

HOUSE BILL NO. 721

INTRODUCED BY WALLIN, FAGG, NORDTVEDT,
ECK, WINSLOW, FABREGA, VINCENT, BOYLAN,
JACOBSON, KEATING, TOWE, PAVLOVICH,
BARDANOUVE, PHILLIPS

IN THE HOUSE

February 11, 1983	Introduced and referred to Committee on Human Services.
February 14, 1983	Rereferred 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.
	Considered correctly engrossed.
	Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on State Administration.
March 12, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 15, 1983	Second reading, concurred in.

March 17, 1983

Third reading, concurred in.
Ayes, 48; Noes, 0.

IN THE HOUSE

March 17, 1983

Returned to House with
amendments.

March 31, 1983

Second reading, amendments
concurred in.

April 1, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

April 6, 1983

Correctly enrolled.

April 7, 1983

Signed by Speaker.

April 9, 1983

Signed by President.

April 12, 1983

Delivered to Governor.

April 15, 1983

Returned from Governor with
recommended amendments.

April 18, 1983

Second reading, Governor's
amendments concurred in.

Third reading, Governor's
amendments concurred in.

IN THE SENATE

April 19, 1983

Governor's amendments
transmitted to Senate.

April 20, 1983

Second reading, Governor's
amendments concurred in.

April 21, 1983

Third reading, Governor's
amendments concurred in.

IN THE HOUSE

April 21, 1983

Returned to House. Sent to
enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *721*
 2 INTRODUCED BY *Wesley E. Smith, Ed. Windsor*
 3 *Vincent* *Jeffrey J. Jorgensen* *Leahy* *Two*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA

5 HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH
 6 INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND
 7 EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS
 8 PROJECTS."

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

11 Section 1. Montana health facility authority. (1)
 12 There is a Montana health facility authority.

13 (2) The authority consists of seven members appointed
 14 by the governor as prescribed in 2-15-124. The members must
 15 be residents of this state. At least one of the members
 16 must currently be or formerly have been a trustee, director,
 17 comptroller, or other employee of a public or nonprofit
 18 hospital, knowledgeable in hospital and health care
 19 construction and financing. At least one member must be a
 20 person experienced in and having a favorable reputation for
 21 skill, knowledge, and experience in the field of state and
 22 municipal finance. At least one member must be a person
 23 experienced in and having a favorable reputation for skill,
 24 knowledge, and experience in the field of health facility
 25 architecture. In making appointments, the governor shall

1 take into consideration nominees recommended to him for
 2 appointment by professional organizations of hospitals,
 3 long-term care facilities, investment banking, and
 4 architects.

5 (3) The members must be appointed for 5-year staggered
 6 terms. Any member is eligible for reappointment. The
 7 governor shall fill any vacancy for the remainder of any
 8 unexpired term. Any member of the authority may be removed
 9 by the governor for misfeasance, malfeasance, willful
 10 neglect of duty, or other cause, after notice and a public
 11 hearing unless such notice or hearing is expressly waived in
 12 writing.

13 (4) The authority is allocated to the department of
 14 commerce for administrative purposes only as provided in
 15 2-15-121.

16 Section 2. Short title. [Sections 2 through 26] may be
 17 cited as the "Montana Health Facility Authority Act".

18 Section 3. Definitions. As used in [sections 2 through
 19 26], unless the context requires otherwise, the following
 20 definitions apply:

21 (1) "Authority" means the Montana health facility
 22 authority created in [section 1].

23 (2) "Costs" means costs allowed under [section 5].

24 (3) "Health facility" means any facility provided for
 25 in [section 4].

(4) "Health institution" means any private nonprofit hospital, corporation, or institution or public hospital or institution authorized to provide or operate a health facility in this state.

(5) "Participating health institution" means a health institution that undertakes the financing, refunding, or refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of [sections 2 through 26].

(6) "Refinancing of outstanding obligations" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a participating health institution incurred to finance or aid in financing a lawful purpose of such health institution not financed pursuant to [sections 2 through 26] that would constitute a facility had it been undertaken and financed by the authority, or consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was incurred.

(7) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Section 4. Eligible health facility. An eligible

health facility includes a structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility; laboratory; laundry; nurses', doctors', or interns' residence; administration building; research facility; maintenance, storage, or utility facility; auditorium; dining hall; food service and preparation facility; mental and physical health care facility; dental care facility; nursing school; medical teaching facility; or other structure or facility related to any of the foregoing or required or useful for the operation of a health facility. These related facilities include offices, parking lots and garages, and other supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site or sites for any of the foregoing. An eligible health facility does not include such items as food, fuel, supplies, or other items that are customarily considered as current operating charges. An eligible health facility does not include any property used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

Section 5. Allowable costs. Costs eligible for financing or refinancing under [sections 2 through 26]

1 include:

2 (1) the total of all reasonable or necessary costs
3 incidental to the acquisition, construction, reconstruction,
4 repair, alteration, equipment, enlargement, and improvement
5 of an eligible health facility and the acquisition of all
6 real and personal property interests necessary or useful in
7 connection with the facility and all other undertakings
8 which the authority considers reasonable or necessary for
9 the development of the facility;

10 (2) the cost of demolishing or removing any building
11 or structure on land so acquired; the cost of acquiring any
12 land to which such building or structure may be moved; the
13 cost of all machinery and equipment, financing charges,
14 interest prior to and during construction and, if judged
15 advisable by the authority, for a period after completion of
16 such construction; the cost of financing the facility,
17 including interest on bonds and notes issued by the
18 authority to finance the facility;

19 (3) reserves for principal and interest and for
20 extensions, enlargements, additions, and improvements,
21 including without limitation the cost of studies and
22 surveys;

23 (4) the costs for land title and mortgage guaranty
24 policies;

25 (5) the costs of plans, specifications, and

1 architectural and engineering services;

2 (6) the costs of legal, organization, marketing, or
3 other special services;

4 (7) the costs of financing, acquisition, demolition,
5 construction, equipment, and site development of new and
6 rehabilitated buildings; and

7 (8) the costs of rehabilitation, reconstruction,
8 repair, or remodeling of existing buildings; and

9 (9) all other expenses necessary and incidental to the
10 construction and acquisition of the facility, the financing
11 of such construction, and the acquisition and placing of the
12 facility into operation.

13 Section 6. Quorum -- mode of action -- expenses. Four
14 members of the authority constitute a quorum for the purpose
15 of conducting business. Action may be taken by the
16 authority upon the affirmative vote of at least four of its
17 members. No vacancy in the membership of the authority
18 impairs the right of a quorum to exercise all the rights and
19 perform all the duties of the authority. Each meeting of
20 the authority for any purpose must be open to the public.
21 Notice of meetings must be as provided in the bylaws of the
22 authority. Resolutions need not be published or posted.
23 Members of the authority may receive no compensation for
24 services but are entitled to necessary expenses, as provided
25 in 2-18-501 through 2-18-503, incurred in the discharge of

1 their duties.

2 Section 7. Powers of authority. The authority may:

3 (1) sue and be sued;

4 (2) have a seal;

5 (3) adopt all procedural and substantive rules

6 necessary for the administration of [sections 2 through 26];

7 (4) issue bonds or incur other debt as described in
8 [sections 2 through 26], including the issuance of notes or
9 refunding bonds;

10 (5) invest any funds not required for immediate use,
11 subject to any agreements with its bondholders and
12 noteholders, as provided in Title 17, chapter 6, except that
13 all investment income from funds invested by the authority,
14 less the cost for investment, must be deposited in the bond
15 proceeds fund;

16 (6) contract in its own name for the investment of
17 funds, borrowing of funds, or any other purposes it
18 considers appropriate to carry out the purposes of [sections
19 2 through 26];

20 (7) participate with any financial institution in the
21 purchase or guarantee of any loan or obligation;

22 (8) issue bond anticipation notes or any other
23 anticipatory financial obligations to secure funding of
24 eligible facilities;

25 (9) enter into agreements or make advance commitments

1 to insure repayments required by loan agreements made by a
2 lender. Such agreements are subject to terms and conditions
3 established by the authority.

4 (10) sell, purchase, or insure loans to finance the
5 costs of eligible facilities;

6 (11) accept gifts, grants, or loans from a federal
7 agency, an agency or instrumentality of the state, a
8 municipality, or any other source;

9 (12) enter into contracts or other transactions with a
10 federal agency, an agency or instrumentality of the state, a
11 municipality, a private organization, or any other entity
12 consistent with the exercise of any power under [sections 2
13 through 26];

14 (13) with regard to property:

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

18 (b) hold, sell, assign, lease, encumber, mortgage, or
19 otherwise dispose thereof;

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

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

25 (e) make any disposition by public or private sale.

1 with or without public bidding;

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

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

4 other agreement;

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

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

7 foreclosure; and

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

9 deal with such property in any manner necessary or desirable

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

11 notes if such action is consistent with any agreement with

12 such holders;

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

14 loans;

15 (15) provide general technical services in the

16 analysis, planning, design, processing, construction,

17 rehabilitation, and management of eligible health facilities

18 whenever considered appropriate;

19 (16) consent, whenever it considers necessary or

20 desirable in fulfilling its purposes, to the modification of

21 the rate of interest, time, or payment of any installment of

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

23 contract, lease agreement, loan agreement, mortgage,

24 mortgage loan, mortgage loan commitment, construction loan,

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

1 agreement with bondholders and noteholders;

2 (17) collect reasonable interest, fees, and charges

3 from participating institutions in connection with making

4 and servicing its lease agreements, loan agreements,

5 mortgage loans, notes, bonds, commitments, and other

6 evidences of indebtedness. Interest, fees, and charges are

7 limited to the amounts required to pay the costs of the

8 authority, including operating and administrative expenses

9 and reasonable allowances for losses that may be incurred.

10 (18) perform any other acts necessary and convenient to

11 carry out the purposes of [sections 2 through 26].

12 Section 8. Restriction on operating facility --

13 leases. (1) The authority may not operate an eligible health

14 facility as a business other than as a lessee or lessor.

15 Any lease of a facility must be for a term not less than the

16 longest maturity of any bonds issued to finance the facility

17 or a portion thereof. The lease must provide for rentals

18 adequate to pay the principal and interest due on bonds and

19 to create and maintain such reserves and accounts for

20 depreciation as the authority determines necessary.

21 (2) The lease may contain terms and conditions that

22 the authority considers proper. The lease may be terminated

23 upon failure of the facility to comply with any obligation

24 under the lease. The lease may include a renewal or an

25 option to purchase provision upon such terms or conditions

1 as the authority considers desirable.

2 (3) Upon payment of all indebtedness incurred by the
3 authority for financing a facility, the authority may convey
4 any or all of the facility to the lessee, with or without
5 consideration.

6 Section 9. Staff of authority. The authority may
7 employ or contract for any professional staff or consultants
8 necessary and fix their compensation.

9 Section 10. Loan limitation. No loan made by the
10 authority may exceed the total cost of the eligible health
11 facility being financed as such cost is determined by the
12 participating institution and approved by the authority.

13 Section 11. Agent of the authority. The authority may
14 designate a participating health institution as its agent
15 for determining the location and character of an eligible
16 health facility undertaken by that institution under the
17 provisions of [sections 2 through 26]. As agent, the
18 institution may acquire, construct, reconstruct, renovate,
19 replace, improve, maintain, repair, operate, lease, as
20 lessee or lessor, and enter into contracts for any and all
21 such purposes, including contracts for the management and
22 operation of the facility.

23 Section 12. Notes. The authority is authorized from
24 time to time to issue its negotiable notes for any corporate
25 purpose, including the payment of all or any part of the

1 cost of any facility, and renew from time to time any notes
2 by the issuance of new notes, whether the notes to be
3 renewed have or have not matured. The authority may issue
4 notes partly to renew notes or to discharge other
5 obligations then outstanding and partly for any other
6 purpose. The notes may be authorized, sold, executed, and
7 delivered in the same manner as bonds. Any resolution
8 authorizing notes of the authority or any issue thereof may
9 contain any provisions which the authority is authorized to
10 include in any resolution authorizing bonds of the
11 authority. The authority may include in its notes any
12 terms, covenants, or conditions that it is authorized to
13 include in any bonds. All notes must be payable from the
14 proceeds of bonds, renewal notes, the revenues of the
15 authority, or other money available therefor and not
16 otherwise pledged, subject only to any contractual rights of
17 the holders of any of its notes or other obligations then
18 outstanding.

19 Section 13. Bonds of the authority. (1) The authority
20 may borrow money and issue bonds, including but not limited
21 to bonds on which the principal and interest are payable:

22 (a) exclusively from the income, receipts, or other
23 money derived from an eligible health facility financed with
24 the proceeds of the bonds;

25 (b) exclusively from the income, receipts, or other

1 money derived from designated facilities, whether or not
2 they are financed in whole or in part with the proceeds of
3 the bonds; or

4 (c) from its income, receipts, other assets generally,
5 or a designated part or parts of them.

6 (2) Bonds must be authorized and dated and shall
7 mature as the authority may specify, except that no bond may
8 mature more than 40 years from the date of its issue. Bonds
9 shall bear interest at the rate or rates, be in the
10 denominations, be in the proper registered or bearer form,
11 be executed in the manner, be payable in the medium of
12 payment, at the place or places, and be subject to the terms
13 of redemption that the authority may provide.

14 (3) All bonds, regardless of form or character, are
15 negotiable instruments for all purposes of the Uniform
16 Commercial Code, subject to requirements as to registration.

17 (4) All bonds may be sold at public or private sale in
18 the manner, for the price or prices, and at the time or
19 times which the authority may determine.

20 (5) Before the issuance of any bonds, the authority
21 shall make provisions, by lease or other agreement,
22 regarding the facility or facilities being financed by the
23 issue of the bonds, for rentals or other considerations
24 sufficient, in the judgment of the authority, to:

25 (a) pay the principal of and interest on the bonds as

1 they become due;

2 (b) create and maintain the reserves therefor;

3 (c) meet all obligations in connection with the lease
4 or other agreement; and

5 (d) meet all costs necessary to service the bonds
6 unless the lease or agreement provides that the obligations
7 are to be met or costs are to be paid by a party other than
8 the authority.

9 (6) The authority may combine, for the purposes of a
10 single offering, bonds financing more than one facility
11 under [sections 2 through 26].

12 Section 14. Security of bondholders. (1) The payment
13 of the principal of and interest on any bonds issued under
14 [sections 2 through 26] must be secured by a pledge of the
15 revenues out of which such bonds are made payable.

