

HOUSE BILL NO. 871

INTRODUCED BY FAGG, HANNAH

BY REQUEST OF THE SELECT  
COMMITTEE ON ECONOMIC DEVELOPMENT

IN THE HOUSE

February 15, 1983	Introduced and referred to Select Committee on Economic Development.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted.  Statement of Intent attached.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass as amended.  Correctly engrossed.  Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Business and Industry.
March 24, 1983	Committee recommend bill be concurrent 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, 42; Noes, 5.

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 20, 1983

Conference Committee dissolved.

On motion, Free Conference Committee requested and appointed.

April 21, 1983

Free Conference Committee reported.

Second reading, Free Conference Committee report adopted.

Third reading, Free Conference Committee report adopted.

Free Conference Committee report adopted by Senate.

Sent to enrolling.

Reported correctly enrolled.

1 House BILL NO. 871  
2 INTRODUCED BY FAGG - Hamner  
3 BY REQUEST OF THE SELECT  
4 COMMITTEE ON ECONOMIC DEVELOPMENT  
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC  
7 DEVELOPMENT AUTHORITY; CREATING AN ECONOMIC DEVELOPMENT  
8 GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF BONDS TO  
9 FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO BE  
10 FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE  
11 PROGRAM; AND PROVIDING RULEMAKING AUTHORITY."

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 "Montana Economic Development Act of  
16 1983".

17 Section 2. Policy statement. (1) It is the policy of  
18 the state of Montana, in the interest of promoting the  
19 health, safety, and general welfare of all the people of the  
20 state, to increase job opportunities and to retain existing  
21 jobs by making available through an economic development  
22 authority funds for industrial, commercial, manufacturing,  
23 recreational, tourist, health care, livestock, and  
24 agricultural development.

25 (2) The legislature finds that:

1 (a) a vigorous growing economy is the basic source of  
2 job opportunities;

3 (b) protection against unemployment, its economic  
4 burdens, and the spread of economic stagnation in the areas  
5 affected can best be provided by promoting, attracting,  
6 stimulating, and revitalizing industry, manufacturing,  
7 commerce, recreation, tourism, and health care facilities in  
8 such areas; and

9 (c) the state of Montana has a responsibility to help  
10 create a favorable climate for new and improved job  
11 opportunities for its citizens by encouraging the  
12 development of business.

13 Section 3. Definitions. As used in [this act], unless  
14 the context requires otherwise, the following definitions  
15 apply:

16 (1) "Authority" means the economic development  
17 authority created in [section 4].

18 (2) "Bond" means any bond, note, debenture, interim  
19 certificate, or other evidence of financial indebtedness  
20 issued by the authority pursuant to [this act].

21 (3) "Capital reserve account" means the capital  
22 reserve account provided for in [section 17].

23 (4) "Composite bond" means a bond issued under the  
24 provisions of [this act], the proceeds of which may be used  
25 to finance more than one project.

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

3 (6) "Financial institution" means a bank, savings and  
4 loan association, or credit union authorized to do business  
5 in the state of Montana.

6 (7) "Mortgage" means a mortgage deed, deed of trust,  
7 or other security device.

8 (8) "Primary industries" means industries designated  
9 as such, from time to time, by the authority.

10 (9) "Project" means any land, building, or other  
11 improvement and any other real or personal property  
12 considered necessary in connection therewith, whether or not  
13 in existence, that is suitable for use for:

14 (a) commercial, manufacturing, or industrial  
15 enterprises;

16 (b) recreation or tourist facilities;

17 (c) hospitals, long-term care facilities, or medical  
18 facilities; or

19 (d) any combination of these projects.

20 (10) "Project costs" means the cost of acquiring or  
21 improving any project, including the following:

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

24 (b) the actual cost of construction of all or any part  
25 of a project that may be constructed, including architects'

1 and engineers' fees;

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

5 (d) bond reserves and premiums for insurance of lease  
6 rentals pledged to pay the bonds; and

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

10 Section 4. Economic development authority --  
11 composition -- allocation. (1) There is an economic  
12 development authority consisting of seven members, who shall  
13 be informed and experienced in economics or finance. Two  
14 members of the authority must be active participants in the  
15 management of a financial institution.

16 (2) Three members shall be appointed by the governor  
17 as provided in 2-15-124.

18 (3) The governor shall consider making appointments to  
19 the authority from a panel of names submitted as hereinafter  
20 provided. Two persons shall be recommended to the governor  
21 by each of the following individuals:

22 (a) the president of the senate;

23 (b) the minority leader of the senate;

24 (c) the speaker of the house; and

25 (d) the minority leader of the house.

