payment of the principal of or
17 interest on the bonds secured in whole or in part by the
18 account or the sinking fund payments with respect to the
19 bonds, the purchase or redemption of the bonds, the payment
20 of interest on the bonds, or the payment of any redemption
21 premium required to be paid when the bonds are redeemed
22 prior to maturity. Funds in the account may not be withdrawn
23 at any time in an amount that reduces the account to an
24 amount less than the sum of minimum capital reserve
25 requirements established in the resolutions or indentures of

1 the board for the account except, with respect to bonds
2 secured in whole or in part by the account, for the purpose
3 of making payment, when due, of principal, interest,
4 redemption premiums, and sinking fund payments for the
5 payment of which other money pledged is not available. Any
6 income or interest earned by or incremental to the capital
7 reserve account due to its investment may be transferred to
8 other accounts of the board to an extent that does not
9 reduce the amount of the capital reserve account below the
10 sum of minimum capital reserve requirements for the account.

11 ~~NEW SECTION.~~ Section 16. Maintenance of capital
12 reserve account. (1) In order to assure the maintenance of
13 the capital reserve account, the chairman of the board
14 shall, on or before September 1 in each year preceding the
15 convening of the legislature, deliver to the governor a
16 certificate stating the sum, if any, required to restore the
17 capital reserve account to the minimum capital reserve
18 requirement. The governor shall include in the executive
19 budget submitted to the legislature the sum required to
20 restore the capital reserve account to the sum of minimum
21 capital reserve requirement. All sums appropriated by the
22 legislature shall be deposited in the capital reserve
23 account.

24 (2) All amounts appropriated to the board under this
25 section constitute advances to the board and, subject to the

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 17. 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 28], 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 28] 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 18. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under [sections 1 through 28] 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 19. 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 28] 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 28]. 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 28] must:

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

the policies and objectives of [sections 1 through 28];

(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 28].

(4) Any contract of guaranty made by the board under the authorization of [sections 1 through 28] 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 28] 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

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

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

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

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

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

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

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

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

25 (a) procedures for soliciting and evaluating

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

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

3 **NEW_SECTION.** Section 22. Pledge of the state. In
 4 accordance with the constitutions of the United States and
 5 the state of Montana, the state pledges that it will not in
 6 any way impair the obligations of any agreement between the
 7 board and the holders of notes and bonds issued by the
 8 board, including but not limited to an agreement to
 9 administer a loan program financed by the issuance of bonds
 10 and to employ a staff sufficient and competent for this
 11 purpose.

12 **NEW_SECTION.** Section 23. Credit of state not pledged.
 13 Obligations issued under the provisions of [sections 1
 14 through 28] do not constitute a debt, liability, obligation,
 15 or pledge of the faith and credit of the state but are
 16 payable solely from the revenues or assets of the board. An
 17 obligation issued under this part must contain on the face
 18 thereof a statement to the effect that the state of Montana
 19 is not liable on the obligation, the obligation is not a
 20 debt of the state, and neither the faith and credit nor the
 21 taxing power of the state is pledged to the payment of the
 22 principal or interest on the obligation.

23 **NEW_SECTION.** Section 24. Taxation of projects. (1)
 24 Notwithstanding the fact that title to a project may be in
 25 the board, such projects are subject to taxation to the same

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

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

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

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

21 (b) insurance companies;

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

25 (d) executors, administrators, trustees, and other

1 fiduciaries; and

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

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

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

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

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

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

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

(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), the board shall conduct hearings in the following manner:

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

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

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

(3) 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 27. 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 28. Annual audit. (1) The board's books and records must be audited at least once each fiscal year.

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

NEW SECTION. Section 29. 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 accountability.

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

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

6 (5) The board is allocated to the department of
7 commerce for administrative purposes only as provided in
8 2-15-121. The board has authority over its own personnel as
9 provided in [section 30].

10 NEW SECTION. Section 30. Meetings and acts of the
11 board and personnel. (1) All meetings of the board are open
12 to the public.

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

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

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

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

23 Section 31. Section 90-6-104, MCA, is amended to read:
24 "90-6-104. General powers of the board. The board may:

25 (1) sue and be sued;

1 (2) have a seal;

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

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

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

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

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

25 (8) accept services, appropriations, gifts, grants,

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

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

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

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

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

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

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

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

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

1 kind, subject to any agreement with bondholders and
2 noteholders;

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

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

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

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

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

24 ~~(21) lend money to the economic development board to~~
25 ~~establish the Montana economic development guaranty fund~~

1 ~~created by [section 20]."~~

2 ~~NEW_SECTION.~~ Section 32. Severability. If a part of
3 this act is invalid, all valid parts that are severable from
4 the invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.

8 ~~NEW_SECTION.~~ Section 33. Effective date. This act is
9 effective on passage and approval.

10 ~~NEW_SECTION.~~ Section 34. Coordination instruction.
11 (1) If ____ Bill No. ____ [LC 557], including the section of
12 that bill creating the Montana economic development board,
13 is passed and approved, the board created in this act is the
14 same board as created in ____ Bill No. ____ [LC 557]. The
15 code commissioner is instructed to note this and codify
16 accordingly.

17 (2) If section 17 of HB 100 is passed and approved,
18 the economic development oversight committee has full
19 oversight of the implementation of this act.

-End-

STATE OF MONTANA

REQUEST NO. 404-83

FISCAL NOTE

Form BD-15

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

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

DESCRIPTION OF PROPOSED LEGISLATION:

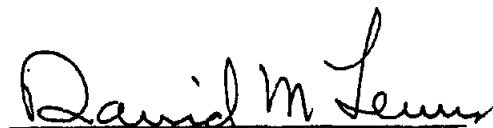
House Bill 700 authorizes issuance of composite industrial revenue bonds with individual loans limited to \$800,000. Program is administered by same 7 member economic development board created in House Bill 100 and financed in House Bill 1.

ASSUMPTIONS:

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

FISCAL IMPACT:

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

Continued

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

COMMENT ON REVENUE IMPACT:

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

COMMENT:

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

NOTE:

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

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

There would be no increase in revenue

FISCAL NOTE 15:P/2

STATE OF MONTANA

REQUEST NO. 520-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, , 19 83 , there is hereby submitted a Fiscal Note or House Bill 700, Amended, pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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

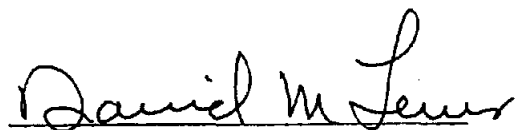
DESCRIPTION OF PROPOSED LEGISLATION:

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

COMMENT:

The amendments do not change the fiscal impact of the bill. Refer to the original fiscal note for the assumptions and impacts.

FISCAL NOTE 15:P/3



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

1 STATEMENT OF INTENT

2 HOUSE BILL 700

3 House Select Committee on Economic Development

4
5 A statement of intent is required for House Bill 700
6 because it provides rulemaking authority for the Montana
7 economic development board in Section 21 of the bill.

8 It is the intention of the legislature that in
9 implementing the rulemaking provisions of the bill, the
10 board will examine the procedures used in other states to
11 take advantage of proven methods of soliciting and reviewing
12 applications for loans. It is further the intention of the
13 legislature that the board will maintain close contact and
14 solicit the opinions of the investment businesses in Montana
15 and the financial institutions of the state. It is further
16 the intention of the legislature that in the examination of
17 the rules provided for assessment of a collection of fees in
18 connection with its programs, the board shall make a
19 concerted effort to consider not only the needs of the
20 board, but the needs of the potential borrowers of the state
21 and the general need for capital investment in Montana.
22 Where possible, the board shall use proven methods of
23 operation which have been provided through the experience of
24 other boards in the state and the experience of other
25 states. The rules should also provide for a local hearing to

1 be held to determine whether a proposed project is in the
2 public interest.

Approved by Committee
on Economic Development

HOUSE BILL NO. 700

INTRODUCED BY FABREGA, MAZUREK, CRIPPEN, FAGG, VINCENT,
KENNIS, METCALF, HARPER, DARKO, RAMIREZ, SCHYE, ASAY,
HARRINGTON, VINGER, NEUMAN, VAN VALKENBURG, HANSEN, TOME
BY REQUEST OF THE GOVERNOR'S OFFICE

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

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

NEW SECTION. Section 1. Short title. [Sections 1
through 28] shall be known and may be cited as the "Montana
Economic Development Bond Act of 1983".

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

development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is
the basic source of job opportunities;

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

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

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

(1) "Board" means the Montana economic development
board created in [section 29].

(2) "Bond" means any bond, note, debenture, interim
certificate, or other evidence of financial indebtedness
issued by the board pursuant to [sections 1 through 28].

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

1 (4) "Financial institution" means any bank, savings
2 and loan association, credit union, development credit
3 corporation, insurance company, investment company, trust
4 company, savings institution, or other financial institution
5 approved by the board and maintaining an office in the
6 state.

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

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

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

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

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

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

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

23 NEW SECTION. Section 4. Powers of the board. The
24 board may:

25 (1) sue and be sued;

1 (2) have a seal;

2 (3) adopt all procedural and substantive rules
3 necessary for the administration of [sections 1 through 28];

4 (4) make contracts, agreements, and other instruments
5 necessary or convenient for the exercise of its powers under
6 [sections 1 through 28];

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

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

12 (7) issue bonds for the purpose of defraying the cost
13 of acquiring or improving any project or projects and
14 securing the payment of the bonds as provided in [sections 1
15 through 28];

16 (8) enter into agreements or other transactions with
17 and accept grants and the cooperation of any governmental
18 agency in furtherance of [sections 1 through 28];

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

21 (10) accept services, appropriations, gifts, grants,
22 bequests, and devise and utilize or dispose of them in
23 carrying out [sections 1 through 28];

24 (11) enter into agreements or other transactions with a
25 federal agency, an agency or instrumentality of the state, a

1 municipality, a private organization, or any other entity or
2 organization in carrying out [sections 1 through 28];

3 (12) with regard to property:

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

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

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

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

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

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

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

23 (h) operate, manage, lease, dispose of, and otherwise
24 deal with such property in any manner necessary or desirable
25 to protect its interests or the holders of its bonds or

1 notes, provided such action is consistent with any agreement
2 with such holders;

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

5 (14) provide ~~general---technical---services---in---the~~
6 ~~FINANCIAL~~ analysis, planning, design, ~~processing,~~
7 ~~construction, rehabilitation, and management of projects~~ AND
8 ~~TECHNICAL ASSISTANCE~~ where considered appropriate;

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

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

25 (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 28].

~~NEW SECTION.~~ Section 5. 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 6. Bonds and notes. (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 15], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 28].

(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 28] 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, 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 \$25 million.