16 (2) The principal of and interest on any bonds issued
17 under the authority of this part may be secured by:

18 (a) a mortgage covering all or any part of the
19 eligible health facility;

20 (b) a pledge of the lease or loan agreement relating
21 to such facility; or

22 (c) such other security device as may be considered
23 most advantageous by the authority.

24 (3) The proceedings under which the bonds are
25 authorized to be issued under the provisions of [sections 2

through 26] and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds, as the authority considers advisable. Such provisions may not be in conflict with the provisions of [sections 2 through 26], including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the facility covered by such proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of such facility;

(d) creation and maintenance of special funds from the revenues of such facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of [sections 2 through 26] and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and

performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder therefor. No breach of any such agreement may impose any pecuniary liability upon the authority.

Section 15. Purchase of bonds. The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

Section 16. Findings before issuance of bonds. The authority may not undertake to finance any eligible health facility unless, prior to the issuance of any bonds or

1 notes, the members find that:

2 (1) such facility will enable or assist a health
3 institution to fulfill its obligation to provide health
4 facilities; and

5 (2) such facility has been reviewed and approved by
6 the appropriate regional and state health planning boards.

7 Section 17. Trust agreement to secure bonds. In the
8 discretion of the authority, any bonds issued under
9 [sections 2 through 26] may be secured by a trust agreement
10 between the authority and a corporate trustee, which may be
11 any trust company or bank having the powers of a trust
12 company in Montana. The trust agreement or the resolution
13 providing for the issuance of such bonds may pledge or
14 assign the revenues to be received or proceeds of any
15 contract or contracts pledged and may convey or mortgage the
16 project or any portion thereof. The trust agreement or
17 resolution providing for the issuance of such bonds may
18 contain such provisions for protecting and enforcing the
19 rights and remedies of the bondholders as may be reasonable
20 and proper and not in violation of law, including
21 particularly such provisions as have been specifically
22 authorized to be included in any resolution of the authority
23 authorizing bonds. Any bank or trust company incorporated
24 under the laws of this state, which may act as depository of
25 the proceeds of bonds or of revenues or other money, may

1 furnish such indemnifying bonds or pledge such securities as
2 may be required by the authority. Any such trust agreement
3 may set forth the rights and remedies of the bondholders and
4 of the trustee or trustees and may restrict the individual
5 right of action by bondholders. In addition, any such trust
6 agreement or resolution may contain such other provisions as
7 the authority may consider reasonable and proper for the
8 security of the bondholders. All expenses incurred in
9 carrying out such trust agreement or resolution may be
10 treated as a part of the cost of the operation of an
11 eligible health facility.

12 Section 18. Credit of state not pledged. Obligations
13 issued under the provisions of [sections 2 through 26] do
14 not constitute a debt, liability, obligation, or pledge of
15 the faith and credit of the state but are payable solely
16 from the revenues or assets of the authority. An obligation
17 issued under [sections 2 through 26] must contain on the
18 face thereof a statement to the effect that the state of
19 Montana is not liable on the obligation, the obligation is
20 not a debt of the state, and neither the faith and credit
21 nor the taxing power of the state is pledged to the payment
22 of the principal of or the interest on the obligation.

23 Section 19. Exemption from taxation -- securities law.
24 (1) The authority performs a public function for the benefit
25 of the people of the state for the improvement of their

health and living conditions and is a public instrumentality of the state. Accordingly, the income or other revenues of the authority and all property owned by the authority and any bonds, notes, or other obligations issued under [sections 2 through 26], their transfer, and income therefrom, including any profit made on the sale thereof, are exempt at all times from all taxation in the state of Montana.

(2) Bonds issued by the authority 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.

Section 20. Necessary expenses -- fees. (1) All expenses of the authority incurred in carrying out the provisions of [sections 2 through 26] are payable solely from funds provided under the authority of [sections 2 through 26], and no liability may be incurred by the authority beyond the extent to which money has been provided under [sections 2 through 26], except for the purposes of meeting the necessary expenses of initial organization and operation and until such date as the authority derives money from funds provided under [sections 2 through 26]. The authority may borrow money for necessary expenses of organization and operation. Such borrowed money must be repaid within a reasonable time after the authority receives

funds provided for under [sections 2 through 26].

(2) When an application is made to the authority by any participating health institution for financial assistance to provide for its facilities, the application must be accompanied by an initial planning service fee in an amount determined by the authority. Such initial planning service fee must be included in the cost of the facilities to be financed and is not refundable by the authority, whether or not any application is approved. In addition to the initial fee, an annual planning service fee must be paid to the authority by each participating health institution in an amount determined by the authority. The annual planning service fee must be paid on such dates or in installments as may be satisfactory to the authority. The fees must be used for:

(a) necessary expenses to determine the need for facilities in the area concerned, and to that end the authority may utilize recognized voluntary and official health planning organizations and agencies at local, regional, and state levels;

(b) necessary administrative expenses; and

(c) reserves for anticipated future expenses.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm, partnership, association, or corporation for the furnishing

1 of services and data for use by the authority in determining
 2 the need for and location of any eligible health facility
 3 for which application is being made or for such other
 4 services or surveys as the authority considers necessary to
 5 carry out the purposes of [sections 2 through 26].

6 Section 21. Conveyance of title to institution. When
 7 the principal and interest on bonds issued by the authority
 8 to finance the cost of eligible health facilities or to
 9 refinance outstanding indebtedness of one or more
 10 participating health institutions, including any refunding
 11 bonds issued to refund and refinance such bonds, have been
 12 fully paid and retired or when adequate provision has been
 13 made to fully pay and retire the same and all other
 14 conditions of the resolution, lease, trust indenture, and
 15 mortgage or deed of trust or any other form of security
 16 arrangement, if any, authorizing and securing the same have
 17 been satisfied and the lien of the mortgage or deed of trust
 18 or any other form of security arrangement has been released
 19 in accordance with the provisions thereof, the authority
 20 shall promptly convey its interest in the facilities and any
 21 other facilities mortgaged or subject to deed of trust or
 22 any other form of security arrangement to secure the bonds
 23 to the participating health institution or institutions.

24 Section 22. Trust funds. All money received pursuant
 25 to [sections 2 through 26], whether as proceeds from the

1 sale of bonds, notes, or other obligations or as revenues or
 2 receipts, are trust funds to be held and applied solely as
 3 provided in [sections 2 through 26]. Any officer with whom
 4 or any bank or trust company with which such money is
 5 deposited shall act as trustee of the money and shall hold
 6 and apply it for the purposes of [sections 2 through 26],
 7 subject to such regulations as [sections 2 through 26] and
 8 the resolution authorizing the bonds, notes, or other
 9 obligations of any issue or the trust agreement securing the
 10 obligations may provide.

11 Section 23. Bonds as legal investment. (1) Bonds
 12 issued by the authority under the provisions of [sections 2
 13 through 26] are securities in which funds may be legally and
 14 properly invested, including capital in the control of or
 15 belonging to:

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

18 (b) insurance companies;

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

22 (d) personal representatives, public administrators,
 23 trustees, and other fiduciaries; and

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

25 (2) Bonds issued under [sections 2 through 26] are

1 securities that may properly and legally be deposited with
2 and received by any state or municipal officer or any agency
3 or municipality of the state for any purpose for which the
4 deposit of bonds or obligations of the state is authorized
5 by law.

6 Section 24. Pledge of the state. In accordance with
7 the constitutions of the United States and the state of
8 Montana, the state pledges that it will not in any way
9 impair the obligations of any agreement between the
10 authority and the holders of notes and bonds issued by the
11 authority, 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 Section 25. Validity of pledge. Any pledge made by the
16 authority is valid and binding from the time the pledge is
17 made. The revenue, money, or property pledged and received
18 by the authority is immediately subject to the lien of the
19 pledge without any physical delivery or further act. The
20 lien of any pledge is valid and binding against all parties
21 having claims of any kind, whether in tort, contract, or
22 otherwise, against the authority, irrespective of whether
23 such parties have notice thereof. Neither the resolution
24 nor any other instrument by which a pledge is created is
25 required to be recorded.

1 Section 26. Annual audit. (1) The authority's books
2 and records must be audited at least once each fiscal year.
3 (2) The legislative auditor may conduct an audit at
4 any time upon the request of the legislative audit
5 committee.

6 Section 27. Initial appointments to authority.
7 Notwithstanding [section 1], the members of the authority
8 first appointed by the governor shall serve for terms to be
9 designated by the governor and to expire on June 30 of the
10 respective year. The terms of two members shall expire in
11 1984, two in 1985, and one each in 1986, 1987, and 1988.

12 Section 28. Severability. If a part of this act is
13 invalid, all valid parts that are severable from the invalid
14 part remain in effect. If a part of this act is invalid in
15 one or more of its applications, the part remains in effect
16 in all valid applications that are severable from the
17 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 405-83

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 721 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 721 creates a 7 member Montana health facility authority with the power to issue tax exempt bonds to finance eligible health facilities.

ASSUMPTIONS:

- 1) Authority required to be self-supporting.
- 2) Authority may borrow and repay initial start-up costs.
- 3) Board will not hire staff, but use contracted professional services of accountants, attorneys, etc.
- 4) No estimate is made for size of bond issues or fees from bond issues.
- 5) Level of activity is unknown as there is no historical base.
- 6) Expenditure level will be based on level of activity.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>	<u>BIENNIUM TOTAL</u>
Revenue:			
Loan to be repaid from bond proceeds	<u>\$ 57,300</u>	<u>\$ 59,400</u>	<u>\$116,700</u>
Expenditures:			
Board	6,300	8,400	14,700
Contracted Services	36,000	36,000	72,000
Other Expenses	15,000	15,000	30,000
Total	<u>57,300</u>	<u>59,400</u>	<u>116,700</u>
Net Effect	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>

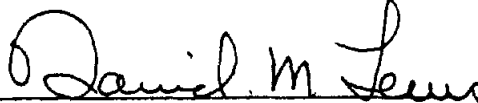
COMMENT:

No estimate is made for the size of bond issues that can be made by the authority. The bonds are not an obligation of the state.

TECHNICAL NOTE:

Bill does not specify account to which these revenues are to be deposited.

FISCAL NOTE 15:Q/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-19-83

STATE OF MONTANA

REQUEST NO. 521-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 721, 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 721, amended, creates a 7 member Montana health facility authority with the power to issue tax exempt bonds to finance eligible health facilities. The amended bill has an immediate effective date.

ASSUMPTIONS:

- 1) Authority required to be self-supporting.
- 2) Authority may borrow and repay initial start-up costs.
- 3) Board will not hire staff, but use contracted professional services of accountants, attorneys, etc.
- 4) No estimate is made for size of bond issues or fees from bond issues.
- 5) Level of activity is unknown as there is no historical base.
- 6) Expenditure level will be based on level of activity.
- 7) The board members will be appointed within 60 days of the effective date of the bill but the board will incur no expenses until FY 84.

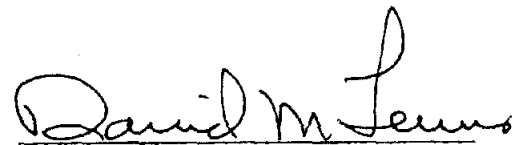
FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>	<u>BIENNIUM TOTAL</u>
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Other Expenses	15,000	15,000	30,000
Total	<u>57,300</u>	<u>59,400</u>	<u>116,700</u>
Net Effect	<u>\$ -0-</u>	<u>\$ -0-</u>	<u>\$ -0-</u>

COMMENT:

No estimate is made for the size of bond issues that can be made by the authority. The bonds are not an obligation of the state.

FISCAL NOTE 15:Q/2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

STATEMENT OF INTENT

HOUSE BILL 721

House Economic Development Committee

A statement of intent is required for this bill because it grants the Health Facility Authority the power to adopt rules to administer this chapter. The Legislature intends that these rules include:

- (1) procedural rules to govern the Authority;
- (2) procedures for assessing applications;
- (3) the establishment of fees to be charged by health institutions using the procedures of the authority; and
- (4) procedures for determining the eligibility of a facility.

The legislature declares that the purpose of this bill is health care cost containment. By making this bonding authority available, the legislature intends that health care costs will be contained by reducing the costs of facilities and equipment so that these savings may be passed on to consumers.

Approved by Comm. On Human Services

HOUSE BILL NO. 721

INTRODUCED BY WALLIN, FAGG, NORDTVEDT,
ECK, WINSLOW, FABREGA, VINCENT, BOYLAN,
JACOBSON, KEATING, TONE, PAVLOVICH,
BARDANOUVE, PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA
HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH
INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND
EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS
PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Montana health facility authority. (1)
There is a CREATED A PUBLIC BODY CORPORATE DESIGNATED AS THE
Montana health facility authority. THIS AUTHORITY IS
CONSTITUTED A PUBLIC INSTRUMENTALITY, AND ITS EXERCISE OF
THE POWERS CONFERRED BY [SECTIONS 2 THROUGH 26] SHALL BE
CONSIDERED AND HELD TO BE THE PERFORMANCE OF AN ESSENTIAL
PUBLIC FUNCTION.

(2) The authority consists of seven members appointed
by the governor as prescribed in 2-15-124. The members must
be residents of this state. At least one of the members
must currently be or formerly have been a trustee, director,
comptroller, or other employee of a public or nonprofit

hospitality--knowledgeable in hospital--and--health--care
construction--and--financing--At least one member must be a
person experienced in and having a favorable reputation for
skill--knowledge--and--experience in the field of state and
municipal finance--At least one member must be a person
experienced in and having a favorable reputation for skill
knowledge and experience in the field of health facility
architecture--in making appointments the governor shall
take into consideration nominees recommended to him for
appointment by professional organizations of hospital
long-term--care--facilities--investment--banking--and
architects

(3) The members must be appointed for 5-year staggered
terms--Any member is eligible for reappointment--The
governor shall fill any vacancy for the remainder of any
unexpired term--Any member of the authority may be removed
by the governor for misfeasance, malfeasance, or wilful
neglect of duty or other cause after notice and a public
hearing unless such notice or hearing is expressly waived in
writing

(4) The authority is allocated to the department of
commerce for administrative purposes only as provided in
2-15-121. THE BOARD MUST BE BROADLY REPRESENTATIVE OF THE
STATE, SEEKING TO BALANCE PROFESSIONAL EXPERTISE AND PUBLIC
ACCOUNTABILITY.

~~(1) 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 9].~~

Section 2. Short title. [Sections 2 through 26] may be cited as the "Montana Health Facility Authority Act".

Section 3. Definitions. As used in [sections 2 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in [section 1].

(2) "Costs" means costs allowed under [section 5].

