

HOUSE BILL NO. 733

INTRODUCED BY BENGTON, TOWE

IN THE HOUSE

February 12, 1983	Introduced and referred to Select Committee on Economic Development.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted.
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 Local Government.
March 23, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 25, 1983	Second reading, pass consideration.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 46; Noes, 1.

IN THE HOUSE

March 28, 1983

Returned to House with amendments.

April 4, 1983

Second reading, amendments not concurred in.

On motion, Conference Committee requested and appointed.

April 13, 1983

Conference Committee reported.

April 14, 1983

Second reading, report adopted.

Third reading, report adopted.

April 18, 1983

Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *733*
2 INTRODUCED BY *Bengtson*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
5 CONSOLIDATED FINANCING OF LOCAL PUBLIC EXPENDITURES BY
6 AUTHORIZING THE BOARD OF INVESTMENTS TO LEND MONEY TO
7 MUNICIPALITIES OR OTHER PUBLIC BODIES THROUGH THE PURCHASE
8 OF THEIR SECURITIES BY THE BOARD; TO AUTHORIZE THE BOARD TO
9 RAISE MONEY FOR SUCH LOANS BY ISSUING ITS OWN BONDS AND
10 NOTES PAYABLE OUT OF LOAN REPAYMENTS."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Short title. [This act] shall be known and
14 may be cited as the "Municipal Finance Consolidation Act of
15 1983".
16 Section 2. Policy and purpose. (1) It is the policy of
17 the state of Montana to:
18 (a) foster and promote, by all reasonable means, the
19 provision of efficient capital markets and facilities for
20 borrowing money by counties, cities, towns, school
21 districts, special taxing districts, and other public bodies
22 to pay for capital improvements and other needs as otherwise
23 authorized by law; and
24 (b) reduce, to the extent possible, costs of local
25 public indebtedness to taxpayers and residents by affording

1 public bodies an appropriate degree of flexibility and
2 choice in the marketing of their debt securities so as to
3 minimize marketing costs and interest rates.
4 (2) It is the purpose of [this act] to promote the
5 policies stated in subsection (1) by:
6 (a) creating a means for public bodies to pool, in
7 effect, the debt instruments they are otherwise authorized
8 to offer for sale to the investment community in order to
9 obtain economies of scale and reduce marketing and interest
10 costs; and
11 (b) providing additional security for the payment of
12 bonds and notes held by investors and thereby further
13 reducing interest costs.
14 Section 3. Liberal construction. [This act] and the
15 powers granted in [this act] must be liberally construed to
16 effectuate the policies and purposes stated in [this act].
17 Section 4. Definitions. As used in [this act], the
18 following definitions apply:
19 (1) "Board" means the board of investments created in
20 2-15-1005.
21 (2) "Department" means the department of commerce
22 created in 2-15-1801.
23 (3) "Local government unit" means any municipal
24 corporation or political subdivision of the state, including
25 without limitation any city, town, county, school district,

1 or other special taxing district.

2 (4) "Reserve fund" means the municipal finance
3 consolidation act reserve fund created in [section 21].

4 Section 5. Board of investments to implement. The
5 board of investments may make and enforce orders, rules, and
6 bylaws that are necessary or desirable for the
7 implementation of [this act].

8 Section 6. Bonds, bond anticipation notes, and notes
9 of the board. (1) The board may by resolution, from time to
10 time, issue negotiable notes and bonds to finance loans or
11 refinance its loans to local government units and its
12 purchases of their bonds and notes, to establish or
13 replenish reserves securing the payment of its bonds and
14 notes, and to finance all other expenditures of the board
15 incident to and necessary or convenient to carry out [this
16 act].

17 (2) The board may by resolution, from time to time:

18 (a) issue notes to renew notes and bonds to pay notes,
19 including interest;

20 (b) whenever it considers refunding expedient, refund
21 any bonds by the issuance of new bonds, whether the bonds to
22 be refunded have or have not matured; and

23 (c) issue bonds partly to refund bonds outstanding and
24 partly for any of its other purposes.

25 (3) The board may by resolution, from time to time, in

1 anticipation of the sale of its securities under this
2 chapter, issue temporary notes and renewal notes.

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

9 (5) The notes and bonds must be authorized by
10 resolutions of the board, shall bear a date, and shall
11 mature at times as the resolutions provide. The bonds may
12 be issued as serial bonds payable in annual installments or
13 as term bonds or as a combination thereof. The notes and
14 bonds shall bear interest at a rate or rates; be in
15 denominations; be in a form, either coupon or registered;
16 carry registration privileges; be executed in a manner; be
17 payable in a medium of payment, at places inside or outside
18 the state; and be subject to terms of redemption as provided
19 in resolutions of the board. The notes and bonds of the
20 board may be sold at public or private sale at such prices,
21 which may be above or below par, as are determined by the
22 board.

23 Section 7. Participation voluntary. Use of the
24 financing mechanism created by [this act] is entirely
25 voluntary, and no local government unit may be required to

1 sell its bonds, bond anticipation notes, or notes to the
2 board.

3 Section 8. Limitations on amounts. The board may not:

4 (1) make any loans to or purchase the bonds or notes
5 of any single local government unit in an amount greater
6 than \$150,000 per single loan, bond issue, or note; or

7 (2) issue any bonds or notes that cause the total
8 outstanding indebtedness of the board under [this act]
9 (except for bonds or notes issued to fund or refund other
10 outstanding bonds or notes) to exceed \$10 million.

11 Section 9. Purchase of anticipation notes.
12 Notwithstanding any other provision of law, a local
13 government unit may issue and the board may purchase notes
14 in anticipation of an otherwise authorized sale of municipal
15 securities. In connection with any purchase of anticipation
16 notes, the board may by agreement with the local government
17 unit impose terms, conditions, and limitations that in the
18 board's opinion are proper under the circumstances and for
19 the purposes and security of the board and the holders of
20 its bonds or notes.

21 Section 10. Refunding obligations. (1) The board may
22 provide for the issuance of refunding obligations for
23 refunding any obligations then outstanding that have been
24 issued under [this act], including the payment of any
25 redemption premium and any interest accrued to or to accrue

1 to the date of redemption of the obligations. The issuance
2 of obligations, the maturities and other details, the rights
3 of the holders, and the rights, duties, and obligations of
4 the board are governed by the appropriate provisions of
5 [this act] that relate to the issuance of obligations.

6 (2) Refunding obligations issued as provided in
7 subsection (1) may be sold or exchanged for outstanding
8 obligations issued under [this act]. The proceeds of
9 refunding obligations may be applied to the purchase,
10 redemption, or payment of outstanding obligations. Pending
11 the application of the proceeds of refunding obligations,
12 with other available funds, to the payment of principal,
13 accrued interest, and any redemption premium on the
14 obligations being refunded and, if permitted in the
15 resolution authorizing the issuance of the refunding
16 obligations or in the trust agreement securing them, to the
17 payment of interest on refunding obligations and expenses in
18 connection with refunding, the proceeds of refunding
19 obligations may be invested as provided in Title 17, chapter
20 6.

21 Section 11. Additional powers of the board. In
22 addition to all other powers conferred on the board by [this
23 act] or any other law, the board has the power:

24 (1) to purchase or hold municipal bonds, bond
25 anticipation notes, or notes at prices and in a manner the

1 board considers advisable;

2 (2) to sell municipal bonds, bond anticipation notes,
3 or notes acquired or held by it at prices without relation
4 to cost and in a manner the board considers advisable;

5 (3) to invest funds or money acquired by the board as
6 provided in [section 23];

7 (4) to prescribe the form of application or procedure
8 required of a local government unit for a loan or purchase
9 of its municipal bonds, bond anticipation notes, or notes;
10 fix the terms and conditions of the loan or purchase; and
11 enter into agreements with local government units with
12 respect to loans or purchases;

13 (5) to render services to local government units in
14 connection with public or private sales of their municipal
15 bonds, bond anticipation notes, or notes that are eligible
16 for purchase by the board under [this act], including
17 advisory and other services, and charge the local government
18 units for such services;

19 (6) to charge for its costs and services in reviewing
20 or acting upon a proposed loan to a local government unit or
21 a proposed purchase by the board of municipal bonds, bond
22 anticipation notes, or notes of the local government unit,
23 whether or not the loan is made or the municipal bonds, bond
24 anticipation notes, or notes are purchased;

25 (7) to fix and establish terms, interest rates, and

1 provisions with respect to a purchase of municipal bonds,
2 bond anticipation notes, or notes by the board, including:

3 (a) the date and maturities of the bonds, bond
4 anticipation notes, or notes;

5 (b) provisions as to redemption or payment before
6 maturity; and

7 (c) any other matters judged by the board to be
8 necessary, desirable, or advisable for the purchase or loan;

9 (8) in connection with any loan to a local government
10 unit or purchase of municipal bonds, bond anticipation
11 notes, or notes of a local government unit, to consider:

12 (a) the lawfulness and validity of the purpose to be
13 served by the loan or purchase;

14 (b) the ability of the local government unit to secure
15 borrowed money from other sources and the costs thereof;

16 (c) the ability of the local government unit to repay
17 the loan, notes, or bonds;

18 (d) the priority of need for the particular public
19 improvement or purpose to be financed; and

20 (a) varying the terms and conditions of its loans or
21 purchases as between various local government units in
22 accordance with their respective priorities and credit
23 worthiness;

24 (9) to conduct examinations and hearings and to hear
25 testimony and take proof, under oath or affirmation, at

1 public or private hearings, on any matter material to its
2 information and necessary to carry out [this act];

3 (10) to issue subpoenas requiring the attendance of
4 witnesses and the production of books and papers pertinent
5 to any hearing before the board;

6 (11) to appoint, employ, or contract for the services
7 of officers, employees, agents, financial or professional
8 advisers, and attorneys and to pay such compensation for
9 their services as the board may determine;

10 (12) to procure insurance against any losses in
11 connection with its property, operations, or assets in such
12 amounts and from such insurers as it considers desirable;

13 (13) to the extent permitted under its contracts with
14 the holders of bonds or notes of the board, to consent to
15 modification of the rate of interest, the time for payment
16 of any installment of principal or interest, or the security
17 for any other term of a bond, bond anticipation note, note,
18 contract, or agreement of any kind to which the board is a
19 party; and

20 (14) to do all acts and things necessary, convenient,
21 or desirable to carry out the powers expressly granted or
22 necessarily implied in [this act].