~~NEW SECTION.~~ Section 7. 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

1 as may be provided by resolution of the board. However, each
2 resolution of the board authorizing notes must:

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

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

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

1 notes for:

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

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

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

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

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

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

1 to:

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

3 property of the board to secure the payment of the notes or

4 bonds or of any issue thereof, subject to existing

5 agreements with noteholders or bondholders;

6 (2) pledging all or any part of the assets of the

7 board, including lease agreements, loan agreements,

8 mortgages, and obligations securing them, to secure the

9 payment of the notes or bonds or of any issue thereof,

10 subject to existing agreements with noteholders or

11 bondholders;

12 (3) the use and disposition of the gross income from

13 lease agreements, loan agreements, and mortgages owned by

14 the board, and the payment of the principal of mortgages

15 owned by the board;

16 (4) the setting aside of reserves for sinking funds in

17 the hands of trustees, paying agents, and other depositories

18 and the regulation and disposition thereof;

19 (5) limitations on the purpose for which the proceeds

20 of the sale of notes or bonds may be applied and the pledge

21 of the proceeds to secure the payment of the bonds or of any

22 issue thereof;

23 (6) limitations on the issuance of additional notes or

24 bonds, the terms upon which additional notes or bonds may be

25 issued and secured, and the refunding of outstanding notes

1 or bonds;

2 (7) the procedure, if any, by which the terms of any

3 contract with noteholders or bondholders may be amended or

4 abrogated, the amount of notes or bonds the holders of which

5 shall consent thereto, and the manner in which such consent

6 may be given;

7 (8) a commitment to employ adequate and competent

8 personnel at reasonable compensation; to set salaries, fees,

9 and charges as may be determined by the board in conjunction

10 with the department; and to maintain suitable facilities and

11 services for the purpose of carrying out its programs;

12 (9) vesting in a trustee such property, rights,

13 powers, and duties in trust as the authority determines to

14 be necessary;

15 (10) defining the acts or omissions that shall

16 constitute a default in the obligations and duties of the

17 board to the holders of the notes or bonds and providing for

18 the rights and remedies of the holders of the notes or bonds

19 in the event of such default, including as a matter of right

20 the appointment of a receiver; and

21 (11) any other matters of like or different character

22 that in any way affect the security or protection of the

23 holders of the notes or bonds.

24 ~~NEW SECTION.~~ Section 9. Personal liability. The board

25 and employees of the department are not personally liable or

1 accountable by reason of the issuance of or on any bond or
2 note issued by the board.

3 ~~NEW SECTION.~~ Section 10. Purchase of notes and bonds
4 -- cancellation. The board may, subject to existing
5 agreements with noteholders or bondholders and out of any
6 funds available for that purpose, purchase notes or bonds of
7 the board, which shall then be canceled, at a price not
8 exceeding:

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

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

16 ~~NEW SECTION.~~ Section 11. Trust indenture. (1) In the
17 discretion of the board, the bonds may be secured by a trust
18 indenture between the board and a corporate trustee, which
19 may be a trust company or bank having the power of a trust
20 company, either inside or outside the state. A trust
21 indenture may contain provisions for protecting and
22 enforcing bondholders' rights and remedies that are
23 reasonable, proper, and not in violation of law, including
24 covenants setting forth the duties of the authority in
25 relation to the exercise of its powers and the custody,

1 safeguarding, and application of all money. The authority
2 may provide by a trust indenture for the payment of the
3 proceeds of the bonds and revenues to the trustee under the
4 trust indenture of another depository and for the method of
5 disbursement, with the safeguards and restrictions it
6 considers necessary.

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

10 ~~NEW SECTION.~~ Section 12. Negotiability of bonds.
11 Notes and bonds issued by the board are negotiable
12 instruments under the Uniform Commercial Code, subject only
13 to the provisions for registration of notes and bonds.

14 ~~NEW SECTION.~~ Section 13. Signatures of board members.
15 If board members whose signatures appear on notes, bonds, or
16 coupons cease to be members before the delivery of the notes
17 or bonds, their signatures shall nevertheless be valid and
18 sufficient for all purposes the same as if the members had
19 remained in office until delivery.

20 ~~NEW SECTION.~~ Section 14. Accounts. The board may
21 create funds and accounts necessary to complement [sections
22 1 through 28]. The funds and accounts may include:

23 (1) a bond proceeds fund into which bond proceeds are
24 deposited;

25 (2) a common bond fund consisting of:

1 (a) a common debt service account;

2 (b) a capital reserve account as provided in [section

3 15]; and

4 (c) an operating account for defraying the operational

5 costs of the board; and

6 (3) other funds or accounts.

7 NEW SECTION. Section 15. Reserve funds and

8 appropriations. (1) The board may establish a capital

9 reserve account and pay into it any:

10 (a) funds appropriated and made available by the state

11 for the purpose of the account;

12 (b) proceeds of the sale of notes or bonds to the

13 extent provided in the resolutions or indentures of the

14 board authorizing their issuance; and

15 (c) other funds which may be available to the board

16 from any other source for the purpose of the account.

17 (2) All funds held in the capital reserve account must

18 be used solely for the payment of the principal of or

19 interest on the bonds secured in whole or in part by the

20 account or the sinking fund payments with respect to the

21 bonds, the purchase or redemption of the bonds, the payment

22 of interest on the bonds, or the payment of any redemption

23 premium required to be paid when the bonds are redeemed

24 prior to maturity. Funds in the account may not be withdrawn

25 at any time in an amount that reduces the account to an

1 amount less than the sum of minimum capital reserve

2 requirements established in the resolutions or indentures of

3 the board for the account except, with respect to bonds

4 secured in whole or in part by the account, for the purpose

5 of making payment, when due, of principal, interest,

6 redemption premiums, and sinking fund payments for the

7 payment of which other money pledged is not available. Any

8 income or interest earned by or incremental to the capital

9 reserve account due to its investment may be transferred to

10 other accounts of the board to an extent that does not

11 reduce the amount of the capital reserve account below the

12 sum of minimum capital reserve requirements for the account.

13 NEW SECTION. Section 16. Maintenance of capital

14 reserve account. (1) In order to assure the maintenance of

15 the capital reserve account, the chairman of the board

16 shall, on or before September 1 in each year preceding the

17 convening of the legislature, deliver to the governor a

18 certificate stating the sum, if any, required to restore the

19 capital reserve account to the minimum capital reserve

20 requirement. The governor shall include in the executive

21 budget submitted to the legislature the sum required to

22 restore the capital reserve account to the sum of minimum

23 capital reserve requirement. All sums appropriated by the

24 legislature shall be deposited in the capital reserve

25 account.

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

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

1 them, to the payment of interest on refunding obligations
 2 and expenses in connection with refunding, the proceeds may
 3 be invested in such securities as the board considers
 4 appropriate.

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

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

25 (2) Guaranties by the board under [sections 1 through

1 28] must:

2 (a) be made for a project which the board finds meets
3 the policies and objectives of [sections 1 through 28];

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

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

8 (d) be in such principal amount, be in such form, and
9 contain such terms and provisions with respect to payment of
10 property insurance, repairs, alterations, taxes,
11 assessments, delinquency charges, and default remedies as
12 the board determines to be necessary.

13 (3) The board is authorized from time to time to enter
14 into guaranties, insurance contracts, or any other
15 agreements or contracts with respect to the economic
16 development guaranty fund and any guaranteed loan lease or
17 other credit agreement. Any such agreement or contract may
18 contain terms and provisions necessary or desirable in
19 connection with the guaranty program, subject to the
20 requirements established, including without limitation terms
21 and provisions relating to loan documentation, review,
22 approval procedures, origination and servicing rights and
23 responsibilities, default obligations, procedures and
24 obligations, and obligations with respect to guaranty
25 contracts made under [sections 1 through 28].

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

1 by such person in such amounts and at such times as the
2 board determines, and the amount of the premium need not be
3 uniform among the various loans, leases, or other credit
4 agreements guaranteed.

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

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

25 (3) The minimum reserve requirement for the economic

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

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

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

25 NEW SECTION. Section 21. Adoption of rules. (1) The

1 board shall adopt rules to establish:

2 (a) procedures for soliciting and evaluating
3 applications ~~AND FOR NOTIFYING THE LOCAL GOVERNMENT OF THE~~
4 ~~APPLICATION FOR PURPOSES OF COMPLYING WITH [SECTION 26];~~ and

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

7 (i) the applicant's net worth;

8 ~~+++the---applicant's---inability---to---secure---adequate~~
9 ~~financing---from---other---sources---at---an---interest---rate---that---will~~
10 ~~allow---a---reasonable---prospect---for---repayment;~~

11 ~~+++IVII~~ the applicant's training and experience in
12 the industry involved in the proposed project;

13 ~~+++VIII~~ the applicant's prospects for succeeding in
14 the proposed project;

15 ~~+++IV~~ the degree to which the new or increased
16 business resulting from the loan will meet the objectives of
17 [section 2]; and

18 ~~+++IV~~ any other factors the board may prescribe.

19 (2) The board shall adopt rules for the:

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

22 (b) approval, standards, and regulation of financial
23 institutions under [sections 1 through 28];

24 (c) assessment, collection, and payment of all fees
25 and charges in connection with making, purchasing, and

1 servicing of its bonds and notes, mortgage lending,
2 construction lending, temporary lending, and guaranty
3 programs; and

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

6 ~~NEW SECTION.~~ Section 22. Pledge of the state. In
7 accordance with the constitutions of the United States and
8 the state of Montana, the state pledges that it will not in
9 any way impair the obligations of any agreement between the
10 board and the holders of notes and bonds issued by the
11 board, including but not limited to an agreement to
12 administer a loan program financed by the issuance of bonds
13 and to employ a staff sufficient and competent for this
14 purpose.

15 ~~NEW SECTION.~~ Section 23. Credit of state not pledged.
16 Obligations issued under the provisions of [sections 1
17 through 28] do not constitute a debt, liability, obligation,
18 or pledge of the faith and credit of the state but are
19 payable solely from the revenues or assets of the board. An
20 obligation issued under this part must contain on the face
21 thereof a statement to the effect that the state of Montana
22 is not liable on the obligation, the obligation is not a
23 debt of the state, and neither the faith and credit nor the
24 taxing power of the state is pledged to the payment of the
25 principal or interest on the obligation.

1 NEW SECTION. Section 24. Taxation of projects. (1)
 2 Notwithstanding the fact that title to a project may be in
 3 the board, such projects are subject to taxation to the same
 4 extent, in the same manner, and under the same procedures as
 5 privately owned property in similar circumstances if such
 6 projects are leased to or held by private interests on both
 7 the assessment date and the date the levy is made in that
 8 year. Such projects are not subject to taxation in any year
 9 if they are not leased to or held by private interests on
 10 both the assessment date and the date the levy is made in
 11 that year.

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

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

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

24 (b) insurance companies;

25 (c) credit unions, building and loan associations,

1 investment companies, savings banks, banking associations,
 2 and trust companies;

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

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

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

12 NEW SECTION. Section 26. Procedure prior to financing
 13 projects. (1) The board may finance projects under [sections
 14 1 through 28] only when it finds that:

15 (a) the financing is in the public interest and is
 16 consistent with the legislative purposes and findings set
 17 forth in [section 2];

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

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

25 (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 19]; 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), ~~the board shall conduct hearings~~ A HEARING MUST BE CONDUCTED in the following manner:

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

~~to 10% of the population of the city or county or 25 persons, whichever is less, may petition for a hearing at the local level or~~ MUST BE NOTIFIED AND WITHIN 14 DAYS MUST ADVISE THE BOARD IF IT ELECTS TO CONDUCT THE HEARING; OR

~~to~~ (b) if no request for a local hearing is received, the board may hold the hearing ~~in Helena~~ 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.

~~(3)(A)~~ 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 27. 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 28. Annual audit. ~~(1)~~ 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.~~

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

NEW SECTION. Section 29. 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 30].