(3) "Health facility" means any facility provided for in [section 4].

(4) "Health institution" means any private nonprofit hospital, corporation, or institution or public hospital or institution authorized to provide or operate a health facility in this state.

(5) "Participating health institution" means a health institution that undertakes the financing, refunding, or

refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of [sections 2 through 26].

(6) "Refinancing of outstanding obligations" means liquidation, with the proceeds of bonds or notes issued by the authority, of any indebtedness of a participating health institution ~~incurred to finance or aid in financing a lawful purpose of such health institution not financed pursuant to [sections 2 through 26] that would constitute a facility had it been undertaken and~~ financed by the authority, or consolidation of such indebtedness ~~with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was~~ incurred.

(7) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Section 4. Eligible health facility. ~~An eligible health facility includes a structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility; laboratory; laundry; nurses'; doctors'; or interns' residence; administration building; research facility; maintenance storage; or utility facility; auditorium; dining hall; food service; and preparation~~

~~facility; mental and physical health care facility; dental~~
~~care facility; nursing school; medical teaching facility; or~~
~~other structure or facility related to any of the foregoing~~
~~or required or useful for the operation of a health~~
~~facility. These related facilities include offices, parking~~
~~lots and garages, and other supporting service structures~~
~~and all necessary, useful, and related equipment,~~
~~furnishings, and appurtenances, and include, without~~
~~limitation, the acquisition, preparation, and development of~~
~~all lands and real and personal property necessary or~~
~~convenient as a site or sites for any of the foregoing. An~~
~~eligible health facility does not include such items as~~
~~food, fuel, supplies, or other items that are customarily~~
~~considered as current operating charges. An eligible health~~
~~facility does not include any property used or to be used~~
~~primarily for sectarian instruction or study or as a place~~
~~for devotional activities or religious worship. (1) ELIGIBLE~~
~~HEALTH FACILITY MEANS ANY STRUCTURE OR BUILDING USED AS A~~
~~HOSPITAL, CLINIC, NURSING HOME, OR OTHER HEALTH CARE~~
~~FACILITY AS DEFINED IN 50-5-101; CENTER FOR DEVELOPMENTALLY~~
~~DISABLED; CENTER FOR THE HANDICAPPED; CHEMICAL DEPENDENCY~~
~~TREATMENT CENTER; NURSING SCHOOL; MEDICAL TEACHING FACILITY;~~
~~LABORATORY; DENTAL CARE FACILITY; OR OTHER STRUCTURE OR~~
~~FACILITY RELATED TO ANY OF THE FOREGOING OR REQUIRED OR~~
~~USEFUL FOR THE OPERATION OF A HEALTH FACILITY BY A HEALTH~~

INSTITUTION. THESE RELATED FACILITIES INCLUDE SUPPORTING
 SERVICE STRUCTURES AND ALL NECESSARY, USEFUL, AND RELATED
 EQUIPMENT, FURNISHINGS, AND APPURTENANCES AND INCLUDE
 WITHOUT LIMITATION THE ACQUISITION, PREPARATION, AND
 DEVELOPMENT OF ALL LANDS AND REAL AND PERSONAL PROPERTY
 NECESSARY OR CONVENIENT AS A SITE FOR ANY OF THE FOREGOING.
 (2) AN ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE SUCH
 ITEMS AS FOOD, FUEL, SUPPLIES, OR OTHER ITEMS THAT ARE
 CUSTOMARILY CONSIDERED AS CURRENT OPERATING EXPENSES; AND
 ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE A STRUCTURE USED
 OR TO BE USED PRIMARILY FOR SECTARIAN INSTRUCTION OR STUDY
 OR AS A PLACE FOR DEVOTIONAL ACTIVITIES OR RELIGIOUS
 WORSHIP.

Section 5. Allowable costs. Costs eligible for
 financing or refinancing under [sections 2 through 26]
 include:

(1) the total of all reasonable or necessary costs
 incidental to the acquisition, construction, reconstruction,
 repair, alteration, equipment, enlargement, and improvement
 of an eligible health facility and the acquisition of all
 real and personal property interests necessary or useful in
 connection with the facility and all other undertakings
 which the authority considers reasonable or necessary for
 the development of the facility;

(2) the cost of demolishing or removing any building

or structure on land so acquired, the cost of acquiring any land to which such building or structure may be moved, the cost of all machinery and equipment, financing charges, interest prior to and during construction and, if judged advisable by the authority, for a period after completion of such construction, the cost of financing the facility, including interest on bonds and notes issued by the authority to finance the facility;

(3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;

(4) the costs for land title and mortgage guaranty policies;

(5) the costs of plans, specifications, and architectural and engineering services;

(6) the costs of legal, organization, marketing, or other special services;

(7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings; and

(8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and

(9) all other expenses necessary and incidental to the construction and acquisition of the facility, the financing

of such construction, and the acquisition and placing of the facility into operation.

Section 6. Quorum -- mode of action -- expenses. Four members of the authority constitute a quorum for the purpose of conducting business. Action may be taken by the authority upon the affirmative vote of at least four of its members. No vacancy in the membership of the authority impairs the right of a quorum to exercise all the rights and perform all the duties of the authority. Each meeting of the authority for any purpose must be open to the public. Notice of meetings must be as provided in the bylaws of the authority. Resolutions need not be published or posted. Members of the authority may receive no compensation for services but are entitled to necessary expenses, as provided in 2-18-501 through 2-18-503, incurred in the discharge of their duties.

Section 7. Powers of authority. The authority may:

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of [sections 2 through 26];

(4) issue bonds or incur other debt as described in [sections 2 through 26], including the issuance of notes or refunding bonds;

(5) invest any funds OBTAINED FROM THE ISSUANCE OF

1 ~~BONDS AND NOTES WHICH ARE~~ not required for immediate use,
 2 subject to any agreements with its bondholders and
 3 noteholders, as provided in Title 17, chapter 6, except that
 4 all investment income from funds invested by the authority,
 5 less the cost for investment, must be deposited in the bond
 6 proceeds fund;

7 (6) contract in its own name for the investment of
 8 funds, borrowing of funds, or any other purposes it
 9 considers appropriate to carry out the purposes of [sections
 10 2 through 26];

11 (7) participate with any financial institution in the
 12 purchase or guarantee of any loan or obligation;

13 (8) issue bond anticipation notes or any other
 14 anticipatory financial obligations to secure funding of
 15 eligible facilities;

16 (9) enter into agreements or make advance commitments
 17 to insure repayments required by loan agreements made by a
 18 lender. Such agreements are subject to terms and conditions
 19 established by the authority.

20 (10) sell, purchase, or insure loans to finance the
 21 costs of eligible facilities;

22 (11) accept gifts, grants, or loans from a federal
 23 agency, an agency or instrumentality of the state, a
 24 municipality, or any other source;

25 (12) enter into contract or other transactions with a

1 federal agency, an agency or instrumentality of the state, a
 2 municipality, a private organization, or any other entity
 3 consistent with the exercise of any power under [sections 2
 4 through 26];

5 (13) with regard to property:

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

9 (b) hold, sell, assign, lease, encumber, mortgage, or
 10 otherwise dispose thereof;

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

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

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

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

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

24 (h) operate, manage, lease, dispose of, and otherwise
 25 deal with such property in any manner necessary or desirable

1 to protect its interests or the holders of its bonds or
2 notes if such action is consistent with any agreement with
3 such holders;

4 (14) service, contract, and pay for the servicing of
5 loans;

6 (15) provide general technical services in the
7 analysis, planning, design, processing, construction,
8 rehabilitation, and management of eligible health facilities
9 whenever considered appropriate;

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

18 (17) collect reasonable interest, fees, and charges
19 from participating institutions in connection with making
20 and servicing its lease agreements, loan agreements,
21 mortgage loans, notes, bonds, commitments, and other
22 evidences of indebtedness. ~~THE INTEREST, FEES, AND CHARGES~~
23 ~~SHALL BE DEPOSITED TO AN EARMARKED REVENUE ACCOUNT TO THE~~
24 ~~CREDIT OF THE AUTHORITY.~~ Interest, fees, and charges are
25 limited to the amounts required to pay the costs of the

1 authority, including operating and administrative expenses
2 and reasonable allowances for losses that may be incurred.

3 (18) perform any other acts necessary and convenient to
4 carry out the purposes of [sections 2 through 26].

5 Section 8. Restriction on operating facility --
6 leases. (1) The authority may not operate an eligible health
7 facility as a business other than as a lessee or lessor.
8 ~~Any lease of a facility must be for a term not less than the~~
9 ~~longest maturity of any bonds issued to finance the facility~~
10 ~~or a portion thereof.~~ The lease must provide for rentals
11 adequate to pay the principal and interest due on bonds and
12 to create and maintain such reserves and accounts for
13 depreciation as the authority determines necessary.

14 (2) The lease may contain terms and conditions that
15 the authority considers proper. The lease may be terminated
16 upon failure of the facility to comply with any obligation
17 under the lease. The lease may include a renewal or an
18 option to purchase provision upon such terms or conditions
19 as the authority considers desirable.

20 (3) Upon payment of all indebtedness incurred by the
21 authority for financing a facility, the authority may convey
22 any or all of the facility to the lessee, with or without
23 consideration.

24 Section 9. Staff of authority. The authority may
25 employ or contract for any professional staff or consultants

1 necessary ~~and fix their compensation. SUCH EMPLOYMENT AND~~
 2 ~~CONTRACTING MUST BE DONE IN CONSULTATION WITH THE~~
 3 ~~DEPARTMENT.~~

4 Section 10. Loan limitation. No loan made by the
 5 authority may exceed the total cost of the eligible health
 6 facility being financed as such cost is determined by the
 7 participating institution and approved by the authority.

8 Section 11. Agent of the authority. The authority may
 9 designate a participating health institution as its agent
 10 for determining the location and character of an eligible
 11 health facility undertaken by that institution under the
 12 provisions of [sections 2 through 26]. As agent, the
 13 institution may acquire, construct, reconstruct, renovate,
 14 replace, improve, maintain, repair, operate, lease, as
 15 lessee or lessor, and enter into contracts for any and all
 16 such purposes, including contracts for the management and
 17 operation of the facility.

18 Section 12. Notes. The authority is authorized from
 19 time to time to issue its negotiable notes for any corporate
 20 purpose, including the payment of all or any part of the
 21 cost of any facility, and renew from time to time any notes
 22 by the issuance of new notes, whether the notes to be
 23 renewed have or have not matured. The authority may issue
 24 notes partly to renew notes or to discharge other
 25 obligations then outstanding and partly for any other

1 purpose. The notes may be authorized, sold, executed, and
 2 delivered in the same manner as bonds. Any resolution
 3 authorizing notes of the authority or any issue thereof may
 4 contain any provisions which the authority is authorized to
 5 include in any resolution authorizing bonds of the
 6 authority. The authority may include in its notes any
 7 terms, covenants, or conditions that it is authorized to
 8 include in any bonds. All notes must be payable from the
 9 proceeds of bonds, renewal notes, the revenues of the
 10 authority, or other money available therefor and not
 11 otherwise pledged, subject only to any contractual rights of
 12 the holders of any of its notes or other obligations then
 13 outstanding.

14 Section 13. Bonds of the authority. (1) The authority
 15 may borrow money and issue bonds ~~NOT IN EXCESS OF \$50~~
 16 ~~MILLION FOR ANY 2-YEAR PERIOD~~, including but not limited to
 17 bonds on which the principal and interest are payable:

18 (a) exclusively from the income, receipts, or other
 19 money derived from an eligible health facility financed with
 20 the proceeds of the bonds;

21 (b) exclusively from the income, receipts, or other
 22 money derived from designated facilities, whether or not
 23 they are financed in whole or in part with the proceeds of
 24 the bonds; or

25 (c) from its income, receipts, other assets generally,

1 or a designated part or parts of them.

2 (2) Bonds must be authorized and dated and shall
3 mature as the authority may specify, except that no bond may
4 mature more than 40 years from the date of its issue. Bonds
5 shall bear interest at the rate or rates, be in the
6 denominations, be in the proper registered or bearer form,
7 be executed in the manner, be payable in the medium of
8 payment, at the place or places, and be subject to the terms
9 of redemption that the authority may provide.

10 (3) All bonds, regardless of form or character, are
11 negotiable instruments for all purposes of the Uniform
12 Commercial Code, subject to requirements as to registration.

13 (4) All bonds may be sold at public or private sale in
14 the manner, for the price or prices, and at the time or
15 times which the authority may determine.

16 (5) Before the issuance of any bonds, the authority
17 shall make provisions, by lease or other agreement,
18 regarding the facility or facilities being financed by the
19 issue of the bonds, for rentals or other considerations
20 sufficient, in the judgment of the authority, to:

21 (a) pay the principal of and interest on the bonds as
22 they become due;

23 (b) create and maintain the reserves therefor;

24 (c) meet all obligations in connection with the lease
25 or other agreement; and

1 (d) meet all costs necessary to service the bonds
2 unless the lease or agreement provides that the obligations
3 are to be met or costs are to be paid by a party other than
4 the authority.

5 (5) The authority may combine, for the purposes of a
6 single offering, bonds financing more than one facility
7 under [sections 2 through 26].

8 Section 14. Security of bondholders. (1) The payment
9 of the principal of and interest on any bonds issued under
10 [sections 2 through 26] must be secured by a pledge of the
11 revenues out of which such bonds are made payable.

12 (2) The principal of and interest on any bonds issued
13 under the authority of this part may be secured by:

14 (a) a mortgage covering all or any part of the
15 eligible health facility;

16 (b) a pledge of the lease or loan agreement relating
17 to such facility; or

18 (c) such other security device as may be considered
19 most advantageous by the authority.

20 (3) The proceedings under which the bonds are
21 authorized to be issued under the provisions of [sections 2
22 through 26] and any mortgage given to secure the same,
23 including a mortgage given by the borrower or lessee, may
24 contain any agreements and provisions customarily contained
25 in instruments securing bonds, as the authority considers

advisable. Such provisions may not be in conflict with the provisions of [sections 2 through 26], including without limitation provisions relating to:

(a) fixing and collection of rents or payments under any lease or loan agreement concerning the facility covered by such proceedings or mortgage;

(b) terms to be incorporated in the lease or loan agreement;

(c) maintenance and insurance of such facility;

(d) creation and maintenance of special funds from the revenues of such facility; and

(e) rights and remedies available in the event of a default to the bondholders or to the trustee under a mortgage.