23 Section 12. Provisions of bond resolutions. A
24 resolution authorizing notes or bonds or any issue thereof
25 may contain provisions that must be a part of the contract

1 or contracts with the holders thereof as to:

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

6 (2) the setting aside of reserves for sinking funds in
7 the possession of trustees, paying agents, and other
8 depositories and the regulation and disposition thereof;

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

13 (4) limitations on the issuance of additional notes or
14 bonds, the terms upon which additional notes or bonds may be
15 issued and secured, and the refunding of outstanding notes
16 or bonds;

17 (5) the procedure, if any, by which the terms of any
18 contract with noteholders or bondholders may be amended or
19 abrogated, the amount of notes or bonds the holders of which
20 must consent thereto, and the manner in which such consent
21 may be given;

22 (6) a commitment to employ adequate and competent
23 personnel at reasonable compensation, salaries, fees, and
24 charges as may be determined by the board in conjunction
25 with the department and to maintain suitable facilities and

1 services for the purpose of carrying out its programs;

2 (7) vesting in a trustee such property, rights,
3 powers, and duties in trust as the board determines; and

4 (8) defining the acts or omissions that constitute a
5 default in the obligations and duties of the board to the
6 holders of the notes or bonds and providing for the rights
7 and remedies of the holders of the notes or bonds in the
8 event of such default, including as a matter of right the
9 appointment of a receiver. Rights and remedies may not be
10 inconsistent with the laws of this state and the other
11 provisions of [this act].

12 Section 13. Validity of pledge. A pledge by the board
13 is valid and binding from the time the pledge is made. The
14 revenues, money, or property pledged and thereafter received
15 by the board is immediately subject to the lien of the
16 pledge without any physical delivery thereof or further act.
17 The lien of any pledge is valid and binding against all
18 parties having claims of any kind in tort, contract, or
19 otherwise against the board, irrespective of whether such
20 parties have notice thereof. Neither the resolution nor any
21 other instrument by which a pledge is created need be
22 recorded.

23 Section 14. Nonimpairment by the state. In accordance
24 with the constitutions of the United States and the state of
25 Montana, the state pledges that it will not in any way

1 impair the obligations of any agreement between the board
2 and a local government unit or between the board and the
3 holders of notes and bonds issued by the board, including
4 but not limited to an agreement to administer a loan program
5 financed by the issuance of bonds and to employ a staff
6 sufficient and competent for this purpose.

7 Section 15. Trust indenture. (1) In the discretion of
8 the board, the bonds or notes of the board may be secured by
9 a trust indenture between the board and a corporate trustee,
10 which may be a trust company or bank having the power of a
11 trust company inside or outside the state. A trust
12 indenture may contain provisions for protecting and
13 enforcing bondholders' rights and remedies that are
14 reasonable and proper and not in violation of law, including
15 covenants setting forth the duties of the board in relation
16 to the exercise of its powers and the custody, safeguarding,
17 and application of all money. The board may provide by a
18 trust indenture for the payment of the proceeds of the bonds
19 or notes and the revenues to the trustee under the trust
20 indenture of another depository and for the method of
21 disbursement, with safeguards and restrictions it considers
22 necessary.

23 (2) All expenditures incurred in carrying out a trust
24 indenture may be treated as part of the general overhead
25 cost of the board.

1 Section 16. Presumption of validity. After issuance,
2 all bonds or notes of the board are conclusively presumed to
3 be fully authorized by and issued under all the laws of this
4 state and any person or governmental unit is estopped from
5 questioning their proper authorization, sale, issuance,
6 execution, or delivery by the board.

7 Section 17. Signatures of board members. If any of the
8 board members whose signatures appear on notes or bonds or
9 coupons cease to be members before the delivery of the notes
10 or bonds, their signatures shall nevertheless be valid and
11 sufficient for all purposes as if the members had remained
12 in office until delivery.

13 Section 18. Negotiability of bonds or notes.
14 Notwithstanding any other provisions of law, a bond or note
15 issued under this chapter is fully negotiable for all
16 purposes of the Uniform Commercial Code, Title 30, chapters
17 1 through 9, and a holder or owner of a bond or note or of a
18 coupon appurtenant to it, by accepting the bond, note, or
19 coupon, is conclusively presumed to have agreed that the
20 bond, note, or coupon is fully negotiable for all purposes
21 of the Uniform Commercial Code.

22 Section 19. Bonds or notes as legal investments.
23 Notwithstanding the restrictions of any other law, all
24 banks, trust companies, savings banks and institutions,
25 building and loan associations, savings and loan

1 associations, investment companies, and other persons
2 carrying on a banking business, all insurance companies,
3 insurance associations, and other persons carrying on an
4 insurance business, and all executors, administrators,
5 guardians, trustees, and other fiduciaries may legally
6 invest sinking funds, money, or other funds belonging to
7 them or within their control in bonds or notes issued under
8 [this act].

9 Section 20. Tax exemption of bonds. Bonds, notes, or
10 other obligations issued by the board under [this act],
11 their transfer, and their income (including any profits made
12 on their sale) are free from taxation by the state or any
13 political subdivision or other instrumentality of the state,
14 excepting inheritance, estate, and gift taxes. The board is
15 not required to pay recording or transfer fees or taxes on
16 instruments recorded by it.

17 Section 21. Reserve fund. (1) The board shall
18 establish and maintain a municipal finance consolidation act
19 reserve fund, to which there shall be deposited or
20 transferred:

21 (a) all money appropriated by the legislature for the
22 purposes of the fund in accordance with the provisions of
23 subsection (4);

24 (b) all proceeds of bonds required to be deposited in
25 the fund by terms of a contract between the board and its

1 bondholders or a resolution of the board with respect to the
2 proceeds of bonds;

3 (c) the proceeds of any bond issue of the state that
4 is authorized for such purpose;

5 (d) all other money appropriated by the legislature to
6 the reserve fund; and

7 (e) any other money or funds of the board that it
8 decides to deposit in the fund.

9 (2) All money held in the reserve fund shall be used
10 solely for the payment of the principal of or interest on
11 the bonds or notes secured in whole or in part by the fund
12 or the sinking fund payments with respect to the bonds or
13 notes, the purchase or redemption of the bonds or notes, the
14 payment of interest on the bonds or notes, or the payment of
15 any redemption premium required to be paid when the bonds or
16 notes are redeemed prior to maturity. Money in the reserve
17 fund may not be withdrawn at any time in an amount that
18 reduces the fund to an amount less than the sum of minimum
19 reserve requirements established in the resolutions or
20 indentures of the board for the fund except, with respect to
21 bonds or notes secured in whole or in part by the fund, for
22 the purpose of making payment when due of principal,
23 interest, redemption premiums, and sinking fund payments for
24 the payment of which other money pledged is not available.

25 (3) Money in the reserve fund in excess of the

1 required reserve may be withdrawn at any time by the board
2 and transferred to another fund or account of the board
3 established for purposes of [this act], but not to any other
4 fund or account.

5 (4) In order to assure the maintenance of the required
6 debt service reserve in the reserve fund, the legislature
7 may appropriate to the board for deposit in the fund the
8 sum, certified by the chairman of the board to the governor
9 and to the legislature, that is necessary to restore the
10 fund to an amount equal to the required debt service
11 reserve. Nothing in this subsection creates a debt or
12 liability of the state.

13 (5) Notwithstanding any provision of Title 17, chapter
14 6, the board of investments may lend money for deposit to
15 the reserve fund in an amount equal to any deficiency in the
16 required debt service reserve. The loans shall be made on
17 such reasonable terms and conditions as the board considers
18 proper [and as may be agreed upon between the board and the
19 board of investments], including without limitation terms
20 and conditions providing that the loans need not be repaid
21 until the obligations of the board secured and to be secured
22 by the reserve fund are no longer outstanding.

23 Section 22. Additional funds and accounts. The board
24 may in its discretion establish additional reserves or other
25 funds or accounts necessary, desirable, or convenient to

1 further the accomplishment of the purposes of [this act] or
2 to comply with the provisions of any of its agreements or
3 resolutions.

4 Section 23. Investment. (1) Unless otherwise required
5 by a resolution or agreement of the board, the board may
6 invest funds coming under its control pursuant to [this act]
7 in the same manner as permitted for investment of funds
8 belonging to the state or held by the state treasurer.

9 (2) Funds from several or all accounts may be combined
10 for investment, and any interest earned shall be prorated
11 and credited to the various contributing accounts on the
12 basis of the amounts thereof invested, calculated according
13 to an average periodic balance or other generally accepted
14 accounting principle. Such proration must be calculated at
15 least once a year or upon a specific request made to the
16 board.

17 (3) All securities purchased by the board as an
18 investment remain in the custody of the state treasurer
19 until the same are sold, exchanged, retired, or mature and
20 are paid.