NEW SECTION. Section 30. 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 31. 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;

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

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

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

15 (9) acquire real or personal property or any right,
16 interest, or easement therein by gift, purchase, transfer,
17 foreclosure, lease, or otherwise; hold, sell, assign, lease,
18 encumber, mortgage, or otherwise dispose thereof; hold,
19 sell, assign, or otherwise dispose of any mortgage or loan
20 owned by it or in its control or custody; release or
21 relinquish any right, title, claim, interest, easement, or
22 demand, however acquired, including any equity or right of
23 redemption; do any of the foregoing by public or private
24 sale, with or without public bidding; commence any action to
25 protect or enforce any right conferred upon it by any law,

1 mortgage, contract, or other agreement; bid for and purchase
2 property at any foreclosure or other sale or acquire or take
3 possession of it in lieu of foreclosure; and operate,
4 manage, lease, dispose of, and otherwise deal with such
5 property in any manner necessary or desirable to protect its
6 interests and the holders of its bonds or notes and
7 consistent with any agreement with such holders;

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

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

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

20 (13) invest any funds not required for immediate use,
21 subject to any agreements with its bondholders and
22 noteholders, as provided in Title 17, chapter 6, except all
23 investment income from funds of the board less the cost for
24 investment as prescribed by law shall be deposited in the
25 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 20]."~~

NEW SECTION. Section 32. 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 33. Effective date. This act is effective on passage and approval.

NEW SECTION. Section 34. Coordination instruction.
(1) If ____ Bill No. ____ [LC 557], including the section of that bill creating the Montana economic development board, is passed and approved, the board created in this act is the

1 same board as created in ____ Bill No. ____ [LC 557]. The
2 code commissioner is instructed to note this and codify
3 accordingly.

4 (2) If section 17 of HB 100 is passed and approved,
5 the economic development oversight committee has full
6 oversight of the implementation of this act.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 700

3 House Select Committee on Economic Development
4

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

8 It is the intention of the legislature that in
9 implementing the rulemaking provisions of the bill, the
10 board will examine the procedures used in other states to
11 take advantage of proven methods of soliciting and reviewing
12 applications for loans. It is further the intention of the
13 legislature that the board will maintain close contact and
14 solicit the opinions of the investment businesses in Montana
15 and the financial institutions of the state. It is further
16 the intention of the legislature that in the examination of
17 the rules provided for assessment of a collection of fees in
18 connection with its programs, the board shall make a
19 concerted effort to consider not only the needs of the
20 board, but the needs of the potential borrowers of the state
21 and the general need for capital investment in Montana.
22 Where possible, the board shall use proven methods of
23 operation which have been provided through the experience of
24 other boards in the state and the experience of other
25 states. The rules should also provide for a local hearing to

1 be held to determine whether a proposed project is in the
2 public interest.

THIRD READING

-2- Please attach to HB 700
Third reading copy

HOUSE BILL NO. 700

INTRODUCED BY FABREGA, MAZUREK, CRIPPEN, FAGG, VINCENT,
KEMMIS, METCALF, HARPER, DARKO, RAMIREZ, SCHYE, ASAY,
HARRINGTON, VINGER, NEUMAN, VAN VALKENBURG, HANSEN, TOWE
BY REQUEST OF THE GOVERNOR'S OFFICE

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

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

NEW SECTION. Section 1. Short title. [Sections 1
through 28] shall be known and may be cited as the "Montana
Economic Development Bond Act of 1983".

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

development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is
the basic source of job opportunities;

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

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

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

(1) "Board" means the Montana economic development
board created in [section 29].

(2) "Bond" means any bonds, note, debenture, interim
certificate, or other evidence of financial indebtedness
issued by the board pursuant to [sections 1 through 28].

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

1 (4) "Financial institution" means any bank, savings
2 and loan association, credit union, development credit
3 corporation, insurance company, investment company, trust
4 company, savings institution, or other financial institution
5 approved by the board and maintaining an office in the
6 state.

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

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

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

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

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

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

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

23 NEW SECTION. Section 4. Powers of the board. The
24 board may:

25 (1) sue and be sued;

1 (2) have a seal;

2 (3) adopt all procedural and substantive rules
3 necessary for the administration of [sections 1 through 28];

4 (4) make contracts, agreements, and other instruments
5 necessary or convenient for the exercise of its powers under
6 [sections 1 through 28];

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

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

12 (7) issue bonds for the purpose of defraying the cost
13 of acquiring or improving any project or projects and
14 securing the payment of the bonds as provided in [sections 1
15 through 28];

16 (8) enter into agreements or other transactions with
17 and accept grants and the cooperation of any governmental
18 agency in furtherance of [sections 1 through 28];

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

21 (10) accept services, appropriations, gifts, grants,
22 bequests, and devises and utilize or dispose of them in
23 carrying out [sections 1 through 28];

24 (11) enter into agreements or other transactions with a
25 federal agency, an agency or instrumentality of the state, a

1 municipality, a private organization, or any other entity or
2 organization in carrying out [sections 1 through 28];

3 (12) with regard to property:

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

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

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

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

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

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

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

23 (h) operate, manage, lease, dispose of, and otherwise
24 deal with such property in any manner necessary or desirable
25 to protect its interests or the holders of its bonds or

1 notes, provided such action is consistent with any agreement
2 with such holders;

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

5 (14) provide ~~general---technical---services---in---the~~
6 ~~FINANCIAL~~ analysis, planning, design, ~~processing~~
7 ~~construction, rehabilitation and management of projects~~ AND
8 ~~TECHNICAL ASSISTANCE~~ where considered appropriate;

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

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

25 (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 28].

~~NEW SECTION.~~ Section 5. 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 6. Bonds and notes. (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 15], and all other expenditures of the board incident to and necessary or convenient to carry out [sections 1 through 28].

(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

1 obligation of the board payable out of any revenue, assets,
2 or money of the board, subject only to agreements with the
3 holders of particular notes or bonds pledging particular
4 revenues, assets, or money.

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

23 (5) The bonds issued under [sections 1 through 28] are
24 exempt from the Montana Securities Act, but copies of all
25 prospectus and disclosure documents must be deposited with

1 the state securities commissioner for public inspection.

2 (5) The total amount of bonds outstanding at any one
3 time, except bonds as to which the board's obligations have
4 been satisfied and discharged by refunding or bonds for
5 which reserves for payment or other means of payment have
6 been provided, may not exceed \$25 million.

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

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

1 as may be provided by resolution of the board. However, each
2 resolution of the board authorizing notes must:

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

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

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

1 notes for:

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

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

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

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

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

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

1 to:

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

3 property of the board to secure the payment of the notes or

4 bonds or of any issue thereof, subject to existing

5 agreements with noteholders or bondholders;

6 (2) pledging all or any part of the assets of the

7 board, including lease agreements, loan agreements,

8 mortgages, and obligations securing them, to secure the

9 payment of the notes or bonds or of any issue thereof,

10 subject to existing agreements with noteholders or

11 bondholders;

12 (3) the use and disposition of the gross income from

13 lease agreements, loan agreements, and mortgages owned by

14 the board, and the payment of the principal of mortgages

15 owned by the board;

16 (4) the setting aside of reserves for sinking funds in

17 the hands of trustees, paying agents, and other depositories

18 and the regulation and disposition thereof;

19 (5) limitations on the purpose for which the proceeds

20 of the sale of notes or bonds may be applied and the pledge

21 of the proceeds to secure the payment of the bonds or of any

22 issue thereof;

23 (6) limitations on the issuance of additional notes or

24 bonds, the terms upon which additional notes or bonds may be

25 issued and secured, and the refunding of outstanding notes

1 or bonds;

2 (7) the procedure, if any, by which the terms of any

3 contract with noteholders or bondholders may be amended or

4 abrogated, the amount of notes or bonds the holders of which

5 shall consent thereto, and the manner in which such consent

6 may be given;

7 (8) a commitment to employ adequate and competent

8 personnel at reasonable compensation; to set salaries, fees,

9 and charges as may be determined by the board in conjunction

10 with the department; and to maintain suitable facilities and

11 services for the purpose of carrying out its programs;

12 (9) vesting in a trustee such property, rights,

13 powers, and duties in trust as the authority determines to

14 be necessary;

15 (10) defining the acts or omissions that shall

16 constitute a default in the obligations and duties of the

17 board to the holders of the notes or bonds and providing for

18 the rights and remedies of the holders of the notes or bonds

19 in the event of such default, including as a matter of right

20 the appointment of a receiver; and

21 (11) any other matters of like or different character

22 that in any way affect the security or protection of the

23 holders of the notes or bonds.

24 ~~NEW SECTION~~ Section 9. Personal liability. The board

25 and employees of the department are not personally liable or

1 accountable by reason of the issuance of or on any bond or
2 note issued by the board.

3 **NEW_SECTION.** Section 10. Purchase of notes and bonds
4 -- cancellation. The board may, subject to existing
5 agreements with noteholders or bondholders and out of any
6 funds available for that purpose, purchase notes or bonds of
7 the board, which shall then be canceled, at a price not
8 exceeding:

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

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

16 **NEW_SECTION.** Section 11. Trust indenture. (1) In the
17 discretion of the board, the bonds may be secured by a trust
18 indenture between the board and a corporate trustee, which
19 may be a trust company or bank having the power of a trust
20 company, either inside or outside the state. A trust
21 indenture may contain provisions for protecting and
22 enforcing bondholders' rights and remedies that are
23 reasonable, proper, and not in violation of law, including
24 covenants setting forth the duties of the authority in
25 relation to the exercise of its powers and the custody,

1 safeguarding, and application of all money. The authority
2 may provide by a trust indenture for the payment of the
3 proceeds of the bonds and revenues to the trustee under the
4 trust indenture of another depository and for the method of
5 disbursement, with the safeguards and restrictions it
6 considers necessary.

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

10 **NEW_SECTION.** Section 12. Negotiability of bonds.
11 Notes and bonds issued by the board are negotiable
12 instruments under the Uniform Commercial Code, subject only
13 to the provisions for registration of notes and bonds.

14 **NEW_SECTION.** Section 13. Signatures of board members.
15 If board members whose signatures appear on notes, bonds, or
16 coupons cease to be members before the delivery of the notes
17 or bonds, their signatures shall nevertheless be valid and
18 sufficient for all purposes the same as if the members had
19 remained in office until delivery.

20 **NEW_SECTION.** Section 14. Accounts. The board may
21 create funds and accounts necessary to complement [sections
22 1 through 28]. The funds and accounts may include:

23 (1) a bond proceeds fund into which bond proceeds are
24 deposited;

25 (2) a common bond fund consisting of:

1 (a) a common debt service account;

2 (b) a capital reserve account as provided in [section

3 15]; and

4 (c) an operating account for defraying the operational

5 costs of the board; and

6 (3) other funds or accounts.

7 NEW SECTION. Section 15. Reserve funds and

8 appropriations. (1) The board may establish a capital

9 reserve account and pay into it any:

10 (a) funds appropriated and made available by the state

11 for the purpose of the account;

12 (b) proceeds of the sale of notes or bonds to the

13 extent provided in the resolutions or indentures of the

14 board authorizing their issuance; and

15 (c) other funds which may be available to the board

16 from any other source for the purpose of the account.

17 (2) All funds held in the capital reserve account must

18 be used solely for the payment of the principal of or

19 interest on the bonds secured in whole or in part by the

20 account or the sinking fund payments with respect to the

21 bonds, the purchase or redemption of the bonds, the payment

22 of interest on the bonds, or the payment of any redemption

23 premium required to be paid when the bonds are redeemed

24 prior to maturity. Funds in the account may not be withdrawn

25 at any time in an amount that reduces the account to an

1 amount less than the sum of minimum capital reserve

2 requirements established in the resolutions or indentures of

3 the board for the account except, with respect to bonds

4 secured in whole or in part by the account, for the purpose

5 of making payment, when due, of principal, interest,

6 redemption premiums, and sinking fund payments for the

7 payment of which other money pledged is not available. Any

8 income or interest earned by or incremental to the capital

9 reserve account due to its investment may be transferred to

10 other accounts of the board to an extent that does not

11 reduce the amount of the capital reserve account below the

12 sum of minimum capital reserve requirements for the account.