1 (4) Compensation of members of the authority is as  
2 provided for in 2-15-124.

3 (5) The authority is allocated to the department of  
4 commerce for administrative purposes only as provided in  
5 2-15-121.

6 (6) The staff of the board of housing created in  
7 2-15-1814 shall also serve as staff of the authority.

8 (7) A member of the authority may not be considered to  
9 have a conflict of interest under the provisions of 2-2-201  
10 merely because the member is a stockholder, officer, or  
11 employee of a financial institution that may participate in  
12 the authority's programs.

13 (8) The members of the authority are subject to senate  
14 confirmation as provided in 2-15-124.

15 Section 5. Powers of the authority. The authority  
16 may:

17 (1) sue and be sued;

18 (2) have a seal;

19 (3) adopt all procedural and substantive rules  
20 necessary for the administration of [this act];

21 (4) make contracts, agreements, and other instruments  
22 necessary or convenient for the exercise of its powers under  
23 [this act];

24 (5) enter into agreements or other transactions with  
25 any federal, state, or local governmental agency or any

1 person or any domestic or foreign partnership, corporation,  
2 association, or organization in carrying out [this act];

3 (6) enter into agreements or other transactions with  
4 and accept grants and the cooperation of any governmental  
5 agency in furtherance of [this act];

6 (7) accept services, appropriations, gifts, grants,  
7 bequests, and devises and utilize or dispose of them in  
8 carrying out [this act];

9 (8) with regard to property:

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

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

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

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

20 (e) do any of the foregoing by public or private sale,  
21 with or without public bidding;

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

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

1 or other sale or acquire or take possession of it in lieu of  
2 foreclosure; and

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

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

9 (10) invest any funds not required for immediate use,  
10 subject to any agreements with its bondholders and  
11 noteholders, as provided in Title 17, chapter 6;

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

20 (12) collect reasonable interest, fees, and charges in  
21 connection with making and servicing its lease agreements,  
22 loan agreements, mortgage loans, notes, bonds, commitments,  
23 and other evidences of indebtedness. Interest, fees, and  
24 charges shall be limited to the amounts required to pay the  
25 costs of the authority, including operating and

1 administrative expenses and reasonable allowances for losses  
2 that may be incurred;

3 (13) procure insurance or guarantees from any parties,  
4 including governmental agencies, against any loss in  
5 connection with its lease agreements, loan agreements,  
6 mortgage loans, and other assets or property in amounts and  
7 in the form the authority considers desirable or necessary;

8 (14) enter into agreements, upon terms the authority  
9 considers advisable and not in conflict with the provisions  
10 of [this act], to loan the proceeds of its bonds to others  
11 for the purpose of defraying the cost of acquiring or  
12 improving any project;

13 (15) issue bonds, including composite bonds, for the  
14 purpose of defraying the cost of acquiring or improving any  
15 project or projects and securing the payment of such bonds  
16 as provided in [this act];

17 (16) sell and convey any real or personal property  
18 acquired as provided in subsection (8) and make any order  
19 respecting it, as may be conducive to the best interest of  
20 the authority. However, such sale or conveyance is subject  
21 to the terms of any lease but is free and clear of any other  
22 encumbrance.

23 (17) participate in making loans to individuals,  
24 corporations, and government agencies under terms and  
25 conditions it prescribes and pursuant to [section 7] and

1 accept guarantees from individuals, corporations, and  
2 government agencies of its loans or the resultant evidences  
3 of obligations to the authority;

4 (18) issue notes and bonds, including composite bonds,  
5 and replace lost, destroyed, or mutilated notes and bonds;  
6 and

7 (19) give preference, in exercising its powers, to  
8 primary industries as designated by the authority.

9 Section 6. Self-sufficiency of projects. (1) Prior to  
10 leasing any project or entering into a loan agreement  
11 concerning a project, the authority must determine the  
12 following:

13 (a) the amount necessary to pay the principal of and  
14 the interest on the bonds proposed to be issued to finance  
15 such project;

16 (b) the amount necessary to be paid into any reserve  
17 funds that the authority considers advisable to establish in  
18 connection with the retirement of the proposed bonds and the  
19 maintenance of the project, including taxes; and

20 (c) the estimated cost of maintaining the project in  
21 good repair and keeping it properly insured, unless the  
22 terms of the lease or loan agreement provide that the lessee  
23 or borrower shall maintain the project and carry all  
24 property insurance with respect thereto.