21 Section 24. Credit of state not pledged. Obligations
22 issued under the provisions of [this act] do not constitute
23 a liability or obligation or a pledge of the faith and
24 credit of the state but are payable solely from revenues or
25 funds of the board generated or received for purposes of

1 [this act]. An obligation issued under [this act] must
2 contain on the face thereof a statement to the effect that
3 the state of Montana is not liable on the obligation and the
4 obligation is not a debt of the state and neither the faith
5 and credit nor the taxing power of the state is pledged to
6 the payment of the principal of or the interest on the
7 obligation.

8 Section 25. Sale or exchange of municipal securities.
9 (1) Notwithstanding any law applicable to or constituting
10 any limitation on the maximum rate of interest per year
11 payable on bonds or notes or to annual interest cost to
12 maturity of money borrowed or received upon issuance of
13 bonds or notes, every local government unit is authorized to
14 contract to pay interest on or an interest cost per year for
15 money borrowed from the board and evidenced by its municipal
16 securities purchased by the board without regard to any
17 statutory limitations as to rate of interest per year
18 payable or as to annual interest cost to maturity of money
19 borrowed by the local government unit. Every local
20 government unit is authorized to contract with the board
21 with respect to the loan or purchase, and the contract must
22 contain the terms and conditions of such loan or purchase.
23 Every local government unit is authorized to pay fees and
24 charges required to be paid to the board for its services.

25 (2) Notwithstanding any law applicable to or

1 constituting any limitation on the sale of bonds or notes
 2 except the limitation on amount of bonded indebtedness, any
 3 local government unit may sell bonds or notes to the board
 4 by private negotiated sale, without limitation as to
 5 denomination. The bonds or notes may be fully registered or
 6 registerable as to principal only or in bearer form or may
 7 bear interest at the rate or rates, all in accordance with
 8 this section. The bonds or notes may be evidenced in the
 9 manner and may contain other provisions not inconsistent
 10 with [this act] and may be sold to the board without
 11 advertisement at the price or prices as may be determined,
 12 all as provided in the proceedings of the governing body of
 13 the local government unit pursuant to which the bonds or
 14 notes are authorized to be issued. The governing body of the
 15 local government unit may provide for the exchange of coupon
 16 bonds for fully registered bonds and of fully registered
 17 bonds for coupon bonds and for the exchange of any such
 18 bonds after issuance for bonds of larger or smaller
 19 denominations, all in the manner provided in the proceedings
 20 authorizing their issuance. The bonds in changed form or
 21 denominations must be exchanged for the surrendered bonds in
 22 the same aggregate principal amounts and in such manner that
 23 no overlapping interest is paid and the bonds in changed
 24 form or denominations bear interest at the same rate or
 25 rates and mature on the same date or dates as the bonds for

1 which they are exchanged. If any exchange is made under this
 2 subsection, the bonds surrendered by the holders at the time
 3 of the exchange must be canceled. The exchange may be made
 4 only at the request of the holders of the bonds to be
 5 surrendered. The local government unit may require all
 6 expenses incurred in connection with the exchange to be paid
 7 by the holders.

8 Section 26. Care and custody of bonds purchased by the
 9 board. The board may:

10 (1) enter into agreements or contracts with a bank,
 11 trust company, or financial institution, inside or outside
 12 the state, as may be necessary, desirable, or convenient, in
 13 the opinion of the board, for rendering services in
 14 connection with:

15 (a) the care, custody, or safekeeping of municipal
 16 bonds or other investments held or owned by the board
 17 pursuant to [this act];

18 (b) the payment or collection of amounts payable as to
 19 principal or interest; and

20 (c) the delivery to the board of municipal bonds or
 21 other investments purchased by it or sold by it pursuant to
 22 [this act];

23 (2) pay the cost of those services; and

24 (3) also, in connection with any of the services to be
 25 rendered by a bank, trust company, or financial institution

as to the custody and safekeeping of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the board, is necessary or desirable.

Section 27. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on municipal bonds, bond anticipation notes, or notes of local government units purchased or held by the board.

Section 28. Default in payment. If the board or local government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or local government unit fails or refuses to comply with [this act] or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the

purposes provided in [this act].

Section 29. Powers and duties of trustee on default.

(1) A trustee appointed under [section 28] may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or local government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and to require the board or local government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under [this act];

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or local government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its

1 consequences.

2 (2) The trustee, in addition to the powers stated in
3 subsection (1), has all the powers necessary for the
4 exercise of functions specifically set out or incident to
5 the general representation of bondholders or noteholders in
6 the enforcement and protection of their rights.

7 (3) Before declaring the principal of notes or bonds
8 due and payable, the trustee must give 30 days' notice in
9 writing to the governor, the attorney general, and the board
10 or local government unit defaulting.

11 Section 30. Exemption from execution and sale. All
12 property of the board, other than its revenues or funds
13 received pursuant to [this act], is exempt from levy and
14 sale by virtue of an execution, and no execution or other
15 judicial process may issue against such property. A judgment
16 against the board constitutes a charge or lien upon such
17 property.

18 Section 31. Annual audit. (1) The board's books and
19 records must be audited at least once each fiscal year.

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

23 Section 32. Annual report. By September 1 of each
24 year, the board shall publish a financial report for
25 distribution to the governor, the legislature, and the

1 public. The report must include a statement of the board's
2 current financial position with respect to its activities
3 under [this act], a summary of its activities pursuant to
4 [this act] during the previous year (including a listing of
5 the local governmental securities purchased by the board, a
6 listing of the bonds and notes sold by the board, and a
7 summary of the performance of any other investments of the
8 board's funds received under [this act]), an estimate of the
9 levels of such activities for the next year, and a
10 comparison of such activities during the previous year with
11 the estimates of those activities that were made in the
12 previous annual report.

13 Section 33. Limitations on board's power. Under [this
14 act] the board may not:

15 (1) make loans of money to any person, firm, or
16 corporation other than a local government unit or purchase
17 securities issued by any person, firm, or corporation other
18 than a local government unit as provided in [this act];

19 (2) emit bills of credit, accept deposits of money for
20 time or demand deposit, engage in any form or manner in the
21 conduct of any private or commercial banking business, or
22 act as a savings bank or savings and loan association;

23 (3) be or constitute a bank or trust company within
24 the jurisdiction or under the control of the state banking
25 board, the department of commerce, or the comptroller of the

1 currency of the United States department of the treasury;

2 (4) be or constitute a bank, banker, or dealer in
3 securities within the meaning of or subject to the
4 provisions of any securities, securities exchange, or
5 securities dealers law of the United States or of this state
6 or of any other state.

7 Section 34. Severability. If a part of this act is
8 invalid, all valid parts that are severable from the invalid
9 part remain in effect. If a part of this act is invalid in
10 one or more of its applications, the part remains in effect
11 in all valid applications that are severable from the
12 invalid applications.

13 Section 35. Coordination instruction. If either House
14 Bill No. 100 or ____ Bill No. ____ [LC 1148] is enacted by
15 the 48th legislature and approved by the governor, the
16 definition of "board" in section 4 is changed to the
17 "Montana economic development board" and all references to
18 the "board" in this act, except the reference to the board
19 of investments in subsection (5) of section 21, mean the
20 Montana economic development board. The bracketed language
21 in subsection (5) of section 21 is effective only if either
22 House Bill No. 100 or ____ Bill No. ____ [LC 1148] is
23 enacted by the 48th legislature and approved by the
24 governor.

-End-

Approved by Committee
on Economic Development

HOUSE BILL NO. 733

INTRODUCED BY BENGTSON, TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR CONSOLIDATED FINANCING OF LOCAL PUBLIC EXPENDITURES BY AUTHORIZING THE BOARD OF INVESTMENTS TO LEND MONEY TO MUNICIPALITIES OR OTHER PUBLIC BODIES THROUGH THE PURCHASE OF THEIR SECURITIES BY THE BOARD; TO AUTHORIZE THE BOARD TO RAISE MONEY FOR SUCH LOANS BY ISSUING ITS OWN BONDS AND NOTES PAYABLE OUT OF LOAN REPAYMENTS; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

Section 1. Short title. [This act] shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

Section 2. Policy and purpose. (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of local

public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of [this act] to promote the policies stated in subsection (1) by:

(a) creating a means for public bodies to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

Section 3. Liberal construction. [This act] and the powers granted in [this act] must be liberally construed to effectuate the policies and purposes stated in [this act].

Section 4. Definitions. As used in [this act], the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1005.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including

1 without limitation any city, town, county, school district,
2 or other special taxing district.

3 (4) "Reserve fund" means the municipal finance
4 consolidation act reserve fund created in [section 21].

5 Section 5. Board of investments to implement. The
6 board of investments may make and enforce orders, rules, and
7 bylaws that are necessary or desirable for the
8 implementation of [this act].

9 Section 6. Bonds, bond anticipation notes, and notes
10 of the board. (1) The board may by resolution, from time to
11 time, issue negotiable notes and bonds to finance loans or
12 refinance its loans to local government units and its
13 purchases of their bonds and notes, to establish or
14 replenish reserves securing the payment of its bonds and
15 notes, and to finance all other expenditures of the board
16 incident to and necessary or convenient to carry out [this
17 act].

18 (2) The board may by resolution, from time to time:

19 (a) issue notes to renew notes and bonds to pay notes,
20 including interest;

21 (b) whenever it considers refunding expedient, refund
22 any bonds by the issuance of new bonds, whether the bonds to
23 be refunded have or have not matured; and

24 (c) issue bonds partly to refund bonds outstanding and
25 partly for any of its other purposes.