13 NEW SECTION. Section 16. Maintenance of capital

14 reserve account. (1) In order to assure the maintenance of

15 the capital reserve account, the chairman of the board

16 shall, on or before September 1 in each year preceding the

17 convening of the legislature, deliver to the governor a

18 certificate stating the sum, if any, required to restore the

19 capital reserve account to the minimum capital reserve

20 requirement. The governor shall include in the executive

21 budget submitted to the legislature the sum required to

22 restore the capital reserve account to the sum of minimum

23 capital reserve requirement. All sums appropriated by the

24 legislature shall be deposited in the capital reserve

25 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 17. 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 28], 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 28] 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 18. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under [sections 1 through 28] 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 19. 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 28] 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 28]. 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

1 28] must:

2 (a) be made for a project which the board finds meets
3 the policies and objectives of [sections 1 through 28];

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

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

8 (d) be in such principal amount, be in such form, and
9 contain such terms and provisions with respect to payment of
10 property insurance, repairs, alterations, taxes,
11 assessments, delinquency charges, and default remedies as
12 the board determines to be necessary.

13 (3) The board is authorized from time to time to enter
14 into guaranties, insurance contracts, or any other
15 agreements or contracts with respect to the economic
16 development guaranty fund and any guaranteed loan lease or
17 other credit agreement. Any such agreement or contract may
18 contain terms and provisions necessary or desirable in
19 connection with the guaranty program, subject to the
20 requirements established, including without limitation terms
21 and provisions relating to loan documentation, review,
22 approval procedures, origination and servicing rights and
23 responsibilities, default obligations, procedures and
24 obligations, and obligations with respect to guaranty
25 contracts made under [sections 1 through 28].

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

1 by such person in such amounts and at such times as the
2 board determines, and the amount of the premium need not be
3 uniform among the various loans, leases, or other credit
4 agreements guaranteed.

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

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

25 (3) The minimum reserve requirement for the economic

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

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

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

25 NEW SECTION. Section 21. Adoption of rules. (1) The

1 board shall adopt rules to establish:

2 (a) procedures for soliciting and evaluating

3 applications ~~AND FOR NOTIFYING THE LOCAL GOVERNMENT OF THE~~

4 ~~APPLICATION FOR PURPOSES OF COMPLYING WITH [SECTION 26];~~ and

5 (b) a system for evaluating applications, considering

6 the following criteria:

7 (i) the applicant's net worth;

8 ~~{++}the---applicant's---inability---to---secure---adequate~~

9 ~~financing---from---other---sources---at---an---interest---rate---that---will~~

10 ~~allow---a---reasonable---prospect---for---repayment;~~

11 ~~{+++}IIII~~ the applicant's training and experience in

12 the industry involved in the proposed project;

13 ~~{++v}IIII~~ the applicant's prospects for succeeding in

14 the proposed project;

15 ~~{v+}IIIV~~ the degree to which the new or increased

16 business resulting from the loan will meet the objectives of

17 [section 2]; and

18 ~~{v++}IV~~ any other factors the board may prescribe.

19 (2) The board shall adopt rules for the:

20 (a) organization, approval, standards, and regulation

21 of project applicants;

22 (b) approval, standards, and regulation of financial

23 institutions under [sections 1 through 28];

24 (c) assessment, collection, and payment of all fees

25 and charges in connection with making, purchasing, and

1 servicing of its bonds and notes, mortgage lending,

2 construction lending, temporary lending, and guaranty

3 programs; and

4 (d) such other matters as the board considers

5 necessary or desirable.

6 **NEW SECTION.** Section 22. Pledge of the state. In

7 accordance with the constitutions of the United States and

8 the state of Montana, the state pledges that it will not in

9 any way impair the obligations of any agreement between the

10 board and the holders of notes and bonds issued by the

11 board, including but not limited to an agreement to

12 administer a loan program financed by the issuance of bonds

13 and to employ a staff sufficient and competent for this

14 purpose.

15 **NEW SECTION.** Section 23. Credit of state not pledged.

16 Obligations issued under the provisions of [sections 1

17 through 28] do not constitute a debt, liability, obligation,

18 or pledge of the faith and credit of the state but are

19 payable solely from the revenues or assets of the board. An

20 obligation issued under this part must contain on the face

21 thereof a statement to the effect that the state of Montana

22 is not liable on the obligation, the obligation is not a

23 debt of the state, and neither the faith and credit nor the

24 taxing power of the state is pledged to the payment of the

25 principal or interest on the obligation.

1 **NEW SECTION.** Section 24. Taxation of projects. (1)
 2 Notwithstanding the fact that title to a project may be in
 3 the board, such projects are subject to taxation to the same
 4 extent, in the same manner, and under the same procedures as
 5 privately owned property in similar circumstances if such
 6 projects are leased to or held by private interests on both
 7 the assessment date and the date the levy is made in that
 8 year. Such projects are not subject to taxation in any year
 9 if they are not leased to or held by private interests on
 10 both the assessment date and the date the levy is made in
 11 that year.

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

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

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

24 (b) insurance companies;

25 (c) credit unions, building and loan associations,

1 investment companies, savings banks, banking associations,
 2 and trust companies;

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

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

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

12 **NEW SECTION.** Section 26. Procedure prior to financing
 13 projects. (1) The board may finance projects under [sections
 14 1 through 28] only when it finds that:

15 (a) the financing is in the public interest and is
 16 consistent with the legislative purposes and findings set
 17 forth in [section 2];

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

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

25 (d) the financing for the project is insured or

1 guaranteed in whole or in part by a private governmental
2 insurer or guarantor, including but not limited to a
3 guaranty by the board pursuant to [section 19]; and

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

11 (2) In order to make the findings as described in
12 subsection (1)(A), the--board--shall--conduct--hearings A
13 HEARING MUST BE CONDUCTED in the following manner:

14 (a) the city or county in which the project will be
15 located may request that the board hold a hearing if it
16 feels such a hearing is appropriate

17 (b) --10%--of the population of the city or county or 25
18 persons, whichever is less, may petition for a hearing at
19 the local level or MUST BE NOTIFIED; AND THE CITY AND
20 COUNTY MUST, WITHIN 14 DAYS AFTER RECEIPT OF THE NOTICE,
21 MUST ADVISE NOTIFY THE BOARD IF IT ELECTS TO CONDUCT THE
22 HEARING OR

23 (c) If no request for a local hearing is received,
24 the board may hold the hearing in Helena at a time and place
25 it prescribes.

1 (3) IF THE HEARING REQUIRED BY SUBSECTION (2) IS
2 CONDUCTED BY A LOCAL GOVERNMENT, THE GOVERNING BODY OF THE
3 LOCAL GOVERNMENT MUST NOTIFY THE BOARD OF ITS DETERMINATION
4 OF WHETHER THE PROJECT IS IN THE PUBLIC INTEREST WITHIN 14
5 DAYS OF THE COMPLETION OF THE PUBLIC HEARING.

6 (3)(A) When a hearing is required either locally or at
7 the state level, notice must be given, at least once a week
8 for 3 weeks prior to the date set for the hearing, by
9 publication in a newspaper of general circulation in the
10 city or county where the hearing will be held. The notice
11 must include the time and place of the hearing; the general
12 nature of the project; the name of the lessee, borrower, or
13 user of the project; and the estimated cost of the project.

14 NEW SECTION. Section 27. Validity of pledge. Any
15 pledge made by the board is valid and binding from the time
16 the pledge is made. Revenue, money, or property pledged and
17 received by the board is immediately subject to the lien of
18 the pledge without any physical delivery or further act. The
19 lien of any pledge is valid and binding against all parties
20 having claims of any kind, whether in tort, contract, or
21 otherwise, against the board, irrespective of whether such
22 parties have notice thereof. Neither the resolution nor any
23 other instrument by which a pledge is created is required to
24 be recorded.

25 NEW SECTION. Section 28. Annual audit. (1) 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.

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

NEW SECTION. Section 29. 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 INCLUDE AT LEAST ONE PERSON REPRESENTING EACH OF THE FOLLOWING: THE FINANCIAL COMMUNITY, SMALL BUSINESS, AGRICULTURE, ORGANIZED LABOR, AND THE GENERAL PUBLIC.

(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 30].

NEW SECTION. Section 30. 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 31. 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

1 any federal, state, or local governmental agency, any
2 persons, and any domestic or foreign partnership,
3 corporation, association, or organization in carrying out
4 this part;

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

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

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

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

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

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

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

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

24 (13) invest any funds not required for immediate use,
25 subject to any agreements with its bondholders and

1 noteholders, as provided in Title 17, chapter 6, except all
 2 investment income from funds of the board less the cost for
 3 investment as prescribed by law shall be deposited in the
 4 housing finance account;

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

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

19 (16) collect reasonable interest, fees, and charges in
 20 connection with making and servicing its loans, notes,
 21 bonds, commitments, and other evidences of indebtedness and
 22 in connection with providing technical, consultative, and
 23 project assistance services. Interest fees and charges shall
 24 be limited to the amounts required to pay the costs of the
 25 board, including operating and administrative expenses and

1 reasonable allowances for losses which may be incurred.

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

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

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

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

15 ~~(21) lend money to the economic development board to~~
 16 ~~establish the Montana economic development guaranty fund~~
 17 ~~created by [section 20]."~~

18 **NEW SECTION.** Section 32. Severability. If a part of
 19 this act is invalid, all valid parts that are severable from
 20 the invalid part remain in effect. If a part of this act is
 21 invalid in one or more of its applications, the part remains
 22 in effect in all valid applications that are severable from
 23 the invalid applications.

24 **NEW SECTION.** Section 33. Effective date. This act is
 25 effective on passage and approval.

1 **NEW SECTION.** Section 34. Coordination Instruction.

2 (1) If ____ Bill No. ____ [LC 557], including the section of
3 that bill creating the Montana economic development board,
4 is passed and approved, the board created in this act is the
5 same board as created in ____ Bill No. ____ [LC 557]. The
6 code commissioner is instructed to note this and codify
7 accordingly.

8 (2) If section 17 of HB 100 is passed and approved,
9 the economic development oversight committee has full
10 oversight of the implementation of this act.

-End-

March 23, 1983

SENATE STANDING COMMITTEE REPORT
(Business and Industry)

That House Bill No. 700 be amended as follows:

1. Page 3, line 7.

Following: line 6.

Insert: "(5) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality."

Renumber: subsequent sections

2. Page 16, line 21.

Strike: "complement"

Insert: "implement"

3. Page 28, line 20.

Following: Line 19.

Insert: "cost or"

4. Page 29, line 1

Following: "private"

Insert: "or"

5. Page 31, line 14.

Following: "accountability"

Strike: remainder of line 14 through "PUBLIC" on line 16.

Insert: "be broadly representative of the state, seeking to balance professional expertise and public interest and accountability"

1 STATEMENT OF INTENT

2 HOUSE BILL 700

3 House Select Committee on Economic Development

4

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

8 It is the intention of the legislature that in
9 implementing the rulemaking provisions of the bill, the
10 board will examine the procedures used in other states to
11 take advantage of proven methods of soliciting and reviewing
12 applications for loans. It is further the intention of the
13 legislature that the board will maintain close contact and
14 solicit the opinions of the investment businesses in Montana
15 and the financial institutions of the state. It is further
16 the intention of the legislature that in the examination of
17 the rules provided for assessment of a collection of fees in
18 connection with its programs, the board shall make a
19 concerted effort to consider not only the needs of the
20 board, but the needs of the potential borrowers of the state
21 and the general need for capital investment in Montana.
22 Where possible, the board shall use proven methods of
23 operation which have been provided through the experience of
24 other boards in the state and the experience of other
25 states. The rules should also provide for a local hearing to

1 be held to determine whether a proposed project is in the
2 public interest.