25 (2) The determinations and findings of the authority

1 required by subsection (1) must be set forth in the  
2 proceedings under which the proposed bonds are to be issued.  
3 Prior to the issuance of any bonds authorized by [this act],  
4 the authority shall lease the project to a lessee or lessees  
5 or enter into a loan agreement with a borrower under a lease  
6 or loan agreement conditioned upon completion of the project  
7 by the lessees or borrowers and providing for payment to the  
8 authority of such rentals or payments, on the basis of  
9 determinations and findings, that will be sufficient to:

10 (a) pay the principal of and interest on the bonds  
11 issued to finance the project;

12 (b) pay the taxes on the project;

13 (c) build up and maintain any reserves considered by  
14 the authority to be advisable in connection with the  
15 project; and

16 (d) pay the costs of maintaining the project in good  
17 repair and keeping it properly insured, unless the lease or  
18 loan agreement obligates the lessees or borrowers to pay for  
19 the maintenance and insurance of the project.

20 (3) Subject to the limitations of [this act], the  
21 lease, loan agreement, or extensions or modifications  
22 thereof may contain other terms and conditions mutually  
23 acceptable to the parties and, notwithstanding any other  
24 provision of law relating to the sale of property owned by  
25 the authority, an option may be granted to a lessee to

1 purchase the project on terms and conditions as may be  
2 mutually acceptable to the parties.

3 Section 7. Loan applications -- institution financing.  
4 (1) The authority shall contract with financial institutions  
5 for review of loan applications and other services related  
6 to the applications. The authority shall authorize such  
7 institutions to charge a sum not to exceed 1% of the amount  
8 loaned as a service fee if such fee is consistent with the  
9 terms of the internal revenue code and regulations adopted  
10 thereunder.

11 (2) The financial institution involved in the funding  
12 of a project shall carry as its loan an amount equal to 10%  
13 of the total sum loaned in connection with a project. The  
14 financial institution may secure its percentage of the loan  
15 with security other than the kind of security required by  
16 the authority. Loans may be made only to qualified  
17 individuals or business entities doing business in Montana.

18 (3) No single project may receive a loan from the  
19 authority in excess of \$2 million. Loans made by the  
20 authority may be pooled with other loans received by a  
21 project.

22 (4) Loans made by the authority must be secured by any  
23 property or collateral the authority considers necessary.

24 (5) The authority shall by rule establish:

25 (a) procedures for soliciting and evaluating

1 applications;

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

4 (i) the applicant's net worth;

5 (ii) the applicant's inability to secure adequate  
6 financing from other sources at an interest rate that will  
7 allow a reasonable prospect for repayment;

8 (iii) the applicant's training and experience in the  
9 industry involved in the proposed project;

10 (iv) the applicant's prospects for succeeding in the  
11 proposed project;

12 (v) the degree to which the new or increased business  
13 resulting from the loan will meet the objectives of [section  
14 2]; and

15 (vi) any other factors it may prescribe.

16 Section 8. Bonds and notes. (1) The authority may by  
17 resolution issue negotiable notes and bonds in a principal  
18 amount as the authority determines necessary to provide  
19 sufficient funds for achieving any of its purposes,  
20 including the payment of interest on notes and bonds of the  
21 authority, establishment of reserves to secure the notes and  
22 bonds, including the reserve funds created under [section  
23 17], and all other expenditures of the authority incident to  
24 and necessary or convenient to carry out [this act].

25 (2) The authority may by resolution, from time to



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

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

(4) The notes and bonds shall be authorized by a resolution of the authority, bear a date, and mature at times as the resolution provides. A note may not mature more than 5 years and a bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and bonds shall bear interest at a rate or rates, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in the resolution. The notes and bonds of the authority may be

sold at public or private sale, at prices above or below par, as determined by the authority.

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

Section 9. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

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

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

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

1 the authority;

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

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

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

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

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

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

25 (10) defining the acts or omissions that constitute a

1 default in the obligations and duties of the authority to  
2 the holders of the notes or bonds and providing for the  
3 rights and remedies of the holders of the notes or bonds in  
4 the event of such default, including as a matter of right  
5 the appointment of a receiver. Rights and remedies may not  
6 be inconsistent with the laws of the state and the other  
7 provisions of [this act]; and

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

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

22 Section 11. Personal liability. The authority members  
23 and employees of the department are not personally liable or  
24 accountable by reason of the issuance of or on any bond or  
25 note issued by the authority.