1 (3) The board may by resolution, from time to time, in
2 anticipation of the sale of its securities under this
3 chapter, issue temporary notes and renewal notes.

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

10 (5) The notes and bonds must be authorized by
11 resolutions of the board, shall bear a date, and shall
12 mature at times as the resolutions provide. The bonds may
13 be issued as serial bonds payable in annual installments or
14 as term bonds or as a combination thereof. The notes and
15 bonds shall bear interest at a rate or rates; be in
16 denominations; be in a form, either coupon or registered;
17 carry registration privileges; be executed in a manner; be
18 payable in a medium of payment, at places inside or outside
19 the state; and be subject to terms of redemption as provided
20 in resolutions of the board. The notes and bonds of the
21 board may be sold at public or private sale at such prices,
22 which may be above or below par, as are determined by the
23 board.

24 Section 7. Participation voluntary. Use of the
25 financing mechanism created by [this act] is entirely

1 voluntary, and no local government unit may be required to
2 sell its bonds, bond anticipation notes, or notes to the
3 board.

4 Section 8. Limitations on amounts. The board may not:

5 (1) make any loans to or purchase the bonds or notes
6 of any single local government unit in an amount greater
7 than ~~\$150,000~~ \$500,000 per single loan, bond issue, or note;
8 or

9 (2) issue any bonds or notes that cause the total
10 outstanding indebtedness of the board under [this act]
11 (except for bonds or notes issued to fund or refund other
12 outstanding bonds or notes) to exceed ~~\$10~~ \$25 million.

13 Section 9. Purchase of anticipation notes.
14 Notwithstanding any other provision of law, a local
15 government unit may issue and the board may purchase notes
16 in anticipation of an otherwise authorized sale of municipal
17 securities. In connection with any purchase of anticipation
18 notes, the board may by agreement with the local government
19 unit impose terms, conditions, and limitations that in the
20 board's opinion are proper under the circumstances and for
21 the purposes and security of the board and the holders of
22 its bonds or notes.

23 Section 10. Refunding obligations. (1) The board may
24 provide for the issuance of refunding obligations for
25 refunding any obligations then outstanding that have been

1 issued under [this act], including the payment of any
2 redemption premium and any interest accrued to or to accrue
3 to the date of redemption of the obligations. The issuance
4 of obligations, the maturities and other details, the rights
5 of the holders, and the rights, duties, and obligations of
6 the board are governed by the appropriate provisions of
7 [this act] that relate to the issuance of obligations.

8 (2) Refunding obligations issued as provided in
9 subsection (1) may be sold or exchanged for outstanding
10 obligations issued under [this act]. The proceeds of
11 refunding obligations may be applied to the purchase,
12 redemption, or payment of outstanding obligations. Pending
13 the application of the proceeds of refunding obligations,
14 with other available funds, to the payment of principal,
15 accrued interest, and any redemption premium on the
16 obligations being refunded and, if permitted in the
17 resolution authorizing the issuance of the refunding
18 obligations or in the trust agreement securing them, to the
19 payment of interest on refunding obligations and expenses in
20 connection with refunding, the proceeds of refunding
21 obligations may be invested as provided in Title 17, chapter
22 6.

23 Section 11. Additional powers of the board. In
24 addition to all other powers conferred on the board by [this
25 act] or any other law, the board has the power:

1 (1) to purchase or hold municipal bonds, bond
 2 anticipation notes, or notes at prices and in a manner the
 3 board considers advisable;

4 (2) to sell municipal bonds, bond anticipation notes,
 5 or notes acquired or held by it at prices without relation
 6 to cost and in a manner the board considers advisable;

7 (3) to invest funds or money acquired by the board as
 8 provided in [section 23];

9 (4) to prescribe the form of application or procedure
 10 required of a local government unit for a loan or purchase
 11 of its municipal bonds, bond anticipation notes, or notes;
 12 fix the terms and conditions of the loan or purchase; and
 13 enter into agreements with local government units with
 14 respect to loans or purchases;

15 (5) to render services to local government units in
 16 connection with public or private sales of their municipal
 17 bonds, bond anticipation notes, or notes that are eligible
 18 for purchase by the board under [this act], including
 19 advisory and other services, and charge the local government
 20 units for such services;

21 (6) to charge for its costs and services in reviewing
 22 or acting upon a proposed loan to a local government unit or
 23 a proposed purchase by the board of municipal bonds, bond
 24 anticipation notes, or notes of the local government unit,
 25 whether or not the loan is made or the municipal bonds, bond

1 anticipation notes, or notes are purchased;

2 (7) to fix and establish terms, interest rates, and
 3 provisions with respect to a purchase of municipal bonds,
 4 bond anticipation notes, or notes by the board, including:

5 (a) the date and maturities of the bonds, bond
 6 anticipation notes, or notes;

7 (b) provisions as to redemption or payment before
 8 maturity; and

9 (c) any other matters judged by the board to be
 10 necessary, desirable, or advisable for the purchase or loan;

11 (3) in connection with any loan to a local government
 12 unit or purchase of municipal bonds, bond anticipation
 13 notes, or notes of a local government unit, to consider:

14 (a) the lawfulness and validity of the purpose to be
 15 served by the loan or purchase;

16 (b) the ability of the local government unit to secure
 17 borrowed money from other sources and the costs thereof;

18 (c) the ability of the local government unit to repay
 19 the loan, notes, or bonds;

20 (d) the priority of need for the particular public
 21 improvement or purpose to be financed; and

22 (e) varying the terms and conditions of its loans or
 23 purchases as between various local government units in
 24 accordance with their respective priorities and credit
 25 worthiness;

(9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out [this act];

(10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;

(11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay such compensation for their services as the board may determine;

(12) to procure insurance against any losses in connection with its property, operations, or assets in such amounts and from such insurers as it considers desirable;

(13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and

(14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in [this act].

Section 12. Provisions of bond resolutions. A

resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

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

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

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

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

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

(6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and

1 charges as may be determined by the board in conjunction
2 with the department and to maintain suitable facilities and
3 services for the purpose of carrying out its programs;

4 (7) vesting in a trustee such property, rights,
5 powers, and duties in trust as the board determines; and

6 (8) defining the acts or omissions that constitute a
7 default in the obligations and duties of the board to the
8 holders of the notes or bonds and providing for the rights
9 and remedies of the holders of the notes or bonds in the
10 event of such default, including as a matter of right the
11 appointment of a receiver. Rights and remedies may not be
12 inconsistent with the laws of this state and the other
13 provisions of [this act].

14 Section 13. Validity of pledge. A pledge by the board
15 is valid and binding from the time the pledge is made. The
16 revenues, money, or property pledged and thereafter received
17 by the board is immediately subject to the lien of the
18 pledge without any physical delivery thereof or further act.
19 The lien of any pledge is valid and binding against all
20 parties having claims of any kind in tort, contract, or
21 otherwise against the board, irrespective of whether such
22 parties have notice thereof. Neither the resolution nor any
23 other instrument by which a pledge is created need be
24 recorded.

25 Section 14. Nonimpairment by the state. In accordance

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

9 Section 15. Trust indenture. (1) In the discretion of
10 the board, the bonds or notes of the board may be secured by
11 a trust indenture between the board and a corporate trustee,
12 which may be a trust company or bank having the power of a
13 trust company inside or outside the state. A trust
14 indenture may contain provisions for protecting and
15 enforcing bondholders' rights and remedies that are
16 reasonable and proper and not in violation of law, including
17 covenants setting forth the duties of the board in relation
18 to the exercise of its powers and the custody, safeguarding,
19 and application of all money. The board may provide by a
20 trust indenture for the payment of the proceeds of the bonds
21 or notes and the revenues to the trustee under the trust
22 indenture of another depository and for the method of
23 disbursement, with safeguards and restrictions it considers
24 necessary.

25 (2) All expenditures incurred in carrying out a trust

1 indenture may be treated as part of the general overhead
2 cost of the board.

3 Section 16. Presumption of validity. After issuance,
4 all bonds or notes of the board are conclusively presumed to
5 be fully authorized by and issued under all the laws of this
6 state and any person or governmental unit is estopped from
7 questioning their proper authorization, sale, issuance,
8 execution, or delivery by the board.

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

15 Section 18. Negotiability of bonds or notes.
16 Notwithstanding any other provisions of law, a bond or note
17 issued under this chapter is fully negotiable for all
18 purposes of the Uniform Commercial Code, Title 30, chapters
19 1 through 9, and a holder or owner of a bond or note or of a
20 coupon appurtenant to it, by accepting the bond, note, or
21 coupon, is conclusively presumed to have agreed that the
22 bond, note, or coupon is fully negotiable for all purposes
23 of the Uniform Commercial Code.

24 Section 19. Bonds or notes as legal investments.
25 Notwithstanding the restrictions of any other law, all

1 banks, trust companies, savings banks and institutions,
2 building and loan associations, savings and loan
3 associations, investment companies, and other persons
4 carrying on a banking business, all insurance companies,
5 insurance associations, and other persons carrying on an
6 insurance business, and all executors, administrators,
7 guardians, trustees, and other fiduciaries may legally
8 invest sinking funds, money, or other funds belonging to
9 them or within their control in bonds or notes issued under
10 [this act].

11 Section 20. Tax exemption of bonds. Bonds, notes, or
12 other obligations issued by the board under [this act],
13 their transfer, and their income (including any profits made
14 on their sale) are free from taxation by the state or any
15 political subdivision or other instrumentality of the state,
16 excepting inheritance, estate, and gift taxes. The board is
17 not required to pay recording or transfer fees or taxes on
18 instruments recorded by it.