HOUSE BILL NO. 700

INTRODUCED BY FABREGA, MAZUREK, CRIPPEN, FAGG, VINCENT,
KEMMIS, METCALF, HARPER, DARKO, RAMIREZ, SCHYE, ASAY,
HARRINGTON, VINGER, NEUMAN, VAN VALKENBURG, HANSEN, TOWE
BY REQUEST OF THE GOVERNOR'S OFFICE

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

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

NEW_SECTION. Section 1. Short title. [Sections 1
through 28] shall be known and may be cited as the "Montana
Economic Development Bond Act of 1983".

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

development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is
the basic source of job opportunities;

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

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

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

(1) "Board" means the Montana economic development
board created in [section 29].

(2) "Bond" means any bond, note, debenture, interim
certificate, or other evidence of financial indebtedness
issued by the board pursuant to [sections 1 through 28].

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

1 (4) "Financial institution" means any bank, savings
2 and loan association, credit union, development credit
3 corporation, insurance company, investment company, trust
4 company, savings institution, or other financial institution
5 approved by the board and maintaining an office in the
6 state.

7 ~~(5) "LOCAL GOVERNMENT" MEANS THE CITY IN WHICH THE~~
8 ~~PROJECT IS LOCATED. IF THE PROJECT IS LOCATED WITHIN AN~~
9 ~~INCORPORATED MUNICIPALITY, OR THE COUNTY IF THE PROJECT IS~~
10 ~~LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF AN~~
11 ~~INCORPORATED MUNICIPALITY.~~

12 ~~(5)(6)~~ "Project" means a project as defined in
13 90-5-101.

14 ~~(6)(7)~~ "Project costs" means the costs of acquiring or
15 improving any project, including the following:

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

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

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

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

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

4 ~~NEW SECTION.~~ Section 4. Powers of the board. The
5 board may:

6 (1) sue and be sued;

7 (2) have a seal;

8 (3) adopt all procedural and substantive rules
9 necessary for the administration of [sections 1 through 28];

10 (4) make contracts, agreements, and other instruments
11 necessary or convenient for the exercise of its powers under
12 [sections 1 through 28];

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

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

18 (7) issue bonds for the purpose of defraying the cost
19 of acquiring or improving any project or projects and
20 securing the payment of the bonds as provided in [sections 1
21 through 28];

22 (8) enter into agreements or other transactions with
23 and accept grants and the cooperation of any governmental
24 agency in furtherance of [sections 1 through 28];

25 (9) sell, purchase, or insure loans to finance the

1 costs of projects;

2 (10) accept services, appropriations, gifts, grants,
3 bequests, and devises and utilize or dispose of them in
4 carrying out [sections 1 through 28];

5 (11) enter into agreements or other transactions with a
6 federal agency, an agency or instrumentality of the state, a
7 municipality, a private organization, or any other entity or
8 organization in carrying out [sections 1 through 28];

9 (12) with regard to property:

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

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

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

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

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

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

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

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

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

11 (14) provide ~~general---technical---services---in---the~~
12 ~~FINANCIAL~~ analysis, planning, design, ~~processing,~~
13 ~~construction, rehabilitation, and management of projects~~ AND
14 ~~TECHNICAL ASSISTANCE~~ where considered appropriate;

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

23 (16) collect reasonable interest, fees, and charges in
24 connection with making and servicing its lease agreements,
25 loan agreements, mortgage loans, notes, bonds, commitments,

1 and other evidences of indebtedness. Interest, fees, and
2 charges are limited to the amounts required to pay the costs
3 of the board, including operating and administrative
4 expenses and reasonable allowances for losses that may be
5 incurred.

6 (17) procure insurance or guaranties in amounts and in
7 the form the board considers desirable or necessary, from
8 any party, including a governmental agency, against any loss
9 in connection with its lease agreements, loan agreements,
10 mortgage loans, and other assets or property; and

11 (18) perform any other acts necessary and convenient to
12 carry out the purposes of the board and [sections 1 through
13 28].

14 ~~NEW SECTION.~~ Section 5. Financing programs of the
15 board. (1) The board may:

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

22 (b) acquire, by construction, purchase, devise, gift,
23 lease, or any combination of methods, from financial
24 institutions, projects located in the state and lease such
25 projects to others for such rentals and upon such terms and

1 conditions as determined by the board; or

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

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

13 ~~NEW SECTION.~~ Section 6. Bonds and notes. (1) The
14 board may by resolution issue negotiable notes and bonds in
15 a principal amount as the board determines necessary to
16 provide sufficient funds for achieving any of its purposes,
17 including the payment of interest on notes and bonds of the
18 board, establishment of reserves to secure the notes and
19 bonds, including the reserve funds created under [section
20 15], and all other expenditures of the board incident to and
21 necessary or convenient to carry out [sections 1 through
22 28].

23 (2) The board may by resolution, from time to time,
24 issue notes to renew notes and bonds or to pay notes,
25 including interest, and whenever it considers refunding

1 expedient, refund any bonds by the issuance of new bonds,
2 whether or not the bonds to be refunded have matured, or
3 issue bonds partly to refund bonds outstanding and partly
4 for any of its other purposes.

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

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

1 determined by the board, and in a manner such that interest
2 on the bonds is either exempt from or subject to federal
3 income tax.

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

8 (6) The total amount of bonds outstanding at any one
9 time, except bonds as to which the board's obligations have
10 been satisfied and discharged by refunding or bonds for
11 which reserves for payment or other means of payment have
12 been provided, may not exceed \$25 million.

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

1 original notes were issued.

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

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

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

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

1 sale, the amounts, the maturities, the rate or rates of
2 interest, and such other terms and details of the notes as
3 considered appropriate by the board or the administrator in
4 the event of such delegation. The board in its discretion
5 but subject to the limitations contained in this section may
6 also provide in the resolution authorizing the issuance of
7 notes for:

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

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

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

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

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

1 and conditions as the board may authorize in the resolution
2 approving the same.

3 NEW SECTION. Section 8. Provisions of bond
4 resolutions. A resolution authorizing notes or bonds or any
5 issue thereof may contain provisions, which must be a part
6 of the contract or contracts with the holders thereof, as
7 to:

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

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

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

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

25 (5) limitations on the purpose for which the proceeds

1 of the sale of notes or bonds may be applied and the pledge
2 of the proceeds to secure the payment of the bonds or of any
3 issue thereof;

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

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

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

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

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

1 the appointment of a receiver; and

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

5 NEW_SECTION. Section 9. Personal liability. The board
6 and employees of the department are not personally liable or
7 accountable by reason of the issuance of or on any bond or
8 note issued by the board.

9 NEW_SECTION. Section 10. Purchase of notes and bonds
10 -- cancellation. The board may, subject to existing
11 agreements with noteholders or bondholders and out of any
12 funds available for that purpose, purchase notes or bonds of
13 the board, which shall then be canceled, at a price not
14 exceeding:

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

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

22 NEW_SECTION. Section 11. Trust indenture. (1) In the
23 discretion of the board, the bonds may be secured by a trust
24 indenture between the board and a corporate trustee, which
25 may be a trust company or bank having the power of a trust

1 company, either inside or outside the state. A trust
2 indenture may contain provisions for protecting and
3 enforcing bondholders' rights and remedies that are
4 reasonable, proper, and not in violation of law, including
5 covenants setting forth the duties of the authority in
6 relation to the exercise of its powers and the custody,
7 safeguarding, and application of all money. The authority
8 may provide by a trust indenture for the payment of the
9 proceeds of the bonds and revenues to the trustee under the
10 trust indenture of another depository and for the method of
11 disbursement, with the safeguards and restrictions it
12 considers necessary.

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

16 NEW_SECTION. Section 12. Negotiability of bonds.
17 Notes and bonds issued by the board are negotiable
18 instruments under the Uniform Commercial Code, subject only
19 to the provisions for registration of notes and bonds.

20 NEW_SECTION. Section 13. Signatures of board members.
21 If board members whose signatures appear on notes, bonds, or
22 coupons cease to be members before the delivery of the notes
23 or bonds, their signatures shall nevertheless be valid and
24 sufficient for all purposes the same as if the members had
25 remained in office until delivery.

1 NEW SECTION. Section 14. Accounts. The board may
 2 create funds and accounts necessary to complement ~~IMPLEMENT~~
 3 [sections 1 through 28]. The funds and accounts may include:
 4 (1) a bond proceeds fund into which bond proceeds are
 5 deposited;
 6 (2) a common bond fund consisting of:
 7 (a) a common debt service account;
 8 (b) a capital reserve account as provided in [section
 9 15]; and
 10 (c) an operating account for defraying the operational
 11 costs of the board; and
 12 (3) other funds or accounts.
 13 NEW SECTION. Section 15. Reserve funds and
 14 appropriations. (1) The board may establish a capital
 15 reserve account and pay into it any:
 16 (a) funds appropriated and made available by the state
 17 for the purpose of the account;
 18 (b) proceeds of the sale of notes or bonds to the
 19 extent provided in the resolutions or indentures of the
 20 board authorizing their issuance; and
 21 (c) other funds which may be available to the board
 22 from any other source for the purpose of the account.
 23 (2) All funds held in the capital reserve account must
 24 be used solely for the payment of the principal of or
 25 interest on the bonds secured in whole or in part by the

1 account or the sinking fund payments with respect to the
 2 bonds, the purchase or redemption of the bonds, the payment
 3 of interest on the bonds, or the payment of any redemption
 4 premium required to be paid when the bonds are redeemed
 5 prior to maturity. Funds in the account may not be withdrawn
 6 at any time in an amount that reduces the account to an
 7 amount less than the sum of minimum capital reserve
 8 requirements established in the resolutions or indentures of
 9 the board for the account except, with respect to bonds
 10 secured in whole or in part by the account, for the purpose
 11 of making payment, when due, of principal, interest,
 12 redemption premiums, and sinking fund payments for the
 13 payment of which other money pledged is not available. Any
 14 income or interest earned by or incremental to the capital
 15 reserve account due to its investment may be transferred to
 16 other accounts of the board to an extent that does not
 17 reduce the amount of the capital reserve account below the
 18 sum of minimum capital reserve requirements for the account.
 19 NEW SECTION. Section 16. Maintenance of capital
 20 reserve account. (1) In order to assure the maintenance of
 21 the capital reserve account, the chairman of the board
 22 shall, on or before September 1 in each year preceding the
 23 convening of the legislature, deliver to the governor a
 24 certificate stating the sum, if any, required to restore the
 25 capital reserve account to the minimum capital reserve

1 requirement. The governor shall include in the executive
2 budget submitted to the legislature the sum required to
3 restore the capital reserve account to the sum of minimum
4 capital reserve requirement. All sums appropriated by the
5 legislature shall be deposited in the capital reserve
6 account.

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

15 NEW SECTION. Section 17. Refunding obligations. The
16 board may provide for the issuance of refunding obligations
17 for refunding any obligations then outstanding that have
18 been issued under [sections 1 through 28], including the
19 payment of any redemption of the obligations. The issuance
20 of obligations, the maturities and other details, the rights
21 of the holders, and the rights, duties, and obligations of
22 the authority are governed by the appropriate provisions of
23 [sections 1 through 28] that relate to the issuance of
24 obligations. The proceeds of refunding obligations may be
25 applied to the purchase, redemption, or payment of

1 outstanding obligations. Pending the application of the
2 proceeds of refunding obligations and other available funds
3 to the payment of principal, accrued interests, and any
4 redemption premium on the obligations being refunded and, if
5 permitted in the resolution authorizing the issuance of the
6 refunding obligations or in the trust agreement securing
7 them, to the payment of interest on refunding obligations
8 and expenses in connection with refunding, the proceeds may
9 be invested in such securities as the board considers
10 appropriate.