1       Section 12. Purchase of notes and bonds --  
 2       cancellation. The authority, subject to existing agreements  
 3       with noteholders or bondholders, may, out of any funds  
 4       available for that purpose, purchase notes or bonds of the  
 5       authority, which shall then be canceled, at a price not  
 6       exceeding:

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

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

14       Section 13. Trust indenture. (1) In the discretion of  
 15       the authority, the bonds may be secured by a trust indenture  
 16       between the authority and a corporate trustee, which may be  
 17       a trust company or bank having the power of a trust company,  
 18       either in or outside the state. A trust indenture may  
 19       contain provisions for protecting and enforcing bondholders'  
 20       rights and remedies that are reasonable, proper, and not in  
 21       violation of law, including covenants setting forth the  
 22       duties of the authority in relation to the exercise of its  
 23       powers and the custody, safeguarding, and application of all  
 24       money. The authority may provide by a trust indenture for  
 25       the payment of the proceeds of the bonds and revenues to the

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

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

7       Section 14. Negotiability of bonds. Notes and bonds  
 8       issued by the authority are negotiable instruments under the  
 9       Uniform Commercial Code, subject only to the provisions for  
 10       registration of notes and bonds.

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

17       Section 16. Accounts. The authority shall create the  
 18       following separate accounts:

19       (1) a bond proceeds account into which bond proceeds  
 20       must be deposited;

21       (2) a capital reserve account as provided in [section  
 22       17]; and

23       (3) an operating account for defraying the operational  
 24       costs of the authority.

25       Section 17. Reserve funds and appropriations. (1) The

1 authority shall establish a capital reserve account and pay  
2 into it:

3 (a) any funds appropriated and made available by the  
4 state for the purpose of the account;

5 (b) any proceeds of sale of notes or bonds to the  
6 extent provided in the resolutions or indentures of the  
7 authority authorizing their issuance; and

8 (c) any other funds which may be available to the  
9 authority from any other source for the purpose of the  
10 account.

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

1 payment of which other money pledged is not available. Any  
2 income or interest earned by or incremental to the capital  
3 reserve account due to its investment may be transferred to  
4 other accounts of the authority to an extent that does not  
5 reduce the amount of the capital reserve account below the  
6 sum of minimum capital reserve requirements for the account.

7 (3) The authority may not issue bonds secured in whole  
8 or in part by the capital reserve account unless the  
9 authority secures such deposits in the account from the  
10 proceeds of the bonds issued or from any other sources in an  
11 amount not less than the minimum capital reserve requirement  
12 for the bonds.

13 (4) In computing the amount of the capital reserve  
14 account, securities in which all or a portion of the account  
15 are invested must be valued at par or, if purchased at less  
16 than par, at their cost to the authority.

17 Section 18. Refunding obligations -- issuance. The  
18 authority may provide for the issuance of refunding  
19 obligations for refunding any obligations then outstanding  
20 that have been issued under [this act], including the  
21 payment of any redemption of the obligations. The issuance  
22 of obligations, the maturities and other details, the rights  
23 of the holders, and the rights, duties, and obligations of  
24 the authority are governed by the appropriate provisions of  
25 [this act] that relate to the issuance of obligations.

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

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

25       Section 21. Annual audit. The authority's books and

1 records must be audited at least once each year by the  
2 legislative auditor or by a contract auditor as directed by  
3 the legislative audit committee. The cost of the audit must  
4 be paid by the authority.

5       Section 22. Tax exemption of bonds. Bonds, notes, or  
6 other obligations issued by the authority under [this act],  
7 their transfer, and income (including any profits made on  
8 their sale) are free from taxation by the state or any  
9 political subdivision or other instrumentality of the state,  
10 except for inheritance, estate, and gift taxes. The  
11 authority is not required to pay recording or transfer fees  
12 or taxes on instruments recorded by it.

13       Section 23. Taxation of projects. (1) Notwithstanding  
14 that title to a project may be in the authority, the  
15 projects are subject to taxation to the same extent, in the  
16 same manner, and under the same procedures as privately  
17 owned property in similar circumstances if the projects are  
18 leased to or held by private interests on both the  
19 assessment date and the date the levy is made in any year.  
20 The projects are not subject to taxation in any year if they  
21 are not leased to or held by private interests on both the  
22 assessment date and the date the levy is made in that year.

23       (2) If personal property owned by a municipality or  
24 county is taxed under this section and the personal property  
25 taxes are delinquent, levy by warrant of distraint for

1 collection of the delinquent taxes may be made only on  
2 personal property against which the taxes were levied.

3 Section 24. Pledge of the state. In accordance with  
4 the Constitution of the United States and the Constitution  
5 of the State of Montana, the state pledges that it will not  
6 in any way impair the obligations of any agreement between  
7 the authority and the holders of notes and bonds issued by  
8 the authority, including but not limited to an agreement to  
9 administer an economic development program financed by the  
10 issuance of bonds and to employ a staff sufficient and  
11 competent for this purpose.