(4) The proceedings authorizing any bonds under the provisions of [sections 2 through 26] and any mortgage, including a mortgage given by the lessee or borrower, securing such bonds may provide that in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the project in accordance with such proceedings or the provisions of such

mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured thereby may become the purchaser at any foreclosure sale if he is the highest bidder therefor. No breach of any such agreement may impose any pecuniary liability upon the authority.

Section 15. Purchase of bonds. The authority may purchase its bonds or notes. The authority may hold, pledge, cancel, or resell such bonds or notes, subject to and in accordance with agreements with bondholders or noteholders.

Section 16. Findings-before ~~PROCEDURE~~ EQB issuance of bonds. (1) The authority may not undertake to finance any eligible health facility unless, prior to the issuance of any bonds or notes, the members find that:

~~that such facility will enable or assist a health institution to fulfill its obligation to provide health facilities and~~

~~(A) SUCH FACILITY WILL BE OPERATED BY A HEALTH INSTITUTION FOR THE PURPOSE OF FULFILLING ITS OBLIGATION TO PROVIDE HEALTH CARE FACILITIES; AND~~

~~(2)(B) such facility has been reviewed and approved by the appropriate regional and state health planning boards.~~

~~(2) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS BEEN SHOWN THAT SUCH FACILITY IS FINANCIALLY FEASIBLE AND THAT THERE WILL BE SUFFICIENT REVENUES TO ASSURE THAT PRINCIPAL AND INTEREST PAYMENTS ARE MADE WHEN THEY BECOME DUE.~~

~~(3) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS CONSIDERED THE ABILITY OF THE HEALTH INSTITUTION TO OPERATE SUCH A FACILITY BASED ON THE HEALTH INSTITUTION'S EXPERIENCE AND EXPERTISE.~~

~~(4) THE AUTHORITY MUST INSURE THAT ITS FINANCINGS CONSISTENTLY PROVIDE FAIR AND REALISTIC TERMS AND COVENANTS SUFFICIENT TO PROTECT THE POSITION OF THE LENDERS OR BONDHOLDERS.~~

Section 17. Trust agreement to secure bonds. In the discretion of the authority, any bonds issued under [sections 2 through 26] may be secured by a trust agreement between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust

company in Montana. The trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other money, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of an eligible health facility.

1 Section 18. Credit of state not pledged. Obligations
 2 issued under the provisions of [sections 2 through 26] do
 3 not constitute a debt, liability, obligation, or pledge of
 4 the faith and credit of the state but are payable solely
 5 from the revenues or assets of the authority HEALTH FACILITY
 6 BEING FINANCED. An obligation issued under [sections 2
 7 through 26] must contain on the face thereof a statement to
 8 the effect that the state of Montana is not liable on the
 9 obligation, the obligation is not a debt of the state, and
 10 neither the faith and credit nor the taxing power of the
 11 state is pledged to the payment of the principal of or the
 12 interest on the obligation.

13 Section 19. Exemption from taxation -- securities law.
 14 (1) The authority performs a public function for the benefit
 15 of the people of the state for the improvement of their
 16 health and living conditions and is a public instrumentality
 17 of the state. Accordingly, the income or other revenues of
 18 the authority and all property owned by the authority and
 19 any bonds, notes, or other obligations issued under
 20 [sections 2 through 26], their transfer, and income
 21 therefrom, including any profit made on the sale thereof,
 22 are exempt at all times from all taxation in the state of
 23 Montana.

24 (2) Bonds issued by the authority are exempt from the
 25 Montana Securities Act, but copies of all prospectus and

1 disclosure documents must be deposited with the state
 2 securities commissioner for public inspection.

3 Section 20. Necessary expenses -- fees. (1) All
 4 expenses of the authority incurred in carrying out the
 5 provisions of [sections 2 through 26] are payable solely
 6 from funds provided under the authority of [sections 2
 7 through 26], and no liability may be incurred by the
 8 authority beyond the extent to which money has been provided
 9 under [sections 2 through 26], except for the purposes of
 10 meeting the necessary expenses of initial organization and
 11 operation and until such date as the authority derives money
 12 from funds provided under [sections 2 through 26]. The
 13 authority may borrow money for necessary expenses of
 14 organization and operation. Such borrowed money must be
 15 repaid within a reasonable time after the authority receives
 16 funds provided for under [sections 2 through 26].

17 (2) When an application is made to the authority by
 18 any participating health institution for financial
 19 assistance to provide for its facilities, the application
 20 must MAY be accompanied by an initial planning service fee
 21 in an amount determined by the authority. Such initial
 22 planning service fee must MAY be included in the cost of the
 23 facilities to be financed and is not refundable by the
 24 authority, whether or not any application is approved. In
 25 addition to the initial fee, an annual planning service fee

1 ~~must~~ MAY be paid to the authority by each participating
 2 health institution in an amount determined by the authority.
 3 The annual planning service fee ~~must~~ MAY be paid on such
 4 dates or in installments as may be satisfactory to the
 5 authority. The fees must be used for:

6 (a) necessary expenses to determine the need for
 7 facilities in the area concerned, and to that end the
 8 authority may utilize recognized voluntary and official
 9 health planning organizations and agencies at local,
 10 regional, and state levels;

11 (b) necessary administrative expenses; and

12 (c) reserves for anticipated future expenses.

13 (3) The authority may, for a negotiated fee, retain
 14 the services of any other public or private person, firm,
 15 partnership, association, or corporation for the furnishing
 16 of services and data for use by the authority in determining
 17 the need for and location of any eligible health facility
 18 for which application is being made or for such other
 19 services or surveys as the authority considers necessary to
 20 carry out the purposes of [sections 2 through 26].

21 Section 21. Conveyance of title to institution. When
 22 the principal and interest on bonds issued by the authority
 23 to finance the cost of eligible health facilities or to
 24 refinance outstanding indebtedness of one or more
 25 participating health institutions, including any refunding

1 bonds issued to refund and refinance such bonds, have been
 2 fully paid and retired or when adequate provision has been
 3 made to fully pay and retire the same and all other
 4 conditions of the resolution, lease, trust indenture, and
 5 mortgage or deed of trust or any other form of security
 6 arrangement, if any, authorizing and securing the same have
 7 been satisfied and the lien of the mortgage or deed of trust
 8 or any other form of security arrangement has been released
 9 in accordance with the provisions thereof, the authority
 10 shall promptly convey its interest in the facilities and any
 11 other facilities mortgaged or subject to deed of trust or
 12 any other form of security arrangement to secure the bonds
 13 to the participating health institution or institutions.

14 Section 22. Trust funds. All money received pursuant
 15 to [sections 2 through 26], whether as proceeds from the
 16 sale of bonds, notes, or other obligations or as revenues or
 17 receipts, are trust funds to be held and applied solely as
 18 provided in [sections 2 through 26]. Any officer with whom
 19 or any bank or trust company with which such money is
 20 deposited shall act as trustee of the money and shall hold
 21 and apply it for the purposes of [sections 2 through 26],
 22 subject to such regulations as [sections 2 through 26] and
 23 the resolution authorizing the bonds, notes, or other
 24 obligations of any issue or the trust agreement securing the
 25 obligations may provide.

1 Section 23. Bonds as legal investment. (1) Bonds
2 issued by the authority under the provisions of [sections 2
3 through 26] are securities in which funds may be legally and
4 properly invested, including capital in the control of or
5 belonging to:

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

8 (b) insurance companies;

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

12 (d) personal representatives, public administrators,
13 trustees, and other fiduciaries; and

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

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

21 Section 24. Pledge of the state. In accordance with
22 the constitutions of the United States and the state of
23 Montana, the state pledges that it will not in any way
24 impair the obligations of any agreement between the
25 authority and the holders of notes and bonds issued by the

1 authority, including but not limited to an agreement to
2 administer a loan program financed by the issuance of bonds,
3 and to employ a staff sufficient and competent for this
4 purpose.

5 Section 25. Validity of pledge. Any pledge made by the
6 authority is valid and binding from the time the pledge is
7 made. The revenue, money, or property pledged and received
8 by the authority is immediately subject to the lien of the
9 pledge without any physical delivery or further act. The
10 lien of any pledge is valid and binding against all parties
11 having claims of any kind, whether in tort, contract, or
12 otherwise, against the authority, irrespective of whether
13 such parties have notice thereof. Neither the resolution
14 nor any other instrument by which a pledge is created is
15 required to be recorded.

16 Section 26. Annual audit. ~~††~~ The authority's books
17 and records must be audited at least once each fiscal year,
18 BY OR AT THE DISCRETION OF THE LEGISLATIVE AUDITOR. THE
19 ACTUAL COSTS OF THE AUDIT SHALL BE PAID FROM THE AUTHORITY'S
20 FUNDS.

21 ~~††--The--legislative--auditor--may--conduct--an--audit--at~~
22 ~~any--time--upon--the--request--of--the--legislative--audit~~
23 ~~committee.~~

24 Section 27. Initial appointments to authority.
25 Notwithstanding [section 1], the members of the authority

1 first appointed by the governor shall serve for terms to be
2 designated by the governor and to expire on June 30 of the
3 respective year. The terms of two members shall expire in
4 1984, two in 1985, and one each in 1986, 1987, and 1988.

5 Section 28. Severability. If a part of this act is
6 invalid, all valid parts that are severable from the invalid
7 part remain in effect. If a part of this act is invalid in
8 one or more of its applications, the part remains in effect
9 in all valid applications that are severable from the
10 invalid applications.

11 ~~SECTION 29. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
12 ~~PASSAGE AND APPROVAL.~~

-End-

1 HOUSE BILL NO. 721

2 INTRODUCED BY MALLIN, FAGG, NORDTVEDT,
3 ECK, WINSLOW, FABREGA, VINCENT, BOYLAN,
4 JACOBSON, KEATING, TOWE, PAVLOVICH,
5 BARDANOUVE, PHILLIPS
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA
8 HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH
9 INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND
10 EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS
11 PROJECTS; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"
12

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

14 Section 1. Montana health facility authority. (1)

15 There is ~~a~~ CREATED A PUBLIC BODY CORPORATE DESIGNATED AS THE
16 Montana health facility authority. THIS AUTHORITY IS
17 CONSTITUTED A PUBLIC INSTRUMENTALITY, AND ITS EXERCISE OF
18 THE POWERS CONFERRED BY [SECTIONS 2 THROUGH 26] SHALL BE
19 CONSIDERED AND HELD TO BE THE PERFORMANCE OF AN ESSENTIAL
20 PUBLIC FUNCTION.

21 (2) The authority consists of seven members appointed
22 by the governor as prescribed in 2-15-124. ~~The members must~~
23 ~~be residents of this state--At least one of the members~~
24 ~~must currently be or formerly have been a trustee, director,~~
25 ~~comptroller--or--other--employee--of--a public or nonprofit~~

THIRD READING

There are no changes in HB 721, and due to length will not be rerun. Please refer to yellow copy for complete text.

March 12, 1983

SENATE STANDING COMMITTEE REPORT
(State Administration)

That House Bill No. 721 be amended as follows:

1. Page 3, line 20.
Following: "any"
Insert: "public or"
2. Page 3, lines 21 and 22.
Strike: "institution or public hospital or institution"
Insert: "other organization"
3. Page 4, lines 4 through 14.
Strike: subsection (6) in its entirety
Renumber: subsequent subsection
4. Page 5, line 25 and page 6, line 1.
Strike: "BY A HEALTH INSTITUTION"
5. Page 12, line 16.
Strike: "facility"
Insert: "participating health institution"
6. Page 14, line 7.
~~Strike: "covenants"~~
Insert: "covenants"
7. Page 14, line 16.
Following: "PERIOD"
Strike: remainder of line 16 through "them" on page 15, line 1.
8. Page 16, line 15.
Strike: "eligible"
Insert: "participating"
Strike: "facility"
Insert: "institution"
9. Page 21, line 5.
Strike: "FACILITY"
Insert: "institution"

1 STATEMENT OF INTENT

2 HOUSE BILL 721

3 House Economic Development Committee
4

5 A statement of intent is required for this bill because
6 it grants the Health Facility Authority the power to adopt
7 rules to administer this chapter. The Legislature intends
8 that these rules include:

- 9 (1) procedural rules to govern the Authority;
10 (2) procedures for assessing applications;
11 (3) the establishment of fees to be charged by health
12 institutions using the procedures of the authority; and
13 (4) procedures for determining the eligibility of a
14 facility.

15 The legislature declares that the purpose of this bill
16 is health care cost containment. By making this bonding
17 authority available, the legislature intends that health
18 care costs will be contained by reducing the costs of
19 facilities and equipment so that these savings may be passed
20 on to consumers.

REFERENCE BILL

HB 721

HOUSE BILL NO. 721

INTRODUCED BY WALLIN, FAGG, NOROTVEIT,
ECK, WINSLOW, FABREGA, VINCENT, BOYLAN,
JACOBSON, KEATING, TOWE, PAVLOVICH,
BARDANOUVE, PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA
HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH
INSTITUTIONS TO CONSTRUCT OR RENOVATE HEALTH FACILITIES; AND
EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS
PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Montana health facility authority. (1)

There is ~~a~~ CREATED A PUBLIC BODY CORPORATE DESIGNATED AS THE
Montana health facility authority. THIS AUTHORITY IS
CONSTITUTED A PUBLIC INSTRUMENTALITY, AND ITS EXERCISE OF
THE POWERS CONFERRED BY [SECTIONS 2 THROUGH 26] SHALL BE
CONSIDERED AND HELD TO BE THE PERFORMANCE OF AN ESSENTIAL
PUBLIC FUNCTION.

(2) The authority consists of seven members appointed
by the governor as prescribed in 2-15-124. The members must
be residents of this state; at least one of the members
must currently be or formerly have been a trustee, director,
comptroller or other employee of a public or nonprofit

hospitality--knowledgeable--in--hospital--and--health--care
construction--and--financing--At least one member must be a
person experienced in and having a favorable reputation for
skill--knowledge--and--experience--in--the--field--of--state--and
municipal finance--At least one member must be a person
experienced in and having a favorable reputation for skill
knowledge--and--experience--in--the--field--of--health--facility
architectures--In making appointments, the governor shall
take into consideration nominees recommended to him for
appointment by professional organizations of hospitals
long-term--care--facilities--investment--banking--and
architects

(3) The members must be appointed for 5-year staggered
terms--Any member is eligible for reappointment--The
governor shall fill any vacancy for the remainder of any
unexpired term--Any member of the authority may be removed
by the governor for misfeasance, malfeasance, or willful
neglect of duty or other cause after notice and a public
hearing unless such notice or hearing is expressly waived in
writing

(4) The authority is allocated to the department of
commerce for administrative purposes only as provided in
2-15-124. THE BOARD MUST BE BROADLY REPRESENTATIVE OF THE
STATE, SEEKING TO BALANCE PROFESSIONAL EXPERTISE AND PUBLIC
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 9].