11 NEW SECTION. Section 18. Tax exemption of bonds.
12 Bonds, notes, or other obligations issued by the board under
13 [sections 1 through 28] and their transfer and income
14 (including any profits made on their sale) are free from
15 taxation by the state or any political subdivision or other
16 instrumentality of the state, except for inheritance,
17 estate, and gift taxes. The board is not required to pay
18 recording or transfer fees or taxes on instruments recorded
19 by it.

20 NEW SECTION. Section 19. Project guaranty program.
21 (1) The board may guarantee and make commitments to
22 guarantee payment required by a loan, lease, or other credit
23 arrangement for any project funded under [sections 1 through
24 28] or under 90-5-101 through 90-5-112, upon such terms and
25 conditions as the board may prescribe in accordance with

1 [sections 1 through 28]. In administering the guaranty
 2 program, the board may require the payment of a fee or
 3 premium, establish application fees, and prescribe
 4 application, notification, contract and guaranty forms,
 5 rules, regulations, and guidelines.

6 (2) Guaranties by the board under [sections 1 through
 7 28] must:

8 (a) be made for a project which the board finds meets
 9 the policies and objectives of [sections 1 through 28];

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

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

14 (d) be in such principal amount, be in such form, and
 15 contain such terms and provisions with respect to payment of
 16 property insurance, repairs, alterations, taxes,
 17 assessments, delinquency charges, and default remedies as
 18 the board determines to be necessary.

19 (3) The board is authorized from time to time to enter
 20 into guaranties, insurance contracts, or any other
 21 agreements or contracts with respect to the economic
 22 development guaranty fund and any guaranteed loan lease or
 23 other credit agreement. Any such agreement or contract may
 24 contain terms and provisions necessary or desirable in
 25 connection with the guaranty program, subject to the

1 requirements established, including without limitation terms
 2 and provisions relating to loan documentation, review,
 3 approval procedures, origination and servicing rights and
 4 responsibilities, default obligations, procedures and
 5 obligations, and obligations with respect to guaranty
 6 contracts made under [sections 1 through 28].

7 (4) Any contract of guaranty made by the board under
 8 the authorization of [sections 1 through 28] must provide
 9 that claims payable thereunder must be paid from any amounts
 10 available in the economic development guaranty fund and from
 11 any amounts available under the terms of any applicable
 12 contract or agreement with the financial institution which
 13 originated the guaranteed loan. The obligation of the board
 14 to make payments under any such contract is limited solely
 15 to such sources and does not constitute a debt or liability
 16 of the state. Any guaranty contract and any rule,
 17 regulation, or guideline of the board implementing the
 18 guaranty program may contain such other terms, provisions,
 19 or conditions as the board considers necessary or
 20 appropriate, including without limitation those relating to
 21 the payment of guaranty premiums, the giving of notice,
 22 claim procedure, the sources of payment for claims, the
 23 priority of competing claims for payment, the release or
 24 termination of loan security and borrower liability, the
 25 timing of payment, the maintenance and disposition of

1 projects and the use of amounts received during periods of
 2 loan delinquency or upon default, and any other provision
 3 concerning the rights of insured parties or conditions to
 4 the payment of guaranty claims. Any premiums for the
 5 guarantee of loan payments under the provisions of [sections
 6 1 through 28] may be determined on such basis and be payable
 7 by such person in such amounts and at such times as the
 8 board determines, and the amount of the premium need not be
 9 uniform among the various loans, leases, or other credit
 10 agreements guaranteed.

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

23 (2) The amounts in the fund must be used to satisfy
 24 any claim resulting from a defaulted loan, lease, or other
 25 credit agreement. The amounts in the fund may also be used

1 for any other purpose prescribed by the board in accordance
 2 with guaranty contracts with financial institutions entered
 3 into pursuant to [sections 1 through 28], including without
 4 limitation the protection of the interest of the board in
 5 projects during periods of delinquency or upon default.

6 (3) The minimum reserve requirement for the economic
 7 development guaranty fund must be such amount as may be
 8 provided in an agreement, resolution, or indenture with the
 9 holders of bonds issued under [sections 1 through 28], but
 10 not in excess of the aggregate annual payments due under the
 11 loans, leases, or other credit agreements guaranteed by the
 12 board. No loan, lease, or other credit agreement may be
 13 guaranteed by the board if the amount of money available in
 14 the economic development guaranty fund would be less than
 15 the minimum reserve requirement.

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

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

6 **NEW SECTION.** Section 21. Adoption of rules. (1) The
7 board shall adopt rules to establish:

8 (a) procedures for soliciting and evaluating
9 applications ~~AND FOR NOTIFYING THE LOCAL GOVERNMENT OF THE~~
10 ~~APPLICATION FOR PURPOSES OF COMPLYING WITH [SECTION 26];~~ and

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

13 (i) the applicant's net worth;

14 ~~+++the--applicant's--inability--to--secure--adequate~~
15 ~~financing--from--other--sources--at--an--interest--rate--that--will~~
16 ~~allow--a--reasonable--prospect--for--repayment+~~

17 ~~++++)(III~~ the applicant's training and experience in
18 the industry involved in the proposed project;

19 ~~+++)(IIII~~ the applicant's prospects for succeeding in
20 the proposed project;

21 ~~+++)(IV)~~ the degree to which the new or increased
22 business resulting from the loan will meet the objectives of
23 [section 2]; and

24 ~~+++)(V)~~ any other factors the board may prescribe.

25 (2) The board shall adopt rules for the:

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

3 (b) approval, standards, and regulation of financial
4 institutions under [sections 1 through 28];

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

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

12 **NEW SECTION.** Section 22. Pledge of the state. In
13 accordance with the constitutions of the United States and
14 the state of Montana, the state pledges that it will not in
15 any way impair the obligations of any agreement between the
16 board and the holders of notes and bonds issued by the
17 board, including but not limited to an agreement to
18 administer a loan program financed by the issuance of bonds
19 and to employ a staff sufficient and competent for this
20 purpose.

21 **NEW SECTION.** Section 23. Credit of state not pledged.
22 Obligations issued under the provisions of [sections 1
23 through 28] do not constitute a debt, liability, obligation,
24 or pledge of the faith and credit of the state but are
25 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 24. 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 25. Bonds as legal investment. (1) Bonds issued by the board under the provisions of [sections 1 through 28] 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 5 through 28] 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 26. Procedure prior to financing projects. (1) The board may finance projects under [sections 1 through 28] only when it finds that:

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

(b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the COSI

OR 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 OR governmental insurer or guarantor, including but not limited to a guaranty by the board pursuant to [section 19]; 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), the--board--shall--conduct--hearings A HEARING MUST BE CONDUCTED in the following manner:

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

(b) --10%--of--the--population--of--the--city--or--county--or--25 persons, whichever is less, may petition for a hearing at the local level or MUST BE NOTIFIED; AND THE CITY AND

COUNTY MUST, WITHIN 14 DAYS AFTER RECEIPT OF THE NOTICE, MUST ADVISE NOTIFY THE BOARD IF IT ELECTS TO CONDUCT THE HEARING; OR

(c)(B) If no request for a local hearing is received, the board may hold the hearing in Helena 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.

(d)(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 27. 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 28. Annual audit. ~~(1)~~ 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.

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

NEW SECTION. Section 29. 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 INCLUDE AT LEAST ONE PERSON REPRESENTING EACH OF THE FOLLOWING: THE FINANCIAL COMMUNITY, SMALL BUSINESS, AGRICULTURE, ORGANIZED LABOR, AND THE GENERAL PUBLIC 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 30].

NEW SECTION. Section 30. 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 31. 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;

1 (2) have a seal;

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

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

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

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

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

25 (8) accept services, appropriations, gifts, grants,

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

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

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

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

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

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

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

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

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

1 kind, subject to any agreement with bondholders and
2 noteholders;

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

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

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

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

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

24 ~~(21) lend money to the economic development board to~~
25 ~~establish the Montana economic development guaranty fund~~

1 created_by_[section_20]."

2 NEW_SECTION. Section 32. Severability. If a part of
3 this act is invalid, all valid parts that are severable from
4 the invalid part remain in effect. If a part of this act is
5 invalid in one or more of its applications, the part remains
6 in effect in all valid applications that are severable from
7 the invalid applications.

8 NEW_SECTION. Section 33. Effective date. This act is
9 effective on passage and approval.

10 NEW_SECTION. Section 34. Coordination instruction.
11 (1) If ____ Bill No. ____ [LC 557], including the section of
12 that bill creating the Montana economic development board,
13 is passed and approved, the board created in this act is the
14 same board as created in ____ Bill No. ____ [LC 557]. The
15 code commissioner is instructed to note this and codify
16 accordingly.

17 (2) If section 17 of HB 100 is passed and approved,
18 the economic development oversight committee has full
19 oversight of the implementation of this act.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 700

3 House Select Committee on Economic Development

1 be held to determine whether a proposed project is in the
2 public interest.4
5 A statement of intent is required for House Bill 700
6 because it provides rulemaking authority for the Montana
7 economic development board in Section 21 of the bill.8 It is the intention of the legislature that in
9 implementing the rulemaking provisions of the bill, the
10 board will examine the procedures used in other states to
11 take advantage of proven methods of soliciting and reviewing
12 applications for loans. It is further the intention of the
13 legislature that the board will maintain close contact and
14 solicit the opinions of the investment businesses in Montana
15 and the financial institutions of the state. It is further
16 the intention of the legislature that in the examination of
17 the rules provided for assessment of a collection of fees in
18 connection with its programs, the board shall make a
19 concerted effort to consider not only the needs of the
20 board, but the needs of the potential borrowers of the state
21 and the general need for capital investment in Montana.
22 Where possible, the board shall use proven methods of
23 operation which have been provided through the experience of
24 other boards in the state and the experience of other
25 states. The rules should also provide for a local hearing to

HOUSE BILL NO. 700

INTRODUCED BY FABREGA, MAZUREK, CRIPPEN, FAGG, VINCENT,
KEMMIS, METCALF, HARPER, DARKO, RAMIREZ, SCHYE, ASAY,
HARRINGTON, VINGER, NEUMAN, VAN VALKENBURG, HANSEN, TOME
BY REQUEST OF THE GOVERNOR'S OFFICE

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

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

NEW SECTION. Section 1. Short title. [Sections 1
through 28] shall be known and may be cited as the "Montana
Economic Development Bond Act of 1983".

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

development.

(2) The legislature finds that:

(a) a vigorous, diversified, and growing economy is
the basic source of job opportunities;

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

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

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

(1) "Board" means the Montana economic development
board created in [section 29].

(2) "Bond" means any bond, note, debenture, interim
certificate, or other evidence of financial indebtedness
issued by the board pursuant to [sections 1 through 28].

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

(4) "Financial institution" means any bank, savings and loan association, credit union, development credit 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) "LOCAL GOVERNMENT" MEANS THE CITY IN WHICH THE PROJECT IS LOCATED, IF THE PROJECT IS LOCATED WITHIN AN INCORPORATED MUNICIPALITY, OR THE COUNTY IF THE PROJECT IS LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF AN INCORPORATED MUNICIPALITY.~~

~~(5)(6)~~ "Project" means a project as defined in 90-5-101.