19 Section 21. Reserve fund. (1) The board shall
20 establish and maintain a municipal finance consolidation act
21 reserve fund, to which there shall be deposited or
22 transferred:

23 (a) all money appropriated by the legislature for the
24 purposes of the fund in accordance with the provisions of
25 subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the sinking fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and sinking fund payments for

the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of [this act], but not to any other fund or account.

(4) In order to assure the maintenance of the required debt service reserve in the reserve fund, the legislature may appropriate to the board for deposit in the fund the sum, certified by the chairman of the board to the governor and to the legislature, that is necessary to restore the fund to an amount equal to the required debt service reserve. Nothing in this subsection creates a debt or liability of the state.

(5) Notwithstanding any provision of Title 17, chapter 6, the board of investments may lend money for deposit to the reserve fund in an amount equal to any deficiency in the required debt service reserve. The loans shall be made on such reasonable terms and conditions as the board considers proper [and as may be agreed upon between the board and the board of investments], including without limitation terms and conditions providing that the loans need not be repaid until the obligations of the board secured and to be secured by the reserve fund are no longer outstanding.

Section 22. Additional funds and accounts. The board

1 may in its discretion establish additional reserves or other
2 funds or accounts necessary, desirable, or convenient to
3 further the accomplishment of the purposes of [this act] or
4 to comply with the provisions of any of its agreements or
5 resolutions.

6 Section 23. Investment. (1) Unless otherwise required
7 by a resolution or agreement of the board, the board may
8 invest funds coming under its control pursuant to [this act]
9 in the same manner as permitted for investment of funds
10 belonging to the state or held by the state treasurer.

11 (2) Funds from several or all accounts may be combined
12 for investment, and any interest earned shall be prorated
13 and credited to the various contributing accounts on the
14 basis of the amounts thereof invested, calculated according
15 to an average periodic balance or other generally accepted
16 accounting principle. Such proration must be calculated at
17 least once a year or upon a specific request made to the
18 board.

19 (3) All securities purchased by the board as an
20 investment remain in the custody of the state treasurer
21 until the same are sold, exchanged, retired, or mature and
22 are paid.

23 Section 24. Credit of state not pledged. Obligations
24 issued under the provisions of [this act] do not constitute
25 a liability or obligation or a pledge of the faith and

1 credit of the state but are payable solely from revenues or
2 funds of the board generated or received for purposes of
3 [this act]. An obligation issued under [this act] must
4 contain on the face thereof a statement to the effect that
5 the state of Montana is not liable on the obligation and the
6 obligation is not a debt of the state and neither the faith
7 and credit nor the taxing power of the state is pledged to
8 the payment of the principal of or the interest on the
9 obligation.

10 Section 25. Sale or exchange of municipal securities.
11 (1) Notwithstanding any law applicable to or constituting
12 any limitation on the maximum rate of interest per year
13 payable on bonds or notes or to annual interest cost to
14 maturity of money borrowed or received upon issuance of
15 bonds or notes, every local government unit is authorized to
16 contract to pay interest on or an interest cost per year for
17 money borrowed from the board and evidenced by its municipal
18 securities purchased by the board without regard to any
19 statutory limitations as to rate of interest per year
20 payable or as to annual interest cost to maturity of money
21 borrowed by the local government unit. Every local
22 government unit is authorized to contract with the board
23 with respect to the loan or purchase, and the contract must
24 contain the terms and conditions of such loan or purchase.
25 Every local government unit is authorized to pay fees and

1 charges required to be paid to the board for its services.
 2 (2) Notwithstanding any law applicable to or
 3 constituting any limitation on the sale of bonds or notes
 4 except the limitation on amount of bonded indebtedness, any
 5 local government unit may sell bonds or notes to the board
 6 by private negotiated sale, without limitation as to
 7 denomination. The bonds or notes may be fully registered or
 8 registerable as to principal only or in bearer form or may
 9 bear interest at the rate or rates, all in accordance with
 10 this section. The bonds or notes may be evidenced in the
 11 manner and may contain other provisions not inconsistent
 12 with [this act] and may be sold to the board without
 13 advertisement at the price or prices as may be determined,
 14 all as provided in the proceedings of the governing body of
 15 the local government unit pursuant to which the bonds or
 16 notes are authorized to be issued. The governing body of the
 17 local government unit may provide for the exchange of coupon
 18 bonds for fully registered bonds and of fully registered
 19 bonds for coupon bonds and for the exchange of any such
 20 bonds after issuance for bonds of larger or smaller
 21 denominations, all in the manner provided in the proceedings
 22 authorizing their issuance. The bonds in changed form or
 23 denominations must be exchanged for the surrendered bonds in
 24 the same aggregate principal amounts and in such manner that
 25 no overlapping interest is paid and the bonds in changed

1 form or denominations bear interest at the same rate or
 2 rates and mature on the same date or dates as the bonds for
 3 which they are exchanged. If any exchange is made under this
 4 subsection, the bonds surrendered by the holders at the time
 5 of the exchange must be canceled. The exchange may be made
 6 only at the request of the holders of the bonds to be
 7 surrendered. The local government unit may require all
 8 expenses incurred in connection with the exchange to be paid
 9 by the holders.

10 Section 26. Care and custody of bonds purchased by the
 11 board. The board may:

12 (1) enter into agreements or contracts with a bank,
 13 trust company, or financial institution, inside or outside
 14 the state, as may be necessary, desirable, or convenient, in
 15 the opinion of the board, for rendering services in
 16 connection with:

17 (a) the care, custody, or safekeeping of municipal
 18 bonds or other investments held or owned by the board
 19 pursuant to [this act];

20 (b) the payment or collection of amounts payable as to
 21 principal or interest; and

22 (c) the delivery to the board of municipal bonds or
 23 other investments purchased by it or sold by it pursuant to
 24 [this act];

25 (2) pay the cost of those services; and

{3} also, in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its municipal bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in such form and amount as, in the opinion of the board, is necessary or desirable.

Section 27. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on municipal bonds, bond anticipation notes, or notes of local government units purchased or held by the board.

Section 28. Default in payment. If the board or local government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days, or if the board or local government unit fails or refuses to comply with [this act] or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of

competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in [this act].

Section 29. Powers and duties of trustee on default.
(1) A trustee appointed under [section 28] may:

(a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or local government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments, and to require the board or local government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under [this act];

(b) bring a civil action upon the notes or bonds;

(c) by civil action require the board or local government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;

(d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;

(e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent

of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee must give 30 days' notice in writing to the governor, the attorney general, and the board or local government unit defaulting.

Section 30. Exemption from execution and sale. All property of the board, other than its revenues or funds received pursuant to [this act], is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

Section 31. Annual audit. ~~(1) The board's books and records must be audited at least once each fiscal year BY OR AT THE DIRECTION OF THE LEGISLATIVE AUDITOR. THE ACTUAL COSTS OF THE AUDIT SHALL BE PAID FROM THE BOARD'S FUNDS.~~

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

committee

Section 32. Annual report. By September 1 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. The report must include a statement of the board's current financial position with respect to its activities under [this act], a summary of its activities pursuant to [this act] during the previous year (including a listing of the local governmental securities purchased by the board, a listing of the bonds and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under [this act]), an estimate of the levels of such activities for the next year, and a comparison of such activities during the previous year with the estimates of those activities that were made in the previous annual report.

Section 33. Limitations on board's power. Under [this act] the board may not:

(1) make loans of money to any person, firm, or corporation other than a local government unit or purchase securities issued by any person, firm, or corporation other than a local government unit as provided in [this act];

(2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or

act as a savings bank or savings and loan association;

(3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of commerce, or the comptroller of the currency of the United States department of the treasury;

(4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

THERE IS A NEW MCA SECTION THAT READS:

Section 34. Municipal finance guaranty fund. (1) The board shall create a municipal finance guaranty fund. The fund must be held by a trustee or other fiduciary designated by the board. There must be deposited into the fund amounts, insurance fees, premiums, and such other revenues and assets as the board considers necessary to comply with any contract or agreement entered into by the board under [sections 1 through 29]. The board may borrow from and deposit in the municipal finance guaranty fund up to \$2.5 million from any available state fund, including funds of the Montana board of housing.

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

for any other purpose prescribed by the board in accordance with guaranty contracts with financial institutions entered into pursuant to [sections 1 through 29], including without limitation the protection of the interest of the board in projects during periods of delinquency or upon default.

(3) The minimum reserve requirement for the municipal finance guaranty fund must be such amount as may be provided in an agreement, resolution, or indenture with the holders of bonds issued under [sections 1 through 29], but not in excess of the aggregate annual payments due under the loans, leases, or other credit agreements guaranteed by the board. No loan, lease, or other credit agreement may be guaranteed by the board if the amount of money available in the municipal finance guaranty fund would be less than the minimum reserve requirement.

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

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

Section 35. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 36. Coordination instruction. If either House Bill No. 100 or ____ Bill No. ____ [LC 1148] is enacted by the 48th legislature and approved by the governor, the definition of "board" in section 4 is changed to the "Montana economic development board" and all references to the "board" in this act, except the reference to the board of investments in subsection (5) of section 21, mean the Montana economic development board. The bracketed language in subsection (5) of section 21 is effective only if either House Bill No. 100 or ____ Bill No. ____ [LC 1148] is enacted by the 48th legislature and approved by the governor.