Section 2. Short title. [Sections 2 through 26] may be cited as the "Montana Health Facility Authority Act".

Section 3. Definitions. As used in [sections 2 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in [section 1].

(2) "Costs" means costs allowed under [section 5].

(3) "Health facility" means any facility provided for in [section 4].

(4) "Health institution" means any PUBLIC OR private nonprofit hospital, corporation, or institution--or--public hospital--or--institution OTHER ORGANIZATION authorized to provide or operate a health facility in this state.

(5) "Participating health institution" means a health institution that undertakes the financing, refunding, or

refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of [sections 2 through 26].

(6) "Refinancing of outstanding obligations" means liquidation with the proceeds of bonds or notes issued by the authority of any indebtedness of a participating health institution incurred to finance or aid in financing a lawful purpose of such health institution not financed pursuant to [sections 2 through 26] that would constitute a facility had it been undertaken and financed by the authority or consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was incurred.

(7) (6) "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Section 4. Eligible health facility. An eligible health facility includes a structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility, laboratory, laundry, nurses', doctors', or interns' residences, administration building, research facility, maintenance, storage, or utility facility, auditoriums, dining hall, food service, and preparation

1 facility--mental-and-physical-health-care--facility--dentat
 2 care-facility--nursing-schools--medical-teaching-facility--or
 3 other--structure-or-facility-related-to-any-of-the-foregoing
 4 or--required--or--useful--for--the--operation--of--a--health
 5 facility--These-related-facilities-include-offices--parking
 6 lots--and--garages--and-other-supporting-service-structures
 7 and--all--necessary--useful--and--related--equipment
 8 furnishings--and--appurtenances--and--include--without
 9 limitation--the-acquisition--preparation--and-development--of
 10 all--lands--and--real--and--personal--property--necessary-or
 11 convenient-as-a-site-or-sites-for-any-of-the-foregoing--An
 12 eligible--health--facility--does--not--include--such-items-as
 13 food--fuel--supplies--or-other-items--that--are--customarily
 14 considered-as-current-operating-charges--An-eligible-health
 15 facility--does--not--include-any-property-used-or-to-be-used
 16 primarily-for-sectarian-instruction-or-study-or-as-a-place
 17 for-devotional-activities-or-religious-worship. (1) ELIGIBLE
 18 HEALTH FACILITY MEANS ANY STRUCTURE OR BUILDING USED AS A
 19 HOSPITAL, CLINIC, NURSING HOME, OR OTHER HEALTH CARE
 20 FACILITY AS DEFINED IN 50-5-101: CENTERS FOR DEVELOPMENTALLY
 21 DISABLED; CENTER FOR THE HANDICAPPED; CHEMICAL DEPENDENCY
 22 TREATMENT CENTER; NURSING SCHOOL; MEDICAL TEACHING FACILITY;
 23 LABORATORY; DENTAL CARE FACILITY; OR OTHER STRUCTURE OR
 24 FACILITY RELATED TO ANY OF THE FOREGOING OR REQUIRED OR
 25 USEFUL FOR THE OPERATION OF A HEALTH FACILITY BY A HEALTH

1 INSTITUTION. THESE RELATED FACILITIES INCLUDE SUPPORTING
 2 SERVICE STRUCTURES AND ALL NECESSARY, USEFUL, AND RELATED
 3 EQUIPMENT, FURNISHINGS, AND APPURTENANCES AND INCLUDE
 4 WITHOUT LIMITATION THE ACQUISITION, PREPARATION, AND
 5 DEVELOPMENT OF ALL LANDS AND REAL AND PERSONAL PROPERTY
 6 NECESSARY OR CONVENIENT AS A SITE FOR ANY OF THE FOREGOING.
 7 (2) AN ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE SUCH
 8 ITEMS AS FOOD, FUEL, SUPPLIES, OR OTHER ITEMS THAT ARE
 9 CUSTOMARILY CONSIDERED AS CURRENT OPERATING EXPENSES; AND
 10 ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE A STRUCTURE USED
 11 OR TO BE USED PRIMARILY FOR SECTARIAN INSTRUCTION OR STUDY
 12 OR AS A PLACE FOR DEVOTIONAL ACTIVITIES OR RELIGIOUS
 13 WORSHIP.

14 Section 5. Allowable costs. Costs eligible for
 15 financing or refinancing under [sections 2 through 26]
 16 include:

17 (1) the total of all reasonable or necessary costs
 18 incidental to the acquisition, construction, reconstruction,
 19 repair, alteration, equipment, enlargement, and improvement
 20 of an eligible health facility and the acquisition of all
 21 real and personal property interests necessary or useful in
 22 connection with the facility and all other undertakings
 23 which the authority considers reasonable or necessary for
 24 the development of the facility;

25 (2) the cost of demolishing or removing any building

1 or structure on land so acquired, the cost of acquiring any
 2 land to which such building or structure may be moved, the
 3 cost of all machinery and equipment, financing charges,
 4 interest prior to and during construction and, if judged
 5 advisable by the authority, for a period after completion of
 6 such construction, the cost of financing the facility,
 7 including interest on bonds and notes issued by the
 8 authority to finance the facility;

9 (3) reserves for principal and interest and for
 10 extensions, enlargements, additions, and improvements,
 11 including without limitation the cost of studies and
 12 surveys;

13 (4) the costs for land title and mortgage guaranty
 14 policies;

15 (5) the costs of plans, specifications, and
 16 architectural and engineering services;

17 (6) the costs of legal, organization, marketing, or
 18 other special services;

19 (7) the costs of financing, acquisition, demolition,
 20 construction, equipment, and site development of new and
 21 rehabilitated buildings; and

22 (8) the costs of rehabilitation, reconstruction,
 23 repair, or remodeling of existing buildings; and

24 (9) all other expenses necessary and incidental to the
 25 construction and acquisition of the facility, the financing

1 of such construction, and the acquisition and placing of the
 2 facility into operation.

3 Section 6. Quorum -- mode of action -- expenses. Four
 4 members of the authority constitute a quorum for the purpose
 5 of conducting business. Action may be taken by the
 6 authority upon the affirmative vote of at least four of its
 7 members. No vacancy in the membership of the authority
 8 impairs the right of a quorum to exercise all the rights and
 9 perform all the duties of the authority. Each meeting of
 10 the authority for any purpose must be open to the public.
 11 Notice of meetings must be as provided in the bylaws of the
 12 authority. Resolutions need not be published or posted.
 13 Members of the authority may receive no compensation for
 14 services but are entitled to necessary expenses, as provided
 15 in 2-18-501 through 2-18-503, incurred in the discharge of
 16 their duties.

17 Section 7. Powers of authority. The authority may:

18 (1) sue and be sued;

19 (2) have a seal;

20 (3) adopt all procedural and substantive rules
 21 necessary for the administration of [sections 2 through 26];

22 (4) issue bonds or incur other debt as described in
 23 [sections 2 through 26], including the issuance of notes or
 24 refunding bonds;

25 (5) invest any funds OBTAINED FROM THE ISSUANCE OF

1 ~~BONDS AND NOTES WHICH ARE~~ not required for immediate use,
2 subject to any agreements with its bondholders and
3 noteholders, as provided in Title 17, chapter 6, except that
4 all investment income from funds invested by the authority,
5 less the cost for investment, must be deposited in the bond
6 proceeds fund;

7 (6) contract in its own name for the investment of
8 funds, borrowing of funds, or any other purposes it
9 considers appropriate to carry out the purposes of [sections
10 2 through 26];

11 (7) participate with any financial institution in the
12 purchase or guarantee of any loan or obligation;

13 (8) issue bond anticipation notes or any other
14 anticipatory financial obligations to secure funding of
15 eligible facilities;

16 (9) enter into agreements or make advance commitments
17 to insure repayments required by loan agreements made by a
18 lender. Such agreements are subject to terms and conditions
19 established by the authority.

20 (10) sell, purchase, or insure loans to finance the
21 costs of eligible facilities;

22 (11) accept gifts, grants, or loans from a federal
23 agency, an agency or instrumentality of the state, a
24 municipality, or any other source;

25 (12) enter into contracts or other transactions with a

1 federal agency, an agency or instrumentality of the state, a
2 municipality, a private organization, or any other entity
3 consistent with the exercise of any power under [sections 2
4 through 26];

5 (13) with regard to property:

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

9 (b) hold, sell, assign, lease, encumber, mortgage, or
10 otherwise dispose thereof;

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

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

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

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

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

24 (h) operate, manage, lease, dispose of, and otherwise
25 deal with such property in any manner necessary or desirable

1 to protect its interests or the holders of its bonds or
2 notes if such action is consistent with any agreement with
3 such holders;

4 (14) service, contract, and pay for the servicing of
5 loans;

6 (15) provide general technical services in the
7 analysis, planning, design, processing, construction,
8 rehabilitation, and management of eligible health facilities
9 whenever considered appropriate;

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

18 (17) collect reasonable interest, fees, and charges
19 from participating institutions in connection with making
20 and servicing its lease agreements, loan agreements,
21 mortgage loans, notes, bonds, commitments, and other
22 evidences of indebtedness. ~~THE INTEREST, FEES, AND CHARGES~~
23 ~~SHALL BE DEPOSITED TO AN EARMARKED REVENUE ACCOUNT TO THE~~
24 ~~CREDIT OF THE AUTHORITY.~~ Interest, fees, and charges are
25 limited to the amounts required to pay the costs of the

1 authority, including operating and administrative expenses
2 and reasonable allowances for losses that may be incurred.

3 (18) perform any other acts necessary and convenient to
4 carry out the purposes of [sections 2 through 26].

5 Section 8. Restriction on operating facility --
6 leases. (1) The authority may not operate an eligible health
7 facility as a business other than as a lessee or lessor.
8 ~~Any lease of a facility must be for a term not less than the~~
9 ~~longest maturity of any bonds issued to finance the facility~~
10 ~~or a portion thereof.~~ The lease must provide for rentals
11 adequate to pay the principal and interest due on bonds and
12 to create and maintain such reserves and accounts for
13 depreciation as the authority determines necessary.

14 (2) The lease may contain terms and conditions that
15 the authority considers proper. The lease may be terminated
16 upon failure of the facility PARTICIPATING HEALTH
17 INSTITUTION to comply with any obligation under the lease.
18 The lease may include a renewal or an option to purchase
19 provision upon such terms or conditions as the authority
20 considers desirable.

21 (3) Upon payment of all indebtedness incurred by the
22 authority for financing a facility, the authority may convey
23 any or all of the facility to the lessee, with or without
24 consideration.

25 Section 9. Staff of authority. The authority may

1 employ or contract for any professional staff or consultants
 2 necessary ~~and fix their compensation. SUCH EMPLOYMENT AND~~
 3 ~~CONTRACTING MUST BE DONE IN CONSULTATION WITH THE~~
 4 ~~DEPARTMENT.~~

5 Section 10. Loan limitation. No loan made by the
 6 authority may exceed the total cost of the eligible health
 7 facility being financed as such cost is determined by the
 8 participating institution and approved by the authority.

9 Section 11. Agent of the authority. The authority may
 10 designate a participating health institution as its agent
 11 for determining the location and character of an eligible
 12 health facility undertaken by that institution under the
 13 provisions of [sections 2 through 26]. As agent, the
 14 institution may acquire, construct, reconstruct, renovate,
 15 replace, improve, maintain, repair, operate, lease, as
 16 lessee or lessor, and enter into contracts for any and all
 17 such purposes, including contracts for the management and
 18 operation of the facility.

19 Section 12. Notes. The authority is authorized from
 20 time to time to issue its negotiable notes for any corporate
 21 purpose, including the payment of all or any part of the
 22 cost of any facility, and renew from time to time any notes
 23 by the issuance of new notes, whether the notes to be
 24 renewed have or have not matured. The authority may issue
 25 notes partly to renew notes or to discharge other

1 obligations then outstanding and partly for any other
 2 purpose. The notes may be authorized, sold, executed, and
 3 delivered in the same manner as bonds. Any resolution
 4 authorizing notes of the authority or any issue thereof may
 5 contain any provisions which the authority is authorized to
 6 include in any resolution authorizing bonds of the
 7 authority. The authority may include in its notes any
 8 terms, covenants ~~COVENANTS~~, or conditions that it is
 9 authorized to include in any bonds. All notes must be
 10 payable from the proceeds of bonds, renewal notes, the
 11 revenues of the authority, or other money available therefor
 12 and not otherwise pledged, subject only to any contractual
 13 rights of the holders of any of its notes or other
 14 obligations then outstanding.

15 Section 13. Bonds of the authority. (1) The authority
 16 may borrow money and issue bonds ~~NOT IN EXCESS OF \$50~~
 17 ~~MILLION FOR ANY 2-YEAR PERIOD, including but not limited to~~
 18 ~~bonds on which the principal and interest are payable~~

19 ~~(a) exclusively from the income, receipts, or other~~
 20 ~~money derived from an eligible health facility financed with~~
 21 ~~the proceeds of the bonds;~~

22 ~~(b) exclusively from the income, receipts, or other~~
 23 ~~money derived from designated facilities, whether or not~~
 24 ~~they are financed in whole or in part with the proceeds of~~
 25 ~~the bonds; or~~

~~(c) -- from its income, receipts, other assets, generally, or a designated part or parts of them.~~

(2) Bonds must be authorized and dated and shall mature as the authority may specify, except that no bond may mature more than 40 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the proper registered or bearer form, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

(a) pay the principal of and interest on the bonds as they become due;

(b) create and maintain the reserves therefor;

(c) meet all obligations in connection with the lease

or other agreement; and

(d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority may combine, for the purposes of a single offering, bonds financing more than one facility under [sections 2 through 26].

Section 14. Security of bondholders. (1) The payment of the principal of and interest on any bonds issued under [sections 2 through 26] must be secured by a pledge of the revenues out of which such bonds are made payable.

(2) The principal of and interest on any bonds issued under the authority of this part may be secured by:

(a) a mortgage covering all or any part of the eligible ~~PARTICIPATING~~ health facility ~~INSTITUTION~~;

(b) a pledge of the lease or loan agreement relating to such facility; or

(c) such other security device as may be considered most advantageous by the authority.