12 Section 25. Economic development guaranty fund. (1)  
13 The authority shall create an economic development guaranty  
14 fund. The fund must be held by a trustee or other fiduciary  
15 designated by the authority. There must be deposited into  
16 the fund the proceeds of the sale of bonds authorized by  
17 [section 17] and such other revenues and assets as the  
18 authority considers necessary to comply with any contract or  
19 agreement entered into by the authority under [this act].

20 (2) The amounts in the fund must be used to satisfy  
21 any claim resulting from a defaulted loan. The amounts in  
22 the fund may also be used for any other purpose determined  
23 by the authority in accordance with guaranty contracts with  
24 financial institutions entered into pursuant to [this act],  
25 including without limitation the protection of the interest

1 of the authority in projects during periods of loan  
2 delinquency or upon loan defaults.

3 Section 26. Loan guaranty program. (1) The authority  
4 may guarantee and make commitments to guarantee payment  
5 required by a loan for any project upon such terms and  
6 conditions as the authority may prescribe in accordance with  
7 [this act]. In administering the guaranty program, the  
8 authority may require the payment of a fee or premium,  
9 establish application fees, and prescribe application,  
10 notification, contract and guaranty forms, rules,  
11 regulations, and guidelines.

12 (2) A loan guaranteed by the authority under [this  
13 act] must:

- 14 (a) be made for a project;
- 15 (b) be financed initially from the proceeds of notes  
16 or bonds issued pursuant to [section 8];
- 17 (c) be made to a borrower approved by the authority or  
18 lending institution as responsible;
- 19 (d) contain complete amortization provisions  
20 satisfactory to the authority; and
- 21 (e) be in such principal amount, be in such form, and  
22 contain such terms and provisions with respect to property  
23 insurance, repairs, alterations, payment of taxes and  
24 assessments, delinquency charges, and default remedies  
25 consistent with [this act] as the authority considers

1 appropriate.

2 (3) The authority is authorized from time to time to  
3 enter into guaranties, insurance contracts, or any other  
4 agreements or contracts with respect to the guaranty fund  
5 and any guaranteed loan. Any such agreement or contract may  
6 contain terms and provisions necessary or desirable in  
7 connection with the guaranty program, subject to the  
8 requirements established, including without limitation terms  
9 and provisions relating to loan documentation, review and  
10 approval procedures, origination and servicing rights and  
11 responsibilities, default obligations, procedures and  
12 obligations, and obligations with respect to guaranty  
13 contracts made under [this act].

14 (4) Any contract of guaranty made by the authority  
15 under the authorization of [this act] must provide that  
16 claims payable thereunder must be paid from any amounts  
17 available in the economic development guaranty fund and from  
18 any amounts available under the terms of any applicable  
19 contract or agreement with the financial institution which  
20 originated the guaranteed loan. The obligation of the  
21 authority to make payments under any such contract must be  
22 limited solely to such sources and may not constitute a debt  
23 or liability of the authority or the state. Any guaranty  
24 contract and any rule or guideline of the authority  
25 implementing the guaranty program may contain such other

1 terms, provisions, or conditions as the authority considers  
2 necessary or appropriate, including without limitation those  
3 relating to the payment of guaranty premiums, the giving of  
4 notice, the claim procedure, the sources of payment for  
5 claims, the priority of competing claims for payment, the  
6 release or termination of loan security and borrower  
7 liability, the timing of payment, the maintenance and  
8 disposition of projects, the use of amounts received during  
9 periods of loan delinquency or upon default, and any other  
10 provision concerning the rights of insured parties or  
11 conditions to the payment of guaranty claims. Any premiums  
12 for the payment of loan guaranties under the provisions of  
13 [this act] may be determined on such basis, be payable by  
14 such person, and be payable in such amounts and at such  
15 times as the authority determines, and the amount of the  
16 premium need not be uniform among the various loans  
17 guaranteed.

18 (5) The minimum reserve requirement for the economic  
19 development guaranty fund must be 10% of the aggregate  
20 amount of loans insured. No loan may be insured by the  
21 authority if such loan, together with the aggregate of all  
22 other loans then insured, exceeds 10 times the amount of  
23 funds available in the economic development guaranty fund.

24 Section 27. Request for appropriations. (1) In order  
25 to assure the maintenance of the economic development

1 guaranty fund, the chairman of the authority shall, on or  
2 before September 1 in the year preceding the convening of  
3 the legislature, deliver to the governor a certificate  
4 stating the sum, if any, required to restore the economic  
5 development guaranty fund to the minimum reserve  
6 requirement. The governor shall include in the executive  
7 budget submitted to the legislature the sum required to  
8 restore the economic development guaranty fund to the  
9 minimum capital reserve requirement.