~~SECTION 37. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON~~
~~PASSAGE AND APPROVAL.~~

-End-

-27-

HB 733

1 HOUSE BILL NO. 733

2 INTRODUCED BY BENGTSON, TONE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
5 CONSOLIDATED FINANCING OF LOCAL PUBLIC EXPENDITURES BY
6 AUTHORIZING THE BOARD OF INVESTMENTS TO LEND MONEY TO
7 MUNICIPALITIES OR OTHER PUBLIC BODIES THROUGH THE PURCHASE
8 OF THEIR SECURITIES BY THE BOARD; TO AUTHORIZE THE BOARD TO
9 RAISE MONEY FOR SUCH LOANS BY ISSUING ITS OWN BONDS AND
10 NOTES PAYABLE OUT OF LOAN REPAYMENTS; ~~AND PROVIDING AN~~
11 ~~IMMEDIATE EFFECTIVE DATE.~~"

12

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

14 Section 1. Short title. [This act] shall be known and
15 may be cited as the "Municipal Finance Consolidation Act of
16 1983".

17 Section 2. Policy and purpose. (1) It is the policy of
18 the state of Montana to:

19 (a) foster and promote, by all reasonable means, the
20 provision of efficient capital markets and facilities for
21 borrowing money by counties, cities, towns, school
22 districts, special taxing districts, and other public bodies
23 to pay for capital improvements and other needs as otherwise
24 authorized by law; and

25 (b) reduce, to the extent possible, costs of local

THIRD READING

There are no changes in HB 733, and due to length will not
be rerun. Please refer to yellow copy for complete text.

March 23, 1983

SENATE STANDING COMMITTEE REPORT
(Local Government)

That House Bill No. 733 be amended as follows:

1. Page 16, line 7.
Following: "(4)"
Strike: the remainder of line 7 through line 12
2. Page 16, line 13.
Strike: "reserve."
Following: "This"
Strike: "subsection"
Insert: "section"
3. Page 25, line 11.
Strike: section 34 in its entirety
Renumber: subsequent sections

HOUSE BILL NO. 733

INTRODUCED BY BENGTSON, TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR CONSOLIDATED FINANCING OF LOCAL PUBLIC EXPENDITURES BY AUTHORIZING THE BOARD OF INVESTMENTS TO LEND MONEY TO MUNICIPALITIES OR OTHER PUBLIC BODIES THROUGH THE PURCHASE OF THEIR SECURITIES BY THE BOARD; TO AUTHORIZE THE BOARD TO RAISE MONEY FOR SUCH LOANS BY ISSUING ITS OWN BONDS AND NOTES PAYABLE OUT OF LOAN REPAYMENTS; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

Section 1. Short title. [This act] shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

Section 2. Policy and purpose. (1) It is the policy of the state of Montana to:

(a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by counties, cities, towns, school districts, special taxing districts, and other public bodies to pay for capital improvements and other needs as otherwise authorized by law; and

(b) reduce, to the extent possible, costs of local

public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of [this act] to promote the policies stated in subsection (1) by:

(a) creating a means for public bodies to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

Section 3. Liberal construction. [This act] and the powers granted in [this act] must be liberally construed to effectuate the policies and purposes stated in [this act].

Section 4. Definitions. As used in [this act], the following definitions apply:

(1) "Board" means the board of investments created in 2-15-1005.

(2) "Department" means the department of commerce created in 2-15-1801.

(3) "Local government unit" means any municipal corporation or political subdivision of the state, including

1 without limitation any city, town, county, school district,
2 or other special taxing district.

3 (4) "Reserve fund" means the municipal finance
4 consolidation act reserve fund created in [section 21].

5 Section 5. Board of investments to implement. The
6 board of investments may make and enforce orders, rules, and
7 bylaws that are necessary or desirable for the
8 implementation of [this act].

9 Section 6. Bonds, bond anticipation notes, and notes
10 of the board. (1) The board may by resolution, from time to
11 time, issue negotiable notes and bonds to finance loans or
12 refinance its loans to local government units and its
13 purchases of their bonds and notes, to establish or
14 replenish reserves securing the payment of its bonds and
15 notes, and to finance all other expenditures of the board
16 incident to and necessary or convenient to carry out [this
17 act].

18 (2) The board may by resolution, from time to time:

19 (a) issue notes to renew notes and bonds to pay notes,
20 including interest;

21 (b) whenever it considers refunding expedient, refund
22 any bonds by the issuance of new bonds, whether the bonds to
23 be refunded have or have not matured; and

24 (c) issue bonds partly to refund bonds outstanding and
25 partly for any of its other purposes.

1 (3) The board may by resolution, from time to time, in
2 anticipation of the sale of its securities under this
3 chapter, issue temporary notes and renewal notes.

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

10 (5) The notes and bonds must be authorized by
11 resolutions of the board, shall bear a date, and shall
12 mature at times as the resolutions provide. The bonds may
13 be issued as serial bonds payable in annual installments or
14 as term bonds or as a combination thereof. The notes and
15 bonds shall bear interest at a rate or rates; be in
16 denominations; be in a form, either coupon or registered;
17 carry registration privileges; be executed in a manner; be
18 payable in a medium of payment, at places inside or outside
19 the state; and be subject to terms of redemption as provided
20 in resolutions of the board. The notes and bonds of the
21 board may be sold at public or private sale at such prices,
22 which may be above or below par, as are determined by the
23 board.

24 Section 7. Participation voluntary. Use of the
25 financing mechanism created by [this act] is entirely

1 voluntary, and no local government unit may be required to
2 sell its bonds, bond anticipation notes, or notes to the
3 board.

4 Section 8. Limitations on amounts. The board may not:

5 (1) make any loans to or purchase the bonds or notes
6 of any single local government unit in an amount greater
7 than ~~\$150,000~~ \$500,000 per single loan, bond issue, or note;
8 or

9 (2) issue any bonds or notes that cause the total
10 outstanding indebtedness of the board under [this act]
11 (except for bonds or notes issued to fund or refund other
12 outstanding bonds or notes) to exceed ~~\$10~~ \$25 million.

13 Section 9. Purchase of anticipation notes.
14 Notwithstanding any other provision of law, a local
15 government unit may issue and the board may purchase notes
16 in anticipation of an otherwise authorized sale of municipal
17 securities. In connection with any purchase of anticipation
18 notes, the board may by agreement with the local government
19 unit impose terms, conditions, and limitations that in the
20 board's opinion are proper under the circumstances and for
21 the purposes and security of the board and the holders of
22 its bonds or notes.

23 Section 10. Refunding obligations. (1) The board may
24 provide for the issuance of refunding obligations for
25 refunding any obligations then outstanding that have been

1 issued under [this act], including the payment of any
2 redemption premium and any interest accrued to or to accrue
3 to the date of redemption of the obligations. The issuance
4 of obligations, the maturities and other details, the rights
5 of the holders, and the rights, duties, and obligations of
6 the board are governed by the appropriate provisions of
7 [this act] that relate to the issuance of obligations.

8 (2) Refunding obligations issued as provided in
9 subsection (1) may be sold or exchanged for outstanding
10 obligations issued under [this act]. The proceeds of
11 refunding obligations may be applied to the purchase,
12 redemption, or payment of outstanding obligations. Pending
13 the application of the proceeds of refunding obligations,
14 with other available funds, to the payment of principal,
15 accrued interest, and any redemption premium on the
16 obligations being refunded and, if permitted in the
17 resolution authorizing the issuance of the refunding
18 obligations or in the trust agreement securing them, to the
19 payment of interest on refunding obligations and expenses in
20 connection with refunding, the proceeds of refunding
21 obligations may be invested as provided in Title 17, chapter
22 6.

23 Section 11. Additional powers of the board. In
24 addition to all other powers conferred on the board by [this
25 act] or any other law, the board has the power:

1 (1) to purchase or hold municipal bonds, bond
2 anticipation notes, or notes at prices and in a manner the
3 board considers advisable;

4 (2) to sell municipal bonds, bond anticipation notes,
5 or notes acquired or held by it at prices without relation
6 to cost and in a manner the board considers advisable;

7 (3) to invest funds or money acquired by the board as
8 provided in [section 23];

9 (4) to prescribe the form of application or procedure
10 required of a local government unit for a loan or purchase
11 of its municipal bonds, bond anticipation notes, or notes;
12 fix the terms and conditions of the loan or purchase; and
13 enter into agreements with local government units with
14 respect to loans or purchases;

15 (5) to render services to local government units in
16 connection with public or private sales of their municipal
17 bonds, bond anticipation notes, or notes that are eligible
18 for purchase by the board under [this act]; including
19 advisory and other services, and charge the local government
20 units for such services;

21 (6) to charge for its costs and services in reviewing
22 or acting upon a proposed loan to a local government unit or
23 a proposed purchase by the board of municipal bonds, bond
24 anticipation notes, or notes of the local government unit,
25 whether or not the loan is made or the municipal bonds, bond

1 anticipation notes, or notes are purchased;

2 (7) to fix and establish terms, interest rates, and
3 provisions with respect to a purchase of municipal bonds,
4 bond anticipation notes, or notes by the board, including:

5 (a) the date and maturities of the bonds, bond
6 anticipation notes, or notes;

7 (b) provisions as to redemption or payment before
8 maturity; and

9 (c) any other matters judged by the board to be
10 necessary, desirable, or advisable for the purchase or loan;

11 (8) in connection with any loan to a local government
12 unit or purchase of municipal bonds, bond anticipation
13 notes, or notes of a local government unit, to consider:

14 (a) the lawfulness and validity of the purpose to be
15 served by the loan or purchase;

16 (b) the ability of the local government unit to secure
17 borrowed money from other sources and the costs thereof;

18 (c) the ability of the local government unit to repay
19 the loan, notes, or bonds;

20 (d) the priority of need for the particular public
21 improvement or purpose to be financed; and

22 (e) varying the terms and conditions of its loans or
23 purchases as between various local government units in
24 accordance with their respective priorities and credit
25 worthiness;

1 (9) to conduct examinations and hearings and to hear
2 testimony and take proof, under oath or affirmation, at
3 public or private hearings, on any matter material to its
4 information and necessary to carry out [this act];

5 (10) to issue subpoenas requiring the attendance of
6 witnesses and the production of books and papers pertinent
7 to any hearing before the board;

8 (11) to appoint, employ, or contract for the services
9 of officers, employees, agents, financial or professional
10 advisers, and attorneys and to pay such compensation for
11 their services as the board may determine;

12 (12) to procure insurance against any losses in
13 connection with its property, operations, or assets in such
14 amounts and from such insurers as it considers desirable;

15 (13) to the extent permitted under its contracts with
16 the holders of bonds or notes of the board, to consent to
17 modification of the rate of interest, the time for payment
18 of any installment of principal or interest, or the security
19 for any other term of a bond, bond anticipation note, note,
20 contract, or agreement of any kind to which the board is a
21 party; and

22 (14) to do all acts and things necessary, convenient,
23 or desirable to carry out the powers expressly granted or
24 necessarily implied in [this act].