(3) The proceedings under which the bonds are authorized to be issued under the provisions of [sections 2 through 26] and any mortgage given to secure the same, including a mortgage given by the borrower or lessee, may contain any agreements and provisions customarily contained

1 in instruments securing bonds, as the authority considers
2 advisable. Such provisions may not be in conflict with the
3 provisions of [sections 2 through 26], including without
4 limitation provisions relating to:

5 (a) fixing and collection of rents or payments under
6 any lease or loan agreement concerning the facility covered
7 by such proceedings or mortgage;

8 (b) terms to be incorporated in the lease or loan
9 agreement;

10 (c) maintenance and insurance of such facility;

11 (d) creation and maintenance of special funds from the
12 revenues of such facility; and

13 (e) rights and remedies available in the event of a
14 default to the bondholders or to the trustee under a
15 mortgage.

16 (4) The proceedings authorizing any bonds under the
17 provisions of [sections 2 through 26] and any mortgage,
18 including a mortgage given by the lessee or borrower,
19 securing such bonds may provide that in the event of a
20 default in the payment of the principal of or the interest
21 on such bonds or in the performance of any agreement
22 contained in such proceedings or mortgage, such payment and
23 performance may be enforced by mandamus or by the
24 appointment of a receiver in equity with power to charge and
25 collect rents and to apply the revenues from the project in

1 accordance with such proceedings or the provisions of such
2 mortgage.

3 (5) Any mortgage made by the authority, lessee, or
4 borrower to secure these bonds may provide that, in the
5 event of a default in the payment thereof or the violation
6 of any agreement contained in the mortgage, the mortgage may
7 be foreclosed and the project sold under proceedings in
8 equity or in any other manner permitted by law. The
9 mortgage may also provide that any trustee under the
10 mortgage or the holder of any of the bonds secured thereby
11 may become the purchaser at any foreclosure sale if he is
12 the highest bidder therefor. No breach of any such
13 agreement may impose any pecuniary liability upon the
14 authority.

15 Section 15. Purchase of bonds. The authority may
16 purchase its bonds or notes. The authority may hold,
17 pledge, cancel, or resell such bonds or notes, subject to
18 and in accordance with agreements with bondholders or
19 noteholders.

20 Section 16. Findings-before PROCEDURE FOR issuance of
21 bonds. (1) The authority may not undertake to finance any
22 eligible health facility unless, prior to the issuance of
23 any bonds or notes, the members find that:

24 ~~that such facility will enable or assist a health~~
25 ~~institution to fulfill its obligation to provide health~~

~~facility and~~

~~(A) SUCH FACILITY WILL BE OPERATED BY A HEALTH INSTITUTION FOR THE PURPOSE OF FULFILLING ITS OBLIGATION TO PROVIDE HEALTH CARE FACILITIES; AND~~

~~(2) such facility has been reviewed and approved by the appropriate regional and state health planning boards.~~

~~(2) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS BEEN SHOWN THAT SUCH FACILITY IS FINANCIALLY FEASIBLE AND THAT THERE WILL BE SUFFICIENT REVENUES TO ASSURE THAT PRINCIPAL AND INTEREST PAYMENTS ARE MADE WHEN THEY BECOME DUE.~~

~~(3) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS CONSIDERED THE ABILITY OF THE HEALTH INSTITUTION TO OPERATE SUCH A FACILITY BASED ON THE HEALTH INSTITUTION'S EXPERIENCE AND EXPERTISE.~~

~~(4) THE AUTHORITY MUST INSURE THAT ITS FINANCINGS CONSISTENTLY PROVIDE FAIR AND REALISTIC TERMS AND COVENANTS SUFFICIENT TO PROTECT THE POSITION OF THE LENDERS OR BONDHOLDERS.~~

Section 17. Trust agreement to secure bonds. In the discretion of the authority, any bonds issued under [sections 2 through 26] may be secured by a trust agreement between the authority and a corporate trustee, which may be

any trust company or bank having the powers of a trust company in Montana. The trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project or any portion thereof. The trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including particularly such provisions as have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any bank or trust company incorporated under the laws of this state, which may act as depository of the proceeds of bonds or of revenues or other money, may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action by bondholders. In addition, any such trust agreement or resolution may contain such other provisions as the authority may consider reasonable and proper for the security of the bondholders. All expenses incurred in carrying out such trust agreement or resolution may be treated as a part of the cost of the operation of an

1 eligible health facility.

2 Section 18. Credit of state not pledged. Obligations
3 issued under the provisions of [sections 2 through 26] do
4 not constitute a debt, liability, obligation, or pledge of
5 the faith and credit of the state but are payable solely
6 from the revenues or assets of the authority ~~HEALTH FACILITY~~
7 ~~INSTITUTION BEING FINANCED~~. An obligation issued under
8 [sections 2 through 26] must contain on the face thereof a
9 statement to the effect that the state of Montana is not
10 liable on the obligation, the obligation is not a debt of
11 the state, and neither the faith and credit nor the taxing
12 power of the state is pledged to the payment of the
13 principal of or the interest on the obligation.

14 Section 19. Exemption from taxation -- securities law.
15 (1) The authority performs a public function for the benefit
16 of the people of the state for the improvement of their
17 health and living conditions and is a public instrumentality
18 of the state. Accordingly, the income or other revenues of
19 the authority and all property owned by the authority and
20 any bonds, notes, or other obligations issued under
21 [sections 2 through 26], their transfer, and income
22 therefrom, including any profit made on the sale thereof,
23 are exempt at all times from all taxation in the state of
24 Montana.

25 (2) Bonds issued by the authority are exempt from the

1 Montana Securities Act, but copies of all prospectus and
2 disclosure documents must be deposited with the state
3 securities commissioner for public inspection.

4 Section 20. Necessary expenses -- fees. (1) All
5 expenses of the authority incurred in carrying out the
6 provisions of [sections 2 through 26] are payable solely
7 from funds provided under the authority of [sections 2
8 through 26], and no liability may be incurred by the
9 authority beyond the extent to which money has been provided
10 under [sections 2 through 26], except for the purposes of
11 meeting the necessary expenses of initial organization and
12 operation and until such date as the authority derives money
13 from funds provided under [sections 2 through 26]. The
14 authority may borrow money for necessary expenses of
15 organization and operation. Such borrowed money must be
16 repaid within a reasonable time after the authority receives
17 funds provided for under [sections 2 through 26].

18 (2) When an application is made to the authority by
19 any participating health institution for financial
20 assistance to provide for its facilities, the application
21 must ~~MAY~~ be accompanied by an initial planning service fee
22 in an amount determined by the authority. Such initial
23 planning service fee must ~~MAY~~ be included in the cost of the
24 facilities to be financed and is not refundable by the
25 authority, whether or not any application is approved. In

1 addition to the initial fee, an annual planning service fee
 2 must ~~MAY~~ be paid to the authority by each participating
 3 health institution in an amount determined by the authority.
 4 The annual planning service fee must ~~MAY~~ be paid on such
 5 dates or in installments as may be satisfactory to the
 6 authority. The fees must be used for:

7 (a) necessary expenses to determine the need for
 8 facilities in the area concerned, and to that end the
 9 authority may utilize recognized voluntary and official
 10 health planning organizations and agencies at local,
 11 regional, and state levels;

12 (b) necessary administrative expenses; and

13 (c) reserves for anticipated future expenses.

14 (3) The authority may, for a negotiated fee, retain
 15 the services of any other public or private person, firm,
 16 partnership, association, or corporation for the furnishing
 17 of services and data for use by the authority in determining
 18 the need for and location of any eligible health facility
 19 for which application is being made or for such other
 20 services or surveys as the authority considers necessary to
 21 carry out the purposes of [sections 2 through 26].

22 Section 21. Conveyance of title to institution. When
 23 the principal and interest on bonds issued by the authority
 24 to finance the cost of eligible health facilities or to
 25 refinance outstanding indebtedness of one or more

1 participating health institutions, including any refunding
 2 bonds issued to refund and refinance such bonds, have been
 3 fully paid and retired or when adequate provision has been
 4 made to fully pay and retire the same and all other
 5 conditions of the resolution, lease, trust indenture, and
 6 mortgage or deed of trust or any other form of security
 7 arrangement, if any, authorizing and securing the same have
 8 been satisfied and the lien of the mortgage or deed of trust
 9 or any other form of security arrangement has been released
 10 in accordance with the provisions thereof, the authority
 11 shall promptly convey its interest in the facilities and any
 12 other facilities mortgaged or subject to deed of trust or
 13 any other form of security arrangement to secure the bonds
 14 to the participating health institution or institutions.

15 Section 22. Trust funds. All money received pursuant
 16 to [sections 2 through 26], whether as proceeds from the
 17 sale of bonds, notes, or other obligations or as revenues or
 18 receipts, are trust funds to be held and applied solely as
 19 provided in [sections 2 through 26]. Any officer with whom
 20 or any bank or trust company with which such money is
 21 deposited shall act as trustee of the money and shall hold
 22 and apply it for the purposes of [sections 2 through 26],
 23 subject to such regulations as [sections 2 through 26] and
 24 the resolution authorizing the bonds, notes, or other
 25 obligations of any issue or the trust agreement securing the

1 obligations may provide.

2 Section 23. Bonds as legal investment. (1) Bonds
3 issued by the authority under the provisions of [sections 2
4 through 26] are securities in which funds may be legally and
5 properly invested, including capital in the control of or
6 belonging to:

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

9 (b) insurance companies;

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

13 (d) personal representatives, public administrators,
14 trustees, and other fiduciaries; and

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

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

22 Section 24. Pledge of the state. In accordance with
23 the constitutions of the United States and the state of
24 Montana, the state pledges that it will not in any way
25 impair the obligations of any agreement between the

1 authority and the holders of notes and bonds issued by the
2 authority, including but not limited to an agreement to
3 administer a loan program financed by the issuance of bonds,
4 and to employ a staff sufficient and competent for this
5 purpose.

6 Section 25. Validity of pledge. Any pledge made by the
7 authority is valid and binding from the time the pledge is
8 made. The revenue, money, or property pledged and received
9 by the authority is immediately subject to the lien of the
10 pledge without any physical delivery or further act. The
11 lien of any pledge is valid and binding against all parties
12 having claims of any kind, whether in tort, contract, or
13 otherwise, against the authority, irrespective of whether
14 such parties have notice thereof. Neither the resolution
15 nor any other instrument by which a pledge is created is
16 required to be recorded.

17 Section 26. Annual audit. ~~†††~~ The authority's books
18 and records must be audited at least once each fiscal year
19 ~~BY OR AT THE DISCRETION OF THE LEGISLATIVE AUDITOR. THE~~
20 ~~ACTUAL COSTS OF THE AUDIT SHALL BE PAID FROM THE AUTHORITY'S~~
21 ~~FUNDS.~~

22 ~~†††--the--legislative--auditor--may--conduct--an--audit--at~~
23 ~~any--time--upon--the--request--of--the--legislative--audit~~
24 ~~committee.~~

25 Section 27. Initial appointments to authority.

1 Notwithstanding [section 1], the members of the authority
2 first appointed by the governor shall serve for terms to be
3 designated by the governor and to expire on June 30 of the
4 respective year. The terms of two members shall expire in
5 1984, two in 1985, and one each in 1986, 1987, and 1988.

6 Section 28. Severability. If a part of this act is
7 invalid, all valid parts that are severable from the invalid
8 part remain in effect. If a part of this act is invalid in
9 one or more of its applications, the part remains in effect
10 in all valid applications that are severable from the
11 invalid applications.

12 ~~SECTION 29. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
13 ~~PASSAGE AND APPROVAL.~~

-End-

GOVERNOR'S PROPOSED AMENDMENTS

TO HOUSE BILL NO. 721 REFERENCE BILL

1. Page 19, line 6.
Following: "boards"
Insert: "and has received any approval required by
Title 50, chapter 5, part 3"

STATEMENT OF INTENT

HOUSE BILL 721

House Economic Development Committee

A statement of intent is required for this bill because it grants the Health Facility Authority the power to adopt rules to administer this chapter. The Legislature intends that these rules include:

- (1) procedural rules to govern the Authority;
- (2) procedures for assessing applications;
- (3) the establishment of fees to be charged by health institutions using the procedures of the authority; and
- (4) procedures for determining the eligibility of a facility.

The legislature declares that the purpose of this bill is health care cost containment. By making this bonding authority available, the legislature intends that health care costs will be contained by reducing the costs of facilities and equipment so that these savings may be passed on to consumers.

HOUSE BILL NO. 721

INTRODUCED BY WALLIN, FAGG, NORDTVEDT,

ECK, WINSLOW, FABREGA, VINCENT, BOYLAN,

JACOBSON, KEATING, TOME, PAVLOVICH,

BARDANOUVE, PHILLIPS

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE A MONTANA HEALTH FACILITY AUTHORITY WITH POWER TO LEND MONEY TO HEALTH INSTITUTIONS TO CONSTRUCT, RENOVATE HEALTH FACILITIES; AND EMPOWERING THE AUTHORITY TO ISSUE BONDS TO FINANCE ITS PROJECTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Montana health facility authority. (1)

There is a CREATED A PUBLIC BODY CORPORATE DESIGNATED AS THE Montana health facility authority. THIS AUTHORITY IS CONSTITUTED A PUBLIC INSTRUMENTALITY, AND ITS EXERCISE OF THE POWERS CONFERRED BY [SECTIONS 2 THROUGH 26] SHALL BE CONSIDERED AND HELD TO BE THE PERFORMANCE OF AN ESSENTIAL PUBLIC FUNCTION.

(2) The authority consists of seven members appointed by the governor as prescribed in 2-15-124. the members must be residents of this state. At least one of the members must currently be or formerly have been a trustee, director, comptroller, or other employee of a public or nonprofit

hospitality--knowledgeable--in--hospital--and--health--care construction--and--financing. At least one member must be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the field of state and municipal finance. At least one member must be a person experienced in and having a favorable reputation for skill, knowledge, and experience in the field of health facility architecture. In making appointments, the governor shall take into consideration nominees recommended to him for appointment by professional organizations of hospital, long-term care facilities, investment banking, and architects.

(3) The members must be appointed for 5-year staggered terms. Any member is eligible for reappointment. The governor shall fill any vacancy for the remainder of any unexpired term. Any member of the authority may be removed by the governor for misfeasance, malfeasance, or neglect of duty or other cause after notice and a public hearing unless such notice or hearing is expressly waived in writing.

(4) The authority is allocated to the department of commerce for administrative purposes only as provided in 2-15-124. THE BOARD MUST BE BROADLY REPRESENTATIVE OF THE STATE, SEEKING TO BALANCE PROFESSIONAL EXPERTISE AND PUBLIC 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 9].~~

Section 2. Short title. [Sections 2 through 26] may be cited as the "Montana Health Facility Authority Act".