~~(6)(7)~~ "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 4. 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 28];

(4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under [sections 1 through 28];

(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 28];

(8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 28];

(9) sell, purchase, or insure loans to finance the

1 costs of projects;

2 (10) accept services, appropriations, gifts, grants,

3 bequests, and devises and utilize or dispose of them in

4 carrying out [sections 1 through 28];

5 (11) enter into agreements or other transactions with a

6 federal agency, an agency or instrumentality of the state, a

7 municipality, a private organization, or any other entity or

8 organization in carrying out [sections 1 through 28];

9 (12) with regard to property:

10 (a) acquire real or personal property or any right,

11 interest, or easement therein by gift, purchase, transfer,

12 foreclosure, lease, or otherwise;

13 (b) hold, sell, assign, lease, encumber, mortgage, or

14 otherwise dispose of such property;

15 (c) hold, sell, assign, or otherwise dispose of any

16 lease, mortgage, or loan owned by it or in its control or

17 custody;

18 (d) release or relinquish any right, title, claim,

19 interest, easement, or demand, however acquired, including

20 any equity or right of redemption;

21 (e) make any disposition by public or private sale,

22 with or without public bidding;

23 (f) commence any action to protect or enforce any

24 right conferred upon it by any law, mortgage, contract, or

25 other agreement;

1 (g) bid for and purchase property at any foreclosure

2 or other sale or acquire or take possession of it in lieu of

3 foreclosure;

4 (h) operate, manage, lease, dispose of, and otherwise

5 deal with such property in any manner necessary or desirable

6 to protect its interests or the holders of its bonds or

7 notes, provided such action is consistent with any agreement

8 with such holders;

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

10 loans;

11 (14) provide ~~general---technical---services---in---the~~

12 ~~FINANCIAL~~ analysis, planning, design, ~~---processing~~

13 ~~construction, rehabilitation, and management of projects~~ AND

14 ~~TECHNICAL ASSISTANCE~~ where considered appropriate;

15 (15) consent, whenever it considers necessary or

16 desirable in fulfilling its purposes, to the modification of

17 the rate of interest, time, and payment of any installment

18 of principal, interest, security, or any other term of any

19 contract, lease agreement, loan agreement, mortgage,

20 mortgage loan, mortgage loan commitment, construction loan,

21 advance contract, or agreement of any kind, subject to any

22 agreement with bondholders and noteholders;

23 (16) collect reasonable interest, fees, and charges in

24 connection with making and servicing its lease agreements,

25 loan agreements, mortgage loans, notes, bonds, commitments,

1 and other evidences of indebtedness. Interest, fees, and
2 charges are limited to the amounts required to pay the costs
3 of the board, including operating and administrative
4 expenses and reasonable allowances for losses that may be
5 incurred.

6 (17) procure insurance or guaranties in amounts and in
7 the form the board considers desirable or necessary, from
8 any party, including a governmental agency, against any loss
9 in connection with its lease agreements, loan agreements,
10 mortgage loans, and other assets or property; and

11 (18) perform any other acts necessary and convenient to
12 carry out the purposes of the board and [sections 1 through
13 28].

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

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

22 (b) acquire, by construction, purchase, devise, gift,
23 lease, or any combination of methods, from financial
24 institutions, projects located in the state and lease such
25 projects to others for such rentals and upon such terms and

1 conditions as determined by the board; or

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

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

13 NEW SECTION. Section 6. Bonds and notes. (1) The
14 board may by resolution issue negotiable notes and bonds in
15 a principal amount as the board determines necessary to
16 provide sufficient funds for achieving any of its purposes,
17 including the payment of interest on notes and bonds of the
18 board, establishment of reserves to secure the notes and
19 bonds, including the reserve funds created under [section
20 15], and all other expenditures of the board incident to and
21 necessary or convenient to carry out [sections 1 through
22 28].

23 (2) The board may by resolution, from time to time,
24 issue notes to renew notes and bonds or to pay notes,
25 including interest, and whenever it considers refunding

1 expedient, refund any bonds by the issuance of new bonds,
2 whether or not the bonds to be refunded have matured, or
3 issue bonds partly to refund bonds outstanding and partly
4 for any of its other purposes.

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

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

1 determined by the board, and in a manner such that interest
2 on the bonds is either exempt from or subject to federal
3 income tax.

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

8 (6) The total amount of bonds outstanding at any one
9 time, except bonds as to which the board's obligations have
10 been satisfied and discharged by refunding or bonds for
11 which reserves for payment or other means of payment have
12 been provided, may not exceed \$25 million.

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

1 original notes were issued.

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

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

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

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

1 sale, the amounts, the maturities, the rate or rates of
2 interest, and such other terms and details of the notes as
3 considered appropriate by the board or the administrator in
4 the event of such delegation. The board in its discretion
5 but subject to the limitations contained in this section may
6 also provide in the resolution authorizing the issuance of
7 notes for:

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

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

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

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

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

1 and conditions as the board may authorize in the resolution
2 approving the same.

3 NEW SECTION. Section 8. Provisions of bond
4 resolutions. A resolution authorizing notes or bonds or any
5 issue thereof may contain provisions, which must be a part
6 of the contract or contracts with the holders thereof, as
7 to:

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

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

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

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

25 (5) limitations on the purpose for which the proceeds

1 of the sale of notes or bonds may be applied and the pledge
2 of the proceeds to secure the payment of the bonds or of any
3 issue thereof;

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

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

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

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

21 (10) defining the acts or omissions that shall
22 constitute a default in the obligations and duties of the
23 board to the holders of the notes or bonds and providing for
24 the rights and remedies of the holders of the notes or bonds
25 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 9. 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 10. 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 11. 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 12. 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 13. 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.

1 NEW SECTION. Section 14. Accounts. The board may
2 create funds and accounts necessary to complement IMPLEMENT
3 [sections 1 through 28]. The funds and accounts may include:

4 (1) a bond proceeds fund into which bond proceeds are
5 deposited;

6 (2) a common bond fund consisting of:

7 (a) a common debt service account;

8 (b) a capital reserve account as provided in [section
9 15]; and

10 (c) an operating account for defraying the operational
11 costs of the board; and

12 (3) other funds or accounts.

13 NEW SECTION. Section 15. Reserve funds and
14 appropriations. (1) The board may establish a capital
15 reserve account and pay into it any:

16 (a) funds appropriated and made available by the state
17 for the purpose of the account;

18 (b) proceeds of the sale of notes or bonds to the
19 extent provided in the resolutions or indentures of the
20 board authorizing their issuance; and

21 (c) other funds which may be available to the board
22 from any other source for the purpose of the account.

23 (2) All funds held in the capital reserve account must
24 be used solely for the payment of the principal of or
25 interest on the bonds secured in whole or in part by the

1 account or the sinking fund payments with respect to the
2 bonds, the purchase or redemption of the bonds, the payment
3 of interest on the bonds, or the payment of any redemption
4 premium required to be paid when the bonds are redeemed
5 prior to maturity. Funds in the account may not be withdrawn
6 at any time in an amount that reduces the account to an
7 amount less than the sum of minimum capital reserve
8 requirements established in the resolutions or indentures of
9 the board for the account except, with respect to bonds
10 secured in whole or in part by the account, for the purpose
11 of making payment, when due, of principal, interest,
12 redemption premiums, and sinking fund payments for the
13 payment of which other money pledged is not available. Any
14 income or interest earned by or incremental to the capital
15 reserve account due to its investment may be transferred to
16 other accounts of the board to an extent that does not
17 reduce the amount of the capital reserve account below the
18 sum of minimum capital reserve requirements for the account.

19 NEW SECTION. Section 16. Maintenance of capital
20 reserve account. (1) In order to assure the maintenance of
21 the capital reserve account, the chairman of the board
22 shall, on or before September 1 in each year preceding the
23 convening of the legislature, deliver to the governor a
24 certificate stating the sum, if any, required to restore the
25 capital reserve account to the minimum capital reserve

1 requirement. The governor shall include in the executive
2 budget submitted to the legislature the sum required to
3 restore the capital reserve account to the sum of minimum
4 capital reserve requirement. All sums appropriated by the
5 legislature shall be deposited in the capital reserve
6 account.

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

15 NEW SECTION. Section 17. Refunding obligations. The
16 board may provide for the issuance of refunding obligations
17 for refunding any obligations then outstanding that have
18 been issued under [sections 1 through 28], including the
19 payment of any redemption of the obligations. The issuance
20 of obligations, the maturities and other details, the rights
21 of the holders, and the rights, duties, and obligations of
22 the authority are governed by the appropriate provisions of
23 [sections 1 through 28] that relate to the issuance of
24 obligations. The proceeds of refunding obligations may be
25 applied to the purchase, redemption, or payment of

1 outstanding obligations. Pending the application of the
2 proceeds of refunding obligations and other available funds
3 to the payment of principal, accrued interests, and any
4 redemption premium on the obligations being refunded and, if
5 permitted in the resolution authorizing the issuance of the
6 refunding obligations or in the trust agreement securing
7 them, to the payment of interest on refunding obligations
8 and expenses in connection with refunding, the proceeds may
9 be invested in such securities as the board considers
10 appropriate.

11 NEW SECTION. Section 18. Tax exemption of bonds.
12 Bonds, notes, or other obligations issued by the board under
13 [sections 1 through 28] and their transfer and income
14 (including any profits made on their sale) are free from
15 taxation by the state or any political subdivision or other
16 instrumentality of the state, except for inheritance,
17 estate, and gift taxes. The board is not required to pay
18 recording or transfer fees or taxes on instruments recorded
19 by it.

20 NEW SECTION. Section 19. Project guaranty program.
21 (1) The board may guarantee and make commitments to
22 guarantee payment required by a loan, lease, or other credit
23 arrangement for any project funded under [sections 1 through
24 28] or under 90-5-101 through 90-5-112, upon such terms and
25 conditions as the board may prescribe in accordance with

1 [sections 1 through 28]. In administering the guaranty
2 program, the board may require the payment of a fee or
3 premium, establish application fees, and prescribe
4 application, notification, contract and guaranty forms,
5 rules, regulations, and guidelines.

6 (2) Guaranties by the board under [sections 1 through
7 28] must:

8 (a) be made for a project which the board finds meets
9 the policies and objectives of [sections 1 through 28];

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

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

14 (d) be in such principal amount, be in such form, and
15 contain such terms and provisions with respect to payment of
16 property insurance, repairs, alterations, taxes,
17 assessments, delinquency charges, and default remedies as
18 the board determines to be necessary.

19 (3) The board is authorized from time to time to enter
20 into guaranties, insurance contracts, or any other
21 agreements or contracts with respect to the economic
22 development guaranty fund and any guaranteed loan lease or
23 other credit agreement. Any such agreement or contract may
24 contain terms and provisions necessary or desirable in
25 connection with the guaranty program, subject to the

1 requirements established, including without limitation terms
2 and provisions relating to loan documentation, review,
3 approval procedures, origination and servicing rights and
4 responsibilities, default obligations, procedures and
5 obligations, and obligations with respect to guaranty
6 contracts made under [sections 1 through 28].

7 (4) Any contract of guaranty made by the board under
8 the authorization of [sections 1 through 28] must provide
9 that claims payable thereunder must be paid from any amounts
10 available in the economic development guaranty fund and from
11 any amounts available under the terms of any applicable
12 contract or agreement with the financial institution which
13 originated the guaranteed loan. The obligation of the board
14 to make payments under any such contract is limited solely
15 to such sources and does not constitute a debt or liability
16 of the state. Any guaranty contract and any rule,
17 regulation, or guideline of the board implementing the
18 guaranty program may contain such other terms, provisions,
19 or conditions as the board considers necessary or
20 appropriate, including without limitation those relating to
21 the payment of guaranty premiums, the giving of notice,
22 claim procedure, the sources of payment for claims, the
23 priority of competing claims for payment, the release or
24 termination of loan security and borrower liability, the
25 timing of payment, the maintenance and disposition of

1 projects and the use of amounts received during periods of
 2 loan delinquency or upon default, and any other provision
 3 concerning the rights of insured parties or conditions to
 4 the payment of guaranty claims. Any premiums for the
 5 guarantee of loan payments under the provisions of [sections
 6 1 through 28] may be determined on such basis and be payable
 7 by such person in such amounts and at such times as the
 8 board determines, and the amount of the premium need not be
 9 uniform among the various loans, leases, or other credit
 10 agreements guaranteed.