25 Section 12. Provisions of bond resolutions. A

1 resolution authorizing notes or bonds or any issue thereof
2 may contain provisions that must be a part of the contract
3 or contracts with the holders thereof as to:

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

8 (2) the setting aside of reserves for sinking funds in
9 the possession of trustees, paying agents, and other
10 depositories and the regulation and disposition thereof;

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

15 (4) limitations on the issuance of additional notes or
16 bonds, the terms upon which additional notes or bonds may be
17 issued and secured, and the refunding of outstanding notes
18 or bonds;

19 (5) the procedure, if any, by which the terms of any
20 contract with noteholders or bondholders may be amended or
21 abrogated, the amount of notes or bonds the holders of which
22 must consent thereto, and the manner in which such consent
23 may be given;

24 (6) a commitment to employ adequate and competent
25 personnel at reasonable compensation, salaries, fees, and

charges as may be determined by the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;

(7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and

(8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of [this act].

Section 13. Validity of pledge. A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

Section 14. Nonimpairment by the state. In accordance

with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and a local government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

Section 15. Trust indenture. (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust

1 indenture may be treated as part of the general overhead
2 cost of the board.

3 Section 16. Presumption of validity. After issuance,
4 all bonds or notes of the board are conclusively presumed to
5 be fully authorized by and issued under all the laws of this
6 state and any person or governmental unit is estopped from
7 questioning their proper authorization, sale, issuance,
8 execution, or delivery by the board.

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

15 Section 18. Negotiability of bonds or notes.
16 Notwithstanding any other provisions of law, a bond or note
17 issued under this chapter is fully negotiable for all
18 purposes of the Uniform Commercial Code, Title 30, chapters
19 1 through 9, and a holder or owner of a bond or note or of a
20 coupon appurtenant to it, by accepting the bond, note, or
21 coupon, is conclusively presumed to have agreed that the
22 bond, note, or coupon is fully negotiable for all purposes
23 of the Uniform Commercial Code.

24 Section 19. Bonds or notes as legal investments.
25 Notwithstanding the restrictions of any other law, all

1 banks, trust companies, savings banks and institutions,
2 building and loan associations, savings and loan
3 associations, investment companies, and other persons
4 carrying on a banking business, all insurance companies,
5 insurance associations, and other persons carrying on an
6 insurance business, and all executors, administrators,
7 guardians, trustees, and other fiduciaries may legally
8 invest sinking funds, money, or other funds belonging to
9 them or within their control in bonds or notes issued under
10 [this act].

11 Section 20. Tax exemption of bonds. Bonds, notes, or
12 other obligations issued by the board under [this act],
13 their transfer, and their income (including any profits made
14 on their sale) are free from taxation by the state or any
15 political subdivision or other instrumentality of the state,
16 excepting inheritance, estate, and gift taxes. The board is
17 not required to pay recording or transfer fees or taxes on
18 instruments recorded by it.

19 Section 21. Reserve fund. (1) The board shall
20 establish and maintain a municipal finance consolidation act
21 reserve fund, to which there shall be deposited or
22 transferred:

23 (a) all money appropriated by the legislature for the
24 purposes of the fund in accordance with the provisions of
25 subsection (4);

1 (b) all proceeds of bonds required to be deposited in
2 the fund by terms of a contract between the board and its
3 bondholders or a resolution of the board with respect to the
4 proceeds of bonds;

5 (c) the proceeds of any bond issue of the state that
6 is authorized for such purpose;

7 (d) all other money appropriated by the legislature to
8 the reserve fund; and

9 (e) any other money or funds of the board that it
10 decides to deposit in the fund.

11 (2) All money held in the reserve fund shall be used
12 solely for the payment of the principal of or interest on
13 the bonds or notes secured in whole or in part by the fund
14 or the sinking fund payments with respect to the bonds or
15 notes, the purchase or redemption of the bonds or notes, the
16 payment of interest on the bonds or notes, or the payment of
17 any redemption premium required to be paid when the bonds or
18 notes are redeemed prior to maturity. Money in the reserve
19 fund may not be withdrawn at any time in an amount that
20 reduces the fund to an amount less than the sum of minimum
21 reserve requirements established in the resolutions or
22 indentures of the board for the fund except, with respect to
23 bonds or notes secured in whole or in part by the fund, for
24 the purpose of making payment when due of principal,
25 interest, redemption premiums, and sinking fund payments for

1 the payment of which other money pledged is not available.

2 (3) Money in the reserve fund in excess of the
3 required reserve may be withdrawn at any time by the board
4 and transferred to another fund or account of the board
5 established for purposes of [this act], but not to any other
6 fund or account.

7 ~~(4) In order to assure the maintenance of the required~~
8 ~~debt service reserve in the reserve fund, the legislature~~
9 ~~may appropriate to the board for deposit in the fund the~~
10 ~~sums certified by the chairman of the board to the governor~~
11 ~~and to the legislature that is necessary to restore the~~
12 ~~fund to an amount equal to the required debt service~~
13 ~~reserves. Nothing in this subsection SECTION creates a debt~~
14 ~~or liability of the state.~~

15 (5) Notwithstanding any provision of Title 17, chapter
16 6, the board of investments may lend money for deposit to
17 the reserve fund in an amount equal to any deficiency in the
18 required debt service reserve. The loans shall be made on
19 such reasonable terms and conditions as the board considers
20 proper [and as may be agreed upon between the board and the
21 board of investments], including without limitation terms
22 and conditions providing that the loans need not be repaid
23 until the obligations of the board secured and to be secured
24 by the reserve fund are no longer outstanding.

25 Section 22. Additional funds and accounts. The board

1 may in its discretion establish additional reserves or other
2 funds or accounts necessary, desirable, or convenient to
3 further the accomplishment of the purposes of [this act] or
4 to comply with the provisions of any of its agreements or
5 resolutions.

6 Section 23. Investment. (1) Unless otherwise required
7 by a resolution or agreement of the board, the board may
8 invest funds coming under its control pursuant to [this act]
9 in the same manner as permitted for investment of funds
10 belonging to the state or held by the state treasurer.

11 (2) Funds from several or all accounts may be combined
12 for investment, and any interest earned shall be prorated
13 and credited to the various contributing accounts on the
14 basis of the amounts thereof invested, calculated according
15 to an average periodic balance or other generally accepted
16 accounting principle. Such proration must be calculated at
17 least once a year or upon a specific request made to the
18 board.

19 (3) All securities purchased by the board as an
20 investment remain in the custody of the state treasurer
21 until the same are sold, exchanged, retired, or mature and
22 are paid.

23 Section 24. Credit of state not pledged. Obligations
24 issued under the provisions of [this act] do not constitute
25 a liability or obligation or a pledge of the faith and

1 credit of the state but are payable solely from revenues or
2 funds of the board generated or received for purposes of
3 [this act]. An obligation issued under [this act] must
4 contain on the face thereof a statement to the effect that
5 the state of Montana is not liable on the obligation and the
6 obligation is not a debt of the state and neither the faith
7 and credit nor the taxing power of the state is pledged to
8 the payment of the principal of or the interest on the
9 obligation.

10 Section 25. Sale or exchange of municipal securities.
11 (1) Notwithstanding any law applicable to or constituting
12 any limitation on the maximum rate of interest per year
13 payable on bonds or notes or to annual interest cost to
14 maturity of money borrowed or received upon issuance of
15 bonds or notes, every local government unit is authorized to
16 contract to pay interest on or an interest cost per year for
17 money borrowed from the board and evidenced by its municipal
18 securities purchased by the board without regard to any
19 statutory limitations as to rate of interest per year
20 payable or as to annual interest cost to maturity of money
21 borrowed by the local government unit. Every local
22 government unit is authorized to contract with the board
23 with respect to the loan or purchase, and the contract must
24 contain the terms and conditions of such loan or purchase.
25 Every local government unit is authorized to pay fees and

1 charges required to be paid to the board for its services.
 2 (2) Notwithstanding any law applicable to or
 3 constituting any limitation on the sale of bonds or notes
 4 except the limitation on amount of bonded indebtedness, any
 5 local government unit may sell bonds or notes to the board
 6 by private negotiated sales without limitation as to
 7 denomination. The bonds or notes may be fully registered or
 8 registerable as to principal only or in bearer form or may
 9 bear interest at the rate or rates, all in accordance with
 10 this section. The bonds or notes may be evidenced in the
 11 manner and may contain other provisions not inconsistent
 12 with [this act] and may be sold to the board without
 13 advertisement at the price or prices as may be determined,
 14 all as provided in the proceedings of the governing body of
 15 the local government unit pursuant to which the bonds or
 16 notes are authorized to be issued. The governing body of the
 17 local government unit may provide for the exchange of coupon
 18 bonds for fully registered bonds and of fully registered
 19 bonds for coupon bonds and for the exchange of any such
 20 bonds after issuance for bonds of larger or smaller
 21 denominations, all in the manner provided in the proceedings
 22 authorizing their issuance. The bonds in changed form or
 23 denominations must be exchanged for the surrendered bonds in
 24 the same aggregate principal amounts and in such manner that
 25 no overlapping interest is paid and the bonds in changed

1 form or denominations bear interest at the same rate or
 2 rates and mature on the same date or dates as the bonds for
 3 which they are exchanged. If any exchange is made under this
 4 subsection, the bonds surrendered by the holders at the time
 5 of the exchange must be canceled. The exchange may be made
 6 only at the request of the holders of the bonds to be
 7 surrendered. The local government unit may require all
 8 expenses incurred in connection with the exchange to be paid
 9 by the holders.