Section 3. Definitions. As used in [sections 2 through 26], unless the context requires otherwise, the following definitions apply:

(1) "Authority" means the Montana health facility authority created in [section 1].

(2) "Costs" means costs allowed under [section 5].

(3) "Health facility" means any facility provided for in [section 4].

(4) "Health institution" means any ~~PUBLIC OR~~ private nonprofit hospital, corporation, or ~~institution--or--public hospital--or--institution~~ OTHER ORGANIZATION authorized to provide or operate a health facility in this state.

(5) "Participating health institution" means a health institution that undertakes the financing, refunding, or

refinancing of obligations on the construction or acquisition of a health facility pursuant to the provisions of [sections 2 through 26].

~~(6) "Refinancing of outstanding obligations" means liquidation--with--the proceeds of bonds or notes issued by the authority of any indebtedness of a participating health institution incurred to finance or aid in financing a lawful purpose of such health institution not financed pursuant to [sections 2 through 26] that would constitute a facility had it been undertaken and financed by the authority or consolidation of such indebtedness with indebtedness of the authority incurred for a facility related to the purpose for which the indebtedness of the health institution was incurred.~~

~~(7)(6)~~ "Revenues" means, with respect to facilities, the rents, fees, charges, interest, principal repayments, and other income received or to be received by the authority from any source on account of such facilities.

Section 4. Eligible health facility. An ~~eligible~~ health ~~facility~~ includes a structure or building suitable for use as a hospital, clinic, nursing home, or other health care facility; laboratory; laundry; nurses' y--doctors' y--or interns'--residence;--administration--building;--research facility;--maintenance;--storage;--or--utility--facility; auditorium;--dining--hall;--food--service--and--preparation

~~1 facility; mental and physical health care facility; dental~~
~~2 care facility; nursing school; medical teaching facility; or~~
~~3 other structure or facility related to any of the foregoing~~
~~4 or required or useful for the operation of a health~~
~~5 facility. These related facilities include offices, parking~~
~~6 lots and garages, or other supporting service structures~~
~~7 and all necessary, useful, and related equipment,~~
~~8 furnishings, and appurtenances and include without~~
~~9 limitation the acquisition, preparation, and development of~~
~~10 all lands and real and personal property necessary or~~
~~11 convenient as a site or sites for any of the foregoing. An~~
~~12 eligible health facility does not include such items as~~
~~13 food, fuel, supplies, or other items that are customarily~~
~~14 considered as current operating charges. An eligible health~~
~~15 facility does not include any property used or to be used~~
~~16 primarily for sectarian instruction or study or as a place~~
~~17 for devotional activities or religious worship. (1) ELIGIBLE~~
~~18 HEALTH FACILITY MEANS ANY STRUCTURE OR BUILDING USED AS A~~
~~19 HOSPITAL, CLINIC, NURSING HOME, OR OTHER HEALTH CARE~~
~~20 FACILITY AS DEFINED IN 50-5-101; CENTER FOR DEVELOPMENTALLY~~
~~21 DISABLED; CENTER FOR THE HANDICAPPED; CHEMICAL DEPENDENCY~~
~~22 TREATMENT CENTER; NURSING SCHOOL; MEDICAL TEACHING FACILITY;~~
~~23 LABORATORY; DENTAL CARE FACILITY; OR OTHER STRUCTURE OR~~
~~24 FACILITY RELATED TO ANY OF THE FOREGOING OR REQUIRED OR~~
~~25 USEFUL FOR THE OPERATION OF A HEALTH FACILITY BY A HEALTH~~

~~1 INSTITUTION. THESE RELATED FACILITIES INCLUDE SUPPORTING~~
~~2 SERVICE STRUCTURES AND ALL NECESSARY, USEFUL, AND RELATED~~
~~3 EQUIPMENT, FURNISHINGS, AND APPURTENANCES AND INCLUDE~~
~~4 WITHOUT LIMITATION THE ACQUISITION, PREPARATION, AND~~
~~5 DEVELOPMENT OF ALL LANDS AND REAL AND PERSONAL PROPERTY~~
~~6 NECESSARY OR CONVENIENT AS A SITE FOR ANY OF THE FOREGOING.~~

~~7 (2) AN ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE SUCH~~
~~8 ITEMS AS FOOD, FUEL, SUPPLIES, OR OTHER ITEMS THAT ARE~~
~~9 CUSTOMARILY CONSIDERED AS CURRENT OPERATING EXPENSES; AND~~
~~10 ELIGIBLE HEALTH FACILITY DOES NOT INCLUDE A STRUCTURE USED~~
~~11 OR TO BE USED PRIMARILY FOR SECTARIAN INSTRUCTION OR STUDY~~
~~12 OR AS A PLACE FOR DEVOTIONAL ACTIVITIES OR RELIGIOUS~~
~~13 WORSHIP.~~

~~14 Section 5. Allowable costs. Costs eligible for~~
~~15 financing or refinancing under [sections 2 through 26]~~
~~16 include:~~

~~17 (1) the total of all reasonable or necessary costs~~
~~18 incidental to the acquisition, construction, reconstruction,~~
~~19 repair, alteration, equipment, enlargement, and improvement~~
~~20 of an eligible health facility and the acquisition of all~~
~~21 real and personal property interests necessary or useful in~~
~~22 connection with the facility and all other undertakings~~
~~23 which the authority considers reasonable or necessary for~~
~~24 the development of the facility;~~

~~25 (2) the cost of demolishing or removing any building~~

1 or structure on land so acquired, the cost of acquiring any
 2 land to which such building or structure may be moved, the
 3 cost of all machinery and equipment, financing charges,
 4 interest prior to and during construction and, if judged
 5 advisable by the authority, for a period after completion of
 6 such construction, the cost of financing the facility,
 7 including interest on bonds and notes issued by the
 8 authority to finance the facility;

9 (3) reserves for principal and interest and for
 10 extensions, enlargements, additions, and improvements,
 11 including without limitation the cost of studies and
 12 surveys;

13 (4) the costs for land title and mortgage guaranty
 14 policies;

15 (5) the costs of plans, specifications, and
 16 architectural and engineering services;

17 (6) the costs of legal, organization, marketing, or
 18 other special services;

19 (7) the costs of financing, acquisition, demolition,
 20 construction, equipment, and site development of new and
 21 rehabilitated buildings; and

22 (8) the costs of rehabilitation, reconstruction,
 23 repair, or remodeling of existing buildings; and

24 (9) all other expenses necessary and incidental to the
 25 construction and acquisition of the facility, the financing

1 of such construction, and the acquisition and placing of the
 2 facility into operation.

3 Section 6. Quorum -- mode of action -- expenses. Four
 4 members of the authority constitute a quorum for the purpose
 5 of conducting business. Action may be taken by the
 6 authority upon the affirmative vote of at least four of its
 7 members. No vacancy in the membership of the authority
 8 impairs the right of a quorum to exercise all the rights and
 9 perform all the duties of the authority. Each meeting of
 10 the authority for any purpose must be open to the public.
 11 Notice of meetings must be as provided in the bylaws of the
 12 authority. Resolutions need not be published or posted.
 13 Members of the authority may receive no compensation for
 14 services but are entitled to necessary expenses, as provided
 15 in 2-18-501 through 2-18-503, incurred in the discharge of
 16 their duties.

17 Section 7. Powers of authority. The authority may:

18 (1) sue and be sued;

19 (2) have a seal;

20 (3) adopt all procedural and substantive rules
 21 necessary for the administration of [sections 2 through 26];

22 (4) issue bonds or incur other debt as described in
 23 [sections 2 through 26], including the issuance of notes or
 24 refunding bonds;

25 (5) invest any funds OBTAINED FROM THE ISSUANCE OF

1 ~~BONDS AND NOTES WHICH ARE~~ not required for immediate use,
 2 subject to any agreements with its bondholders and
 3 noteholders, as provided in Title 17, chapter 6, except that
 4 all investment income from funds invested by the authority,
 5 less the cost for investment, must be deposited in the bond
 6 proceeds fund;

7 (6) contract in its own name for the investment of
 8 funds, borrowing of funds, or any other purposes it
 9 considers appropriate to carry out the purposes of [sections
 10 2 through 26];

11 (7) participate with any financial institution in the
 12 purchase or guarantee of any loan or obligation;

13 (8) issue bond anticipation notes or any other
 14 anticipatory financial obligations to secure funding of
 15 eligible facilities;

16 (9) enter into agreements or make advance commitments
 17 to insure repayments required by loan agreements made by a
 18 lender. Such agreements are subject to terms and conditions
 19 established by the authority.

20 (10) sell, purchase, or insure loans to finance the
 21 costs of eligible facilities;

22 (11) accept gifts, grants, or loans from a federal
 23 agency, an agency or instrumentality of the state, a
 24 municipality, or any other source;

25 (12) enter into contracts or other transactions with a

1 federal agency, an agency or instrumentality of the state, a
 2 municipality, a private organization, or any other entity
 3 consistent with the exercise of any power under [sections 2
 4 through 26];

5 (13) with regard to property:

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

9 (b) hold, sell, assign, lease, encumber, mortgage, or
 10 otherwise dispose thereof;

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

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

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

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

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

24 (h) operate, manage, lease, dispose of, and otherwise
 25 deal with such property in any manner necessary or desirable

1 to protect its interests or the holders of its bonds or
2 notes if such action is consistent with any agreement with
3 such holders;

4 (14) service, contract, and pay for the servicing of
5 loans;

6 (15) provide general technical services in the
7 analysis, planning, design, processing, construction,
8 rehabilitation, and management of eligible health facilities
9 whenever considered appropriate;

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

18 (17) collect reasonable interest, fees, and charges
19 from participating institutions in connection with making
20 and servicing its lease agreements, loan agreements,
21 mortgage loans, notes, bonds, commitments, and other
22 evidences of indebtedness. THE INTEREST, FEES, AND CHARGES
23 SHALL BE DEPOSITED TO AN EARMARKED REVENUE ACCOUNT TO THE
24 CREDIT OF THE AUTHORITY. Interest, fees, and charges are
25 limited to the amounts required to pay the costs of the

1 authority, including operating and administrative expenses
2 and reasonable allowances for losses that may be incurred.

3 (18) perform any other acts necessary and convenient to
4 carry out the purposes of [sections 2 through 26].

5 Section 8. Restriction on operating facility --
6 leases. (1) The authority may not operate an eligible health
7 facility as a business other than as a lessee or lessor.
8 ~~Any lease of a facility must be for a term not less than the~~
9 ~~longest maturity of any bonds issued to finance the facility~~
10 ~~or a portion thereof.~~ The lease must provide for rentals
11 adequate to pay the principal and interest due on bonds and
12 to create and maintain such reserves and accounts for
13 depreciation as the authority determines necessary.

14 (2) The lease may contain terms and conditions that
15 the authority considers proper. The lease may be terminated
16 upon failure of the facility PARTICIPATING HEALTH
17 INSTITUTION to comply with any obligation under the lease.
18 The lease may include a renewal or an option to purchase
19 provision upon such terms or conditions as the authority
20 considers desirable.

21 (3) Upon payment of all indebtedness incurred by the
22 authority for financing a facility, the authority may convey
23 any or all of the facility to the lessee, with or without
24 consideration.

25 Section 9. Staff of authority. The authority may

1 employ or contract for any professional staff or consultants
 2 necessary ~~and fix their compensation.~~ SUCH EMPLOYMENT AND
 3 CONTRACTING MUST BE DONE IN CONSULTATION WITH THE
 4 DEPARTMENT.

5 Section 10. Loan limitation. No loan made by the
 6 authority may exceed the total cost of the eligible health
 7 facility being financed as such cost is determined by the
 8 participating institution and approved by the authority.

9 Section 11. Agent of the authority. The authority may
 10 designate a participating health institution as its agent
 11 for determining the location and character of an eligible
 12 health facility undertaken by that institution under the
 13 provisions of [sections 2 through 26]. As agent, the
 14 institution may acquire, construct, reconstruct, renovate,
 15 replace, improve, maintain, repair, operate, lease, as
 16 lessee or lessor, and enter into contracts for any and all
 17 such purposes, including contracts for the management and
 18 operation of the facility.

19 Section 12. Notes. The authority is authorized from
 20 time to time to issue its negotiable notes for any corporate
 21 purpose, including the payment of all or any part of the
 22 cost of any facility, and renew from time to time any notes
 23 by the issuance of new notes, whether the notes to be
 24 renewed have or have not matured. The authority may issue
 25 notes partly to renew notes or to discharge other

1 obligations then outstanding and partly for any other
 2 purpose. The notes may be authorized, sold, executed, and
 3 delivered in the same manner as bonds. Any resolution
 4 authorizing notes of the authority or any issue thereof may
 5 contain any provisions which the authority is authorized to
 6 include in any resolution authorizing bonds of the
 7 authority. The authority may include in its notes any
 8 terms, covenants COVENANTS, or conditions that it is
 9 authorized to include in any bonds. All notes must be
 10 payable from the proceeds of bonds, renewal notes, the
 11 revenues of the authority, or other money available therefor
 12 and not otherwise pledged, subject only to any contractual
 13 rights of the holders of any of its notes or other
 14 obligations then outstanding.

15 Section 13. Bonds of the authority. (1) The authority
 16 may borrow money and issue bonds NOT IN EXCESS OF \$50
 17 MILLION FOR ANY 2-YEAR PERIOD, ~~including but not limited to~~
 18 ~~bonds on which the principal and interest are payable:~~

19 ~~(a) exclusively from the income, receipts, or other~~
 20 ~~money derived from an eligible health facility financed with~~
 21 ~~the proceeds of the bonds;~~

22 ~~(b) exclusively from the income, receipts, or other~~
 23 ~~money derived from designated facilities, whether or not~~
 24 ~~they are financed in whole or in part with the proceeds of~~
 25 ~~the bonds;~~ or

1 ~~(c) -- from its income, receipts, other assets generally,~~
2 ~~or a designated part or parts of them.~~

3 (2) Bonds must be authorized and dated and shall
4 mature as the authority may specify, except that no bond may
5 mature more than 40 years from the date of its issue. Bonds
6 shall bear interest at the rate or rates, be in the
7 denominations, be in the proper registered or bearer form,
8 be executed in the manner, be payable in the medium of
9 payment, at the place or places, and be subject to the terms
10 of redemption that the authority may provide.

11 (3) All bonds, regardless of form or character, are
12 negotiable instruments for all purposes of the Uniform
13 Commercial Code, subject to requirements as to registration.