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

23 (2) The amounts in the fund must be used to satisfy
 24 any claim resulting from a defaulted loan, lease, or other
 25 credit agreement. The amounts in the fund may also be used

1 for any other purpose prescribed by the board in accordance
 2 with guaranty contracts with financial institutions entered
 3 into pursuant to [sections 1 through 28], including without
 4 limitation the protection of the interest of the board in
 5 projects during periods of delinquency or upon default.

6 (3) The minimum reserve requirement for the economic
 7 development guaranty fund must be such amount as may be
 8 provided in an agreement, resolution, or indenture with the
 9 holders of bonds issued under [sections 1 through 28], but
 10 not in excess of the aggregate annual payments due under the
 11 loans, leases, or other credit agreements guaranteed by the
 12 board. No loan, lease, or other credit agreement may be
 13 guaranteed by the board if the amount of money available in
 14 the economic development guaranty fund would be less than
 15 the minimum reserve requirement.

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

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

6 ~~NEW SECTION.~~ Section 21. Adoption of rules. (1) The
7 board shall adopt rules to establish:

8 (a) procedures for soliciting and evaluating
9 applications ~~AND FOR NOTIFYING THE LOCAL GOVERNMENT OF THE~~
10 ~~APPLICATION FOR PURPOSES OF COMPLYING WITH [SECTION 26];~~ and

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

13 (i) the applicant's net worth;
14 ~~+++the--applicant's--inability--to--secure--adequate~~
15 ~~financing--from--other--sources--at--an--interest--rate--that--will~~
16 ~~allow--a--reasonable--prospect--for--repayment;~~

17 ~~++++[III]~~ the applicant's training and experience in
18 the industry involved in the proposed project;

19 ~~+++[IIII]~~ the applicant's prospects for succeeding in
20 the proposed project;

21 ~~++[IV]~~ the degree to which the new or increased
22 business resulting from the loan will meet the objectives of
23 [section 2]; and

24 ~~++[V]~~ any other factors the board may prescribe.

25 (2) The board shall adopt rules for the:

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

3 (b) approval, standards, and regulation of financial
4 institutions under [sections 1 through 28];

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

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

12 ~~NEW SECTION.~~ Section 22. Pledge of the state. In
13 accordance with the constitutions of the United States and
14 the state of Montana, the state pledges that it will not in
15 any way impair the obligations of any agreement between the
16 board and the holders of notes and bonds issued by the
17 board, including but not limited to an agreement to
18 administer a loan program financed by the issuance of bonds
19 and to employ a staff sufficient and competent for this
20 purpose.

21 ~~NEW SECTION.~~ Section 23. Credit of state not pledged.
22 obligations issued under the provisions of [sections 1
23 through 28] do not constitute a debt, liability, obligation,
24 or pledge of the faith and credit of the state but are
25 payable solely from the revenues or assets of the board. An

1 obligation issued under this part must contain on the face
2 thereof a statement to the effect that the state of Montana
3 is not liable on the obligation, the obligation is not a
4 debt of the state, and neither the faith and credit nor the
5 taxing power of the state is pledged to the payment of the
6 principal or interest on the obligation.

7 NEW SECTION. Section 24. Taxation of projects. (1)
8 Notwithstanding the fact that title to a project may be in
9 the board, such projects are subject to taxation to the same
10 extent, in the same manner, and under the same procedures as
11 privately owned property in similar circumstances if such
12 projects are leased to or held by private interests on both
13 the assessment date and the date the levy is made in that
14 year. Such projects are not subject to taxation in any year
15 if they are not leased to or held by private interests on
16 both the assessment date and the date the levy is made in
17 that year.

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

23 NEW SECTION. Section 25. Bonds as legal investment.
24 (1) Bonds issued by the board under the provisions of
25 [sections 1 through 28] are securities in which all funds

1 may be legally and properly invested, including capital in
2 the control of or belonging to:

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

5 (b) insurance companies;

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

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

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

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

18 NEW SECTION. Section 26. Procedure prior to financing
19 projects. (1) The board may finance projects under [sections
20 1 through 28] only when it finds that:

21 (a) the financing is in the public interest and is
22 consistent with the legislative purposes and findings set
23 forth in [section 2];

24 (b) the financing to be provided by the board for a
25 project does not exceed either \$800,000 or 90% of the COSI

1 OR appraised value of the project, whichever is less;

2 (c) a financial institution will participate in

3 financing the project, either directly or through a letter

4 of credit, to the extent of at least 10% of the financing to

5 be provided by the board;

6 (d) the financing for the project is insured or

7 guaranteed in whole or in part by a private OR governmental

8 insurer or guarantor, including but not limited to a

9 guaranty by the board pursuant to [section 19]; and

10 (e) adequate provision is made in the loan agreement,

11 lease, or other credit arrangement regarding a project or

12 projects being financed to provide for payment of debt

13 service on bonds of the board issued to finance such project

14 or projects, to create and maintain reserves therefor, and

15 to meet all costs and expenses of issuing and servicing the

16 bonds.

17 (2) In order to make the findings as described in

18 subsection (1)(A), the--board--shall--conduct--hearings A

19 HEARING MUST BE CONDUCTED in the following manner:

20 (a) the city or county in which the project will be

21 located may--request--that--the--board--hold--a--hearing--if--it

22 feels--such--a--hearing--is--appropriate;

23 ~~(b) 10% of the population of the city or county or 25~~

24 ~~persons, whichever is less, may petition for a hearing at~~

25 ~~the least ten or~~ MUST BE NOTIFIED; AND THE CITY AND

1 COUNTY MUST, WITHIN 14 DAYS AFTER RECEIPT OF THE NOTICE,

2 MUST ADVISE NOTICE THE BOARD IF IT ELECTS TO CONDUCT THE

3 HEARING; OR

4 ~~(c)(B)~~ if no request for a local hearing is received,

5 the board may hold the hearing in Helena at a time and place

6 it prescribes.

7 (3) IF THE HEARING REQUIRED BY SUBSECTION (2) IS

8 CONDUCTED BY A LOCAL GOVERNMENT, THE GOVERNING BODY OF THE

9 LOCAL GOVERNMENT MUST NOTIFY THE BOARD OF ITS DETERMINATION

10 OF WHETHER THE PROJECT IS IN THE PUBLIC INTEREST WITHIN 14

11 DAYS OF THE COMPLETION OF THE PUBLIC HEARING.

12 ~~(3)(4)~~ When a hearing is required either locally or at

13 the state level, notice must be given, at least once a week

14 for 3 weeks prior to the date set for the hearing, by

15 publication in a newspaper of general circulation in the

16 city or county where the hearing will be held. The notice

17 must include the time and place of the hearing; the general

18 nature of the project; the name of the lessee, borrower, or

19 user of the project; and the estimated cost of the project.

20 NEW SECTION. Section 27. Validity of pledge. Any

21 pledge made by the board is valid and binding from the time

22 the pledge is made. Revenue, money, or property pledged and

23 received by the board is immediately subject to the lien of

24 the pledge without any physical delivery or further act. The

25 lien of any pledge is valid and binding against all parties

1 having claims of any kind, whether in tort, contract, or
2 otherwise, against the board, irrespective of whether such
3 parties have notice thereof. Neither the resolution nor any
4 other instrument by which a pledge is created is required to
5 be recorded.

6 NEW SECTION. Section 28. Annual audit. ~~(1)~~ The
7 board's books and records must be audited at least once each
8 fiscal year ~~BY OR AT THE DIRECTION OF THE LEGISLATIVE~~
9 ~~AUDITOR. THE ACTUAL COSTS OF THE AUDIT SHALL BE PAID FROM~~
10 ~~THE BOARD'S FUNDS.~~

11 ~~(2) The legislative auditor may conduct an audit at~~
12 ~~any time upon the request of the legislative audit~~
13 ~~committee.~~

14 NEW SECTION. Section 29. Montana economic development
15 board. (1) There is a Montana economic development board.

16 (2) The board consists of seven members, who shall be
17 appointed by the governor as prescribed in 2-15-124. The
18 board must ~~be broadly representative of the state seeking~~
19 ~~to balance professional expertise and public interest and~~
20 ~~accountability include at least one person representing each~~
21 ~~of the following: the financial community, small business,~~
22 ~~agriculture, organized labor, and the general public~~ BE
23 BROADLY REPRESENTATIVE OF THE STATE SEEKING TO BALANCE
24 PROFESSIONAL EXPERTISE AND PUBLIC INTEREST AND
25 ACCOUNTABILITY INCLUDE AT LEAST ONE PERSON REPRESENTING EACH

1 OF THE FOLLOWING:

2 (A) THE FINANCIAL COMMUNITY;

3 (B) SMALL BUSINESS;

4 (C) AGRICULTURE; AND

5 (D) LABOR.

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

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

11 (5) The board is allocated to the department of
12 commerce for administrative purposes only as provided in
13 2-15-121. The board has authority over its own personnel as
14 provided in [section 30].

15 NEW SECTION. Section 30. Meetings and acts of the
16 board and personnel. (1) All meetings of the board are open
17 to the public.

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

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

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

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

3 Section 31. Section 90-6-104, MCA, is amended to read:
4 "90-6-104. General powers of the board. The board may:

5 (1) sue and be sued;

6 (2) have a seal;

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

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

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

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

25 (7) enter into agreements or other transactions with,

1 and accept grants and the cooperation of, any governmental
2 agency in furtherance of this part, including but not
3 limited to the development, leasing, maintenance, operation,
4 and financing of any housing development;

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

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

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

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

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

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

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

25 (15) consent, whenever it deems it necessary or

1 desirable in fulfilling its purposes, to the modification of
2 the rate of interest, time, and payment of any installment
3 of principal or interest, security, or any other term of any
4 contract, mortgage, mortgage loan, mortgage loan commitment,
5 construction loan, advance contract, or agreement of any
6 kind, subject to any agreement with bondholders and
7 noteholders;

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

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

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

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

25 (20) develop special programs for housing developments

1 for veterans of the armed forces of the United States who
2 are unable to acquire safe and sanitary housing through
3 lending institutions by conventional means; and

4 ~~(2) lend money to the economic development board to~~
5 ~~establish the Montana economic development guaranty fund~~
6 ~~created by [section 20]."~~

7 NEW SECTION. Section 32. Severability. If a part of
8 this act is invalid, all valid parts that are severable from
9 the invalid part remain in effect. If a part of this act is
10 invalid in one or more of its applications, the part remains
11 in effect in all valid applications that are severable from
12 the invalid applications.

13 NEW SECTION. Section 33. Effective date. This act is
14 effective on passage and approval.

15 NEW SECTION. Section 34. Coordination instruction.
16 (1) If ____ Bill No. ____ [LC 557], including the section of
17 that bill creating the Montana economic development board,
18 is passed and approved, the board created in this act is the
19 same board as created in ____ Bill No. ____ [LC 557]. The
20 code commissioner is instructed to note this and codify
21 accordingly.

22 (2) If section 17 of HB 100 is passed and approved,
23 the economic development oversight committee has full
24 oversight of the implementation of this act.

-End-