10 Section 26. Care and custody of bonds purchased by the
 11 board. The board may:

12 (1) enter into agreements or contracts with a bank,
 13 trust company, or financial institution, inside or outside
 14 the state, as may be necessary, desirable, or convenient, in
 15 the opinion of the board, for rendering services in
 16 connection with:

17 (a) the care, custody, or safekeeping of municipal
 18 bonds or other investments held or owned by the board
 19 pursuant to [this act];

20 (b) the payment or collection of amounts payable as to
 21 principal or interest; and

22 (c) the delivery to the board of municipal bonds or
 23 other investments purchased by it or sold by it pursuant to
 24 [this act];

25 (2) pay the cost of those services; and

1 (3) also, in connection with any of the services to be
 2 rendered by a bank, trust company, or financial institution
 3 as to the custody and safekeeping of its municipal bonds or
 4 investments, require security in the form of collateral
 5 bonds, surety agreements, or security agreements in such
 6 form and amount as, in the opinion of the board, is
 7 necessary or desirable.

8 Section 27. Insurance or guaranty. The board may
 9 obtain, from a department or agency of the United States or
 10 a nongovernmental insurer, insurance or guaranty for the
 11 payment or repayment of interest or principal, or both, or
 12 any part of interest or principal on bonds or notes issued
 13 by the board or on municipal bonds, bond anticipation notes,
 14 or notes of local government units purchased or held by the
 15 board.

16 Section 28. Default in payment. If the board or local
 17 government unit defaults in the payment of principal or
 18 interest on an issue of notes or bonds after they become
 19 due, whether at maturity or upon call for redemption, and
 20 the default continues for 30 days, or if the board or local
 21 government unit fails or refuses to comply with [this act]
 22 or defaults in an agreement made with the holders of an
 23 issue of notes or bonds, the holders of 25% of the aggregate
 24 principal amount of the outstanding notes or bonds of that
 25 issue have the right, upon proper application to a court of

1 competent jurisdiction, to have a trustee appointed to
 2 represent the holders of those notes or bonds for the
 3 purposes provided in [this act].

4 Section 29. Powers and duties of trustee on default.

5 (1) A trustee appointed under [section 28] may:

6 (a) by civil action enforce all rights of the
 7 noteholders or bondholders, including the right to require
 8 the board or local government unit to collect rates,
 9 charges, and other fees and to collect interest and
 10 amortization payments on bonds and notes held by them
 11 adequate to carry out a pledge of or an agreement as to the
 12 rates, charges, and other fees and of the interest and
 13 amortization payments, and to require the board or local
 14 government unit to carry out any other agreements with the
 15 holders of the notes or bonds and to perform their duties
 16 under [this act];

17 (b) bring a civil action upon the notes or bonds;

18 (c) by civil action require the board or local
 19 government unit to account as if it were the trustee of an
 20 express trust for the holders of the notes or bonds;

21 (d) by civil action enjoin anything that may be
 22 unlawful or in violation of the rights of the holders of the
 23 notes or bonds;

24 (e) declare all the notes or bonds due and payable
 25 and, if all defaults are made good, then, with the consent

1 of the holders of 25% of the principal amount of the
2 outstanding notes or bonds, annul the declaration and its
3 consequences.

4 (2) The trustee, in addition to the powers stated in
5 subsection (1), has all the powers necessary for the
6 exercise of functions specifically set out or incident to
7 the general representation of bondholders or noteholders in
8 the enforcement and protection of their rights.

9 (3) Before declaring the principal of notes or bonds
10 due and payable, the trustee must give 30 days' notice in
11 writing to the governor, the attorney general, and the board
12 or local government unit defaulting.

13 Section 30. Exemption from execution and sale. All
14 property of the board, other than its revenues or funds
15 received pursuant to [this act], is exempt from levy and
16 sale by virtue of an execution, and no execution or other
17 judicial process may issue against such property. A judgment
18 against the board constitutes a charge or lien upon such
19 property.

20 Section 31. Annual audit. ~~(1) The board's books and~~
21 ~~records must be audited at least once each fiscal year BY OR~~
22 ~~AT THE DIRECTION OF THE LEGISLATIVE AUDITOR. THE ACTUAL~~
23 ~~COSTS OF THE AUDIT SHALL BE PAID FROM THE BOARD'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 32. Annual report. By September 1 of each
3 year, the board shall publish a financial report for
4 distribution to the governor, the legislature, and the
5 public. The report must include a statement of the board's
6 current financial position with respect to its activities
7 under [this act], a summary of its activities pursuant to
8 [this act] during the previous year (including a listing of
9 the local governmental securities purchased by the board, a
10 listing of the bonds and notes sold by the board, and a
11 summary of the performance of any other investments of the
12 board's funds received under [this act]), an estimate of the
13 levels of such activities for the next year, and a
14 comparison of such activities during the previous year with
15 the estimates of those activities that were made in the
16 previous annual report.

17 Section 33. Limitations on board's power. Under [this
18 act] the board may not:

19 (1) make loans of money to any person, firm, or
20 corporation other than a local government unit or purchase
21 securities issued by any person, firm, or corporation other
22 than a local government unit as provided in [this act];

23 (2) emit bills of credit, accept deposits of money for
24 time or demand deposit, engage in any form or manner in the
25 conduct of any private or commercial banking business, or

1 act as a savings bank or savings and loan association;

2 (3) be or constitute a bank or trust company within
3 the jurisdiction or under the control of the state banking
4 board, the department of commerce, or the comptroller of the
5 currency of the United States department of the treasury;

6 (4) be or constitute a bank, banker, or dealer in
7 securities within the meaning of or subject to the
8 provisions of any securities, securities exchange, or
9 securities dealers law of the United States or of this state
10 or of any other state.

11 ~~HERE IS A NEW MCA SECTION THAT READS:~~

12 Section 34v--Municipal finance guaranty fund--(1)--The
13 board shall create a municipal finance guaranty fund--The
14 fund must be held by a trustee or other fiduciary designated
15 by the board. There must be deposited into the fund amounts
16 insurance fees, premiums, and such other revenues and assets
17 as the board considers necessary to comply with any contract
18 or agreement entered into by the board under [sections 1
19 through 29]s. The board may borrow from and deposit in the
20 municipal finance guaranty fund up to \$25 million from any
21 available state funds including funds of the Montana board
22 of housing.

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

1 for any other purpose prescribed by the board in accordance
2 with guaranty contracts with financial institutions entered
3 into pursuant to [sections 1 through 29]y, including without
4 limitation the protection of the interest of the board in
5 projects during periods of delinquency or upon default.

6 (3)--The minimum reserve requirement for the municipal
7 finance guaranty fund must be such amount as may be provided
8 in an agreement, resolution, or indenture with the holders
9 of bonds issued under [sections 1 through 29]y, but not in
10 excess of the aggregate annual payments due under the loans,
11 leases, or other credit agreements guaranteed by the board.
12 No loan, lease, or other credit agreement may be guaranteed
13 by the board if the amount of money available in the
14 municipal finance guaranty fund would be less than the
15 minimum reserve requirements.

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

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

Section 34. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 35. Coordination instruction. If either House Bill No. 100 or ~~HOUSE Bill No. 1149~~ ~~100~~ is enacted by the 48th legislature and approved by the governor, the definition of "board" in section 4 is changed to the "Montana economic development board" and all references to the "board" in this act, except the reference to the board of investments in subsection (5) of section 21, mean the Montana economic development board. The bracketed language in subsection (5) of section 21 is effective only if either House Bill No. 100 or ~~HOUSE Bill No. 1149~~ ~~100~~ is enacted by the 48th legislature and approved by the governor.

SECTION 36. EFFECTIVE DATE. THIS ACT IS EFFECTIVE ON PASSAGE AND APPROVAL.

-End-

-27-

HB 733

April 12, 1983

..... 19

CONFERENCE COMMITTEE ON
AMENDMENTS TO HOUSE BILL 733
(Report No. 1, 1:00 p.m.)

Mr. Speaker:

We, your conference committee on amendments to House Bill 733, met and considered Senate Local Government Committee amendments to the third reading copy (blue). We recommend as follows:

That the House accede to Senate Local Government Committee amendment numbers 1, 2 and 3; and

That this Conference Committee report on House Bill 733 be adopted.

FOR THE HOUSE:

Bengtson/Chim.
Bengtson, Chairman

Fagg
Fagg

Harper
Harper

FOR THE SENATE:

Story
Story, Chairman

Hammond
Hammond

Towe
Towe