10 (2) All amounts remitted to the authority under this  
11 section constitute loans to the authority and must be repaid  
12 to the state treasury without interest from available  
13 operating revenues of the authority in excess of amounts  
14 required for the guaranty of loans.

15 Section 26. Report to 49th legislature. The authority  
16 shall investigate the feasibility of guaranteeing loans of  
17 the authority through methods other than the economic  
18 development guaranty fund provided for in [sections 25  
19 through 27], such as guaranteeing loans through private  
20 insurance coverage. The authority shall report its findings  
21 to the 49th legislature and make recommendations concerning  
22 whether to continue the economic development guaranty fund  
23 or to replace it with a more appropriate method of loan  
24 guaranty.

-End-



## STATE OF MONTANA

REQUEST NO. 481-83

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 19, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 871 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

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

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 871 authorizes issuance of industrial revenue bonds with individual loans limited to \$2,000,000. Program is administered by a seven member economic development authority.

ASSUMPTIONS:

- 1) Seven (7) member board.
- 2) Three (3) member staff added to separate bureau in Board of Housing.
- 3) The board will issue \$20 million in bonds during the biennium.
- 4) Loan would be required for initial operating costs.
- 5) Federal law requires the bonds can be sold only after loans made.
- 6) Costs of issuance paid from bond proceeds.

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>	<u>Total Bennium</u>
Expenditures			
Personal Services	\$122,984	\$122,521	\$245,505
Operating Expenses	77,401	80,389	157,790
Equipment	5,010	-0-	5,010
TOTAL	\$205,395	\$202,910	\$408,305

## Revenue:

A general fund loan for initial expenses of the board would be necessary. The loan would be repaid in 4 to 5 years under an agreement with state. An optimistic estimate of net income for the first biennium would be \$192,000 in bonds.

COMMENT:

If the board and staffing for issuing bonds were combined with the board and staff of HB's 100 or HB 700 the fiscal impact would be reduced and overhead costs spread between the programs'.

FISCAL NOTE 17: B/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-21-83

STATE OF MONTANA

REQUEST NO. 521-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, 19 83, there is hereby submitted a Fiscal Note for House Bill 871, Amended pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

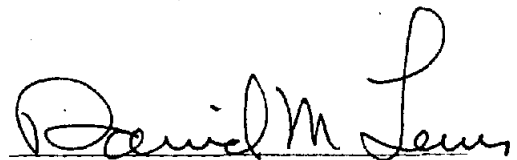
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 871, amended, authorizes issuance of industrial revenue bonds with individual loans limited to \$2,000,000. Program is administered by a seven member economic development authority.

COMMENT:

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

FISCAL NOTE 17: B/2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 871

## 3 House Economic Development Committee

4  
5 A statement of intent is required for House Bill 871  
6 because it provides rulemaking authority for the Montana  
7 economic development board in Section 21 of the bill.

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

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

Approved by Committee  
on Economic Development

## HOUSE BILL NO. 871

INTRODUCED BY FAGG, HANNAH

BY REQUEST OF THE SELECT

COMMITTEE ON ECONOMIC DEVELOPMENT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC  
DEVELOPMENT AUTHORITY BOARD; CREATING AN ECONOMIC  
DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF  
BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO  
BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE  
PROGRAM; AND PROVIDING RULEMAKING AUTHORITY; ~~AMENDING~~  
~~SECTION 20-6-104, MCA.~~"

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

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

(3) "Department" means the department of commerce

provided for in 2-15-1801.

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

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

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

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

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

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

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

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

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

1 (1) sue and be sued;  
 2 (2) have a seal;  
 3 (3) adopt all procedural and substantive rules  
 4 necessary for the administration of [sections 1 through 26];  
 5 (4) make contracts, agreements, and other instruments  
 6 necessary or convenient for the exercise of its powers under  
 7 [sections 1 through 26];  
 8 (5) invest any funds not required for immediate use,  
 9 as the board considers appropriate, subject to any  
 10 agreements with its bondholders and noteholders;  
 11 (6) arrange for lines of credit from and enter into  
 12 participation agreements with any financial institution;  
 13 (7) issue bonds for the purpose of defraying the cost  
 14 of acquiring or improving any project or projects and  
 15 securing the payment of the bonds as provided in [sections 1  
 16 through 26];  
 17 (8) enter into agreements or other transactions with  
 18 and accept grants and the cooperation of any governmental  
 19 agency in furtherance of [sections 1 through 26];  
 20 (9) sell, purchase, or insure loans to finance the  
 21 costs of projects;  
 22 (10) accept services, appropriations, gifts, grants,  
 23 bequests, and devises and utilize or dispose of them in  
 24 carrying out [sections 1 through 26];  
 25 (11) enter into agreements or other transactions with a