14 (4) All bonds may be sold at public or private sale in
15 the manner, for the price or prices, and at the time or
16 times which the authority may determine.

17 (5) Before the issuance of any bonds, the authority
18 shall make provisions, by lease or other agreement,
19 regarding the facility or facilities being financed by the
20 issue of the bonds, for rentals or other considerations
21 sufficient, in the judgment of the authority, to:

22 (a) pay the principal of and interest on the bonds as
23 they become due;

24 (b) create and maintain the reserves therefor;

25 (c) meet all obligations in connection with the lease

1 or other agreement; and

2 (d) meet all costs necessary to service the bonds
3 unless the lease or agreement provides that the obligations
4 are to be met or costs are to be paid by a party other than
5 the authority.

6 (6) The authority may combine, for the purposes of a
7 single offering, bonds financing more than one facility
8 under [sections 2 through 26].

9 Section 14. Security of bondholders. (1) The payment
10 of the principal of and interest on any bonds issued under
11 [sections 2 through 26] must be secured by a pledge of the
12 revenues out of which such bonds are made payable.

13 (2) The principal of and interest on any bonds issued
14 under the authority of this part may be secured by:

15 (a) a mortgage covering all or any part of the
16 ~~eligible~~ **PARTICIPATING** health facility **INSTITUTION**;

17 (b) a pledge of the lease or loan agreement relating
18 to such facility; or

19 (c) such other security device as may be considered
20 most advantageous by the authority.

21 (3) The proceedings under which the bonds are
22 authorized to be issued under the provisions of [sections 2
23 through 26] and any mortgage given to secure the same,
24 including a mortgage given by the borrower or lessee, may
25 contain any agreements and provisions customarily contained

1 in instruments securing bonds, as the authority considers
2 advisable. Such provisions may not be in conflict with the
3 provisions of [sections 2 through 26], including without
4 limitation provisions relating to:

5 (a) fixing and collection of rents or payments under
6 any lease or loan agreement concerning the facility covered
7 by such proceedings or mortgage;

8 (b) terms to be incorporated in the lease or loan
9 agreement;

10 (c) maintenance and insurance of such facility;

11 (d) creation and maintenance of special funds from the
12 revenues of such facility; and

13 (e) rights and remedies available in the event of a
14 default to the bondholders or to the trustee under a
15 mortgage.

16 (4) The proceedings authorizing any bonds under the
17 provisions of [sections 2 through 26] and any mortgage,
18 including a mortgage given by the lessee or borrower,
19 securing such bonds may provide that in the event of a
20 default in the payment of the principal of or the interest
21 on such bonds or in the performance of any agreement
22 contained in such proceedings or mortgage, such payment and
23 performance may be enforced by mandamus or by the
24 appointment of a receiver in equity with power to charge and
25 collect rents and to apply the revenues from the project in

1 accordance with such proceedings or the provisions of such
2 mortgage.

3 (5) Any mortgage made by the authority, lessee, or
4 borrower to secure these bonds may provide that, in the
5 event of a default in the payment thereof or the violation
6 of any agreement contained in the mortgage, the mortgage may
7 be foreclosed and the project sold under proceedings in
8 equity or in any other manner permitted by law. The
9 mortgage may also provide that any trustee under the
10 mortgage or the holder of any of the bonds secured thereby
11 may become the purchaser at any foreclosure sale if he is
12 the highest bidder therefor. No breach of any such
13 agreement may impose any pecuniary liability upon the
14 authority.

15 Section 15. Purchase of bonds. The authority may
16 purchase its bonds or notes. The authority may hold,
17 pledge, cancel, or resell such bonds or notes, subject to
18 and in accordance with agreements with bondholders or
19 noteholders.

20 Section 16. Findings-before ~~PROCEDURE FOR~~ issuance of
21 bonds. (1) The authority may not undertake to finance any
22 eligible health facility unless, prior to the issuance of
23 any bonds or notes, the members find that:

24 ~~(1) such facility will enable or assist a health~~
25 ~~institution to fulfill its obligation to provide health~~

1 ~~facilities and~~

2 ~~(A) SUCH FACILITY WILL BE OPERATED BY A HEALTH~~

3 ~~INSTITUTION FOR THE PURPOSE OF FULFILLING ITS OBLIGATION TO~~

4 ~~PROVIDE HEALTH CARE FACILITIES; AND~~

5 ~~(2)(B) such facility has been reviewed and approved by~~

6 ~~the appropriate regional and state health planning boards~~

7 ~~AND HAS RECEIVED ANY APPROVAL REQUIRED BY TITLE 50, CHAPTER~~

8 ~~2, PART 3.~~

9 ~~(2) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY~~

10 ~~BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS~~

11 ~~BEEN SHOWN THAT SUCH FACILITY IS FINANCIALLY FEASIBLE AND~~

12 ~~THAT THERE WILL BE SUFFICIENT REVENUES TO ASSURE THAT~~

13 ~~PRINCIPAL AND INTEREST PAYMENTS ARE MADE WHEN THEY BECOME~~

14 ~~DUE.~~

15 ~~(3) THE AUTHORITY MAY NOT ALLOW THE PROCEEDS OF ANY~~

16 ~~BONDS OR NOTES TO BE EXPENDED FOR ANY FACILITY UNTIL IT HAS~~

17 ~~CONSIDERED THE ABILITY OF THE HEALTH INSTITUTION TO OPERATE~~

18 ~~SUCH A FACILITY BASED ON THE HEALTH INSTITUTION'S EXPERIENCE~~

19 ~~AND EXPERTISE.~~

20 ~~(4) THE AUTHORITY MUST INSURE THAT ITS FINANCINGS~~

21 ~~CONSISTENTLY PROVIDE FAIR AND REALISTIC TERMS AND COVENANTS~~

22 ~~SUFFICIENT TO PROTECT THE POSITION OF THE LENDERS OR~~

23 ~~BONDHOLDERS.~~

24 Section 17. Trust agreement to secure bonds. In the

25 discretion of the authority, any bonds issued under

1 [sections 2 through 26] may be secured by a trust agreement

2 between the authority and a corporate trustee, which may be

3 any trust company or bank having the powers of a trust

4 company in Montana. The trust agreement or the resolution

5 providing for the issuance of such bonds may pledge or

6 assign the revenues to be received or proceeds of any

7 contract or contracts pledged and may convey or mortgage the

8 project or any portion thereof. The trust agreement or

9 resolution providing for the issuance of such bonds may

10 contain such provisions for protecting and enforcing the

11 rights and remedies of the bondholders as may be reasonable

12 and proper and not in violation of law, including

13 particularly such provisions as have been specifically

14 authorized to be included in any resolution of the authority

15 authorizing bonds. Any bank or trust company incorporated

16 under the laws of this state, which may act as depository of

17 the proceeds of bonds or of revenues or other money, may

18 furnish such indemnifying bonds or pledge such securities as

19 may be required by the authority. Any such trust agreement

20 may set forth the rights and remedies of the bondholders and

21 of the trustee or trustees and may restrict the individual

22 right of action by bondholders. In addition, any such trust

23 agreement or resolution may contain such other provisions as

24 the authority may consider reasonable and proper for the

25 security of the bondholders. All expenses incurred in

1 carrying out such trust agreement or resolution may be
2 treated as a part of the cost of the operation of an
3 eligible health facility.

4 Section 18. Credit of state not pledged. Obligations
5 issued under the provisions of [sections 2 through 26] do
6 not constitute a debt, liability, obligation, or pledge of
7 the faith and credit of the state but are payable solely
8 from the revenues or assets of the ~~authority~~ ~~HEALTH FACILITY~~
9 ~~INSTITUTION BEING FINANCED~~. An obligation issued under
10 [sections 2 through 26] must contain on the face thereof a
11 statement to the effect that the state of Montana is not
12 liable on the obligation, the obligation is not a debt of
13 the state, and neither the faith and credit nor the taxing
14 power of the state is pledged to the payment of the
15 principal of or the interest on the obligation.

16 Section 19. Exemption from taxation -- securities law.
17 (1) The authority performs a public function for the benefit
18 of the people of the state for the improvement of their
19 health and living conditions and is a public instrumentality
20 of the state. Accordingly, the income or other revenues of
21 the authority and all property owned by the authority and
22 any bonds, notes, or other obligations issued under
23 [sections 2 through 26], their transfer, and income
24 therefrom, including any profit made on the sale thereof,
25 are exempt at all times from all taxation in the state of

1 Montana.

2 (2) Bonds issued by the authority are exempt from the
3 Montana Securities Act, but copies of all prospectus and
4 disclosure documents must be deposited with the state
5 securities commissioner for public inspection.

6 Section 20. Necessary expenses -- fees. (1) All
7 expenses of the authority incurred in carrying out the
8 provisions of [sections 2 through 26] are payable solely
9 from funds provided under the authority of [sections 2
10 through 26], and no liability may be incurred by the
11 authority beyond the extent to which money has been provided
12 under [sections 2 through 26], except for the purposes of
13 meeting the necessary expenses of initial organization and
14 operation and until such date as the authority derives money
15 from funds provided under [sections 2 through 26]. The
16 authority may borrow money for necessary expenses of
17 organization and operation. Such borrowed money must be
18 repaid within a reasonable time after the authority receives
19 funds provided for under [sections 2 through 26].

20 (2) When an application is made to the authority by
21 any participating health institution for financial
22 assistance to provide for its facilities, the application
23 must ~~MAY~~ be accompanied by an initial planning service fee
24 in an amount determined by the authority. Such initial
25 planning service fee must ~~MAY~~ be included in the cost of the

1 facilities to be financed and is not refundable by the
 2 authority, whether or not any application is approved. In
 3 addition to the initial fee, an annual planning service fee
 4 must MAY be paid to the authority by each participating
 5 health institution in an amount determined by the authority.
 6 The annual planning service fee must MAY be paid on such
 7 dates or in installments as may be satisfactory to the
 8 authority. The fees must be used for:

9 (a) necessary expenses to determine the need for
 10 facilities in the area concerned, and to that end the
 11 authority may utilize recognized voluntary and official
 12 health planning organizations and agencies at local,
 13 regional, and state levels;

14 (b) necessary administrative expenses; and

15 (c) reserves for anticipated future expenses.

16 (3) The authority may, for a negotiated fee, retain
 17 the services of any other public or private person, firm,
 18 partnership, association, or corporation for the furnishing
 19 of services and data for use by the authority in determining
 20 the need for and location of any eligible health facility
 21 for which application is being made or for such other
 22 services or surveys as the authority considers necessary to
 23 carry out the purposes of [sections 2 through 26].

24 Section 21. Conveyance of title to institution. When
 25 the principal and interest on bonds issued by the authority

1 to finance the cost of eligible health facilities or to
 2 refinance outstanding indebtedness of one or more
 3 participating health institutions, including any refunding
 4 bonds issued to refund and refinance such bonds, have been
 5 fully paid and retired or when adequate provision has been
 6 made to fully pay and retire the same and all other
 7 conditions of the resolution, lease, trust indenture, and
 8 mortgage or deed of trust or any other form of security
 9 arrangement, if any, authorizing and securing the same have
 10 been satisfied and the lien of the mortgage or deed of trust
 11 or any other form of security arrangement has been released
 12 in accordance with the provisions thereof, the authority
 13 shall promptly convey its interest in the facilities and any
 14 other facilities mortgaged or subject to deed of trust or
 15 any other form of security arrangement to secure the bonds
 16 to the participating health institution or institutions.

17 Section 22. Trust funds. All money received pursuant
 18 to [sections 2 through 26], whether as proceeds from the
 19 sale of bonds, notes, or other obligations or as revenues or
 20 receipts, are trust funds to be held and applied solely as
 21 provided in [sections 2 through 26]. Any officer with whom
 22 or any bank or trust company with which such money is
 23 deposited shall act as trustee of the money and shall hold
 24 and apply it for the purposes of [sections 2 through 26],
 25 subject to such regulations as [sections 2 through 26] and

1 the resolution authorizing the bonds, notes, or other
2 obligations of any issue or the trust agreement securing the
3 obligations may provide.

4 Section 23. Bonds as legal investment. (1) Bonds
5 issued by the authority under the provisions of [sections 2
6 through 26] are securities in which funds may be legally and
7 properly invested, including capital in the control of or
8 belonging to:

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

11 (b) insurance companies;

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

15 (d) personal representatives, public administrators,
16 trustees, and other fiduciaries; and

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

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

24 Section 24. Pledge of the state. In accordance with
25 the constitutions of the United States and the state of

1 Montana, the state pledges that it will not in any way
2 impair the obligations of any agreement between the
3 authority and the holders of notes and bonds issued by the
4 authority, including but not limited to an agreement to
5 administer a loan program financed by the issuance of bonds,
6 and to employ a staff sufficient and competent for this
7 purpose.

8 Section 25. Validity of pledge. Any pledge made by the
9 authority is valid and binding from the time the pledge is
10 made. The revenue, money, or property pledged and received
11 by the authority is immediately subject to the lien of the
12 pledge without any physical delivery or further act. The
13 lien of any pledge is valid and binding against all parties
14 having claims of any kind, whether in tort, contract, or
15 otherwise, against the authority, irrespective of whether
16 such parties have notice thereof. Neither the resolution
17 nor any other instrument by which a pledge is created is
18 required to be recorded.

19 Section 26. Annual audit. ~~{1} The authority's books~~
20 ~~and records must be audited at least once each fiscal year~~
21 ~~BY OR AT THE DISCRETION DIRECTION OF THE LEGISLATIVE~~
22 ~~AUDITOR. THE ACTUAL COSTS OF THE AUDIT SHALL BE PAID FROM~~
23 ~~THE AUTHORITY'S FUNDS.~~

24 ~~{2}--The--legislative--auditor--may--conduct--an--audit--at~~
25 ~~any--time--upon--the--request--of--the--legislative--audit~~

1 ~~committee~~

2 Section 27. Initial appointments to authority.
 3 Notwithstanding [section 1], the members of the authority
 4 first appointed by the governor shall serve for terms to be
 5 designated by the governor and to expire on June 30 of the
 6 respective year. The terms of two members shall expire in
 7 1984, two in 1985, and one each in 1986, 1987, and 1988.

8 Section 28. Severability. If a part of this act is
 9 invalid, all valid parts that are severable from the invalid
 10 part remain in effect. If a part of this act is invalid in
 11 one or more of its applications, the part remains in effect
 12 in all valid applications that are severable from the
 13 invalid applications.

14 SECTION 29. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON
 15 PASSAGE AND APPROVAL.

-End-