1 federal agency, an agency or instrumentality of the state, a  
 2 municipality, a private organization, or any other entity or  
 3 organization in carrying out [sections 1 through 26];  
 4 (12) with regard to property:  
 5 (a) acquire real or personal property or any right,  
 6 interest, or easement therein by gift, purchase, transfer,  
 7 foreclosure, lease, or otherwise;  
 8 (b) hold, sell, assign, lease, encumber, mortgage, or  
 9 otherwise dispose of such property;  
 10 (c) hold, sell, assign, or otherwise dispose of any  
 11 lease, mortgage, or loan owned by it or in its control or  
 12 custody;  
 13 (d) release or relinquish any right, title, claim,  
 14 interest, easement, or demand, however acquired, including  
 15 any equity or right of redemption;  
 16 (e) make any disposition by public or private sale,  
 17 with or without public bidding;  
 18 (f) commence any action to protect or enforce any  
 19 right conferred upon it by any law, mortgage, contract, or  
 20 other agreement;  
 21 (g) bid for and purchase property at any foreclosure  
 22 or other sale or acquire or take possession of it in lieu of  
 23 foreclosure;  
 24 (h) operate, manage, lease, dispose of, and otherwise  
 25 deal with such property in any manner necessary or desirable

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

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

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

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

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

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

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

4 (18) perform any other acts necessary and convenient to  
5 carry out the purposes of the board and [sections 1 through  
6 26].

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

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

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

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

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

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

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

23 (3) Except as otherwise expressly provided by  
24 resolution of the board, every issue of its bonds is an  
25 obligation of the board payable out of any revenue, assets,

1 or money of the board, subject only to agreements with the  
2 holders of particular notes or bonds pledging particular  
3 revenues, assets, or money.

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

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

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

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

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

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

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

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

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



1 notes for:

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

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

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

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

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

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

1 to:

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

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

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

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

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

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

1 or bonds;

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

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

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

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

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

24 **NEW SECTION.** Section 7. Personal liability. The board  
25 and employees of the department are not personally liable or

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

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

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

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

16 **NEW SECTION.** Section 9. Trust indenture. (1) In the  
17 discretion of the board, the bonds may be secured by a trust  
18 indenture between the board and a corporate trustee, which  
19 may be a trust company or bank having the power of a trust  
20 company, either inside or outside the state. A trust  
21 indenture may contain provisions for protecting and  
22 enforcing bondholders' rights and remedies that are  
23 reasonable, proper, and not in violation of law, including  
24 covenants setting forth the duties of the authority in  
25 relation to the exercise of its powers and the custody,

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

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

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

14 NEW SECTION. Section 11. Signatures of board members.  
15 If board members whose signatures appear on notes, bonds, or  
16 coupons cease to be members before the delivery of the notes  
17 or bonds, their signatures shall nevertheless be valid and  
18 sufficient for all purposes the same as if the members had  
19 remained in office until delivery.

20 NEW SECTION. Section 12. Accounts. The board may  
21 create funds and accounts necessary to complement [sections  
22 1 through 26]. The funds and accounts may include:

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

25 (2) a common bond fund consisting of:

1 (a) a common debt service account;

2 (b) a capital reserve account as provided in [section  
3 15]; and

4 (c) an operating account for defraying the operational  
5 costs of the board; and

6 (3) other funds or accounts.

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

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

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

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

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

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

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

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

9 NEW SECTION. Section 15. Refunding obligations. The  
 10 board may provide for the issuance of refunding obligations  
 11 for refunding any obligations then outstanding that have  
 12 been issued under [sections 1 through 26], including the  
 13 payment of any redemption of the obligations. The issuance  
 14 of obligations, the maturities and other details, the rights  
 15 of the holders, and the rights, duties, and obligations of  
 16 the authority are governed by the appropriate provisions of  
 17 [sections 1 through 26] that relate to the issuance of  
 18 obligations. The proceeds of refunding obligations may be  
 19 applied to the purchase, redemption, or payment of  
 20 outstanding obligations. Pending the application of the  
 21 proceeds of refunding obligations and other available funds  
 22 to the payment of principal, accrued interests, and any  
 23 redemption premium on the obligations being refunded and, if  
 24 permitted in the resolution authorizing the issuance of the  
 25 refunding obligations or in the trust agreement securing

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

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

14 **NEW SECTION.** Section 17. Project guaranty program.  
15 (1) The board may guarantee and make commitments to  
16 guarantee payment required by a loan, lease, or other credit  
17 arrangement for any project funded under [sections 1 through  
18 26] or under 90-5-101 through 90-5-112, upon such terms and  
19 conditions as the board may prescribe in accordance with  
20 [sections 1 through 26]. In administering the guaranty  
21 program, the board may require the payment of a fee or  
22 premium, establish application fees, and prescribe  
23 application, notification, contract and guaranty forms,  
24 rules, regulations, and guidelines.

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

1 26] must:

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

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

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

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

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

1 (4) Any contract of guaranty made by the board under  
 2 the authorization of [sections 1 through 26] must provide  
 3 that claims payable thereunder must be paid from any amounts  
 4 available in the economic development guaranty fund and from  
 5 any amounts available under the terms of any applicable  
 6 contract or agreement with the financial institution which  
 7 originated the guaranteed loan. The obligation of the board  
 8 to make payments under any such contract is limited solely  
 9 to such sources and does not constitute a debt or liability  
 10 of the state. Any guaranty contract and any rule,  
 11 regulation, or guideline of the board implementing the  
 12 guaranty program may contain such other terms, provisions,  
 13 or conditions as the board considers necessary or  
 14 appropriate, including without limitation those relating to  
 15 the payment of guaranty premiums, the giving of notice,  
 16 claim procedure, the sources of payment for claims, the  
 17 priority of competing claims for payment, the release or  
 18 termination of loan security and borrower liability, the  
 19 timing of payment, the maintenance and disposition of  
 20 projects and the use of amounts received during periods of  
 21 loan delinquency or upon default, and any other provision  
 22 concerning the rights of insured parties or conditions to  
 23 the payment of guaranty claims. Any premiums for the  
 24 guarantee of loan payments under the provisions of [sections  
 25 1 through 26] may be determined on such basis and be payable

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

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

17 (2) The amounts in the fund must be used to satisfy  
 18 any claim resulting from a defaulted loan, lease, or other  
 19 credit agreement. The amounts in the fund may also be used  
 20 for any other purpose prescribed by the board in accordance  
 21 with guaranty contracts with financial institutions entered  
 22 into pursuant to [sections 1 through 26], including without  
 23 limitation the protection of the interest of the board in  
 24 projects during periods of delinquency or upon default.

25 (3) The minimum reserve requirement for the economic

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

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

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

~~NEW SECTION.~~ Section 19. Adoption of rules. (1) The

board shall adopt rules to establish:

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

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

(i) the applicant's net worth;

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

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

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

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

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

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

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

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

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

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

**NEW SECTION.** Section 22. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same

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

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

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

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

(b) insurance companies;

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

(d) executors, administrators, trustees, and other



1 fiduciaries; and

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

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

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

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

14 (b) the financing to be provided by the board for a  
15 project does not exceed either \$10 million or 90% of the  
16 appraised value of the project, whichever is less;

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

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

25 (e) adequate provision is made in the loan agreement,

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

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

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

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

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

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

1 must include the time and place of the hearing; the general  
2 nature of the project; the name of the lessee, borrower, or  
3 user of the project; and the estimated cost of the project.

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

15 **NEW\_SECTION.** Section 26. Annual audit. The board's  
16 books and records must be audited at least once each fiscal  
17 year by or at the direction of the legislative auditor. The  
18 actual costs of the audit shall be paid from the board's  
19 funds.

20 **NEW\_SECTION.** Section 27. Montana economic development  
21 board. (1) There is a Montana economic development board.

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

1 accountability.

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

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

7 (5) The board is allocated to the department of  
8 commerce for administrative purposes only as provided in  
9 2-15-121. The board has authority over its own personnel as  
10 provided in [section 28].

11 **NEW\_SECTION.** Section 28. Meetings and acts of the  
12 board and personnel. (1) All meetings of the board are open  
13 to the public.

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

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

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

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

24 Section 29. Section 90-6-104, MCA, is amended to read:  
25 "90-6-104. General powers of the board. The board may:

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

1 (8) accept services, appropriations, gifts, grants,  
 2 bequests, and devises and utilize or dispose of them in  
 3 carrying out this part;  
 4 (9) acquire real or personal property or any right,  
 5 interest, or easement therein by gift, purchase, transfer,  
 6 foreclosure, lease, or otherwise; hold, sell, assign, lease,  
 7 encumber, mortgage, or otherwise dispose thereof; hold,  
 8 sell, assign, or otherwise dispose of any mortgage or loan  
 9 owned by it or in its control or custody; release or  
 10 relinquish any right, title, claim, interest, easement, or  
 11 demand, however acquired, including any equity or right of  
 12 redemption; do any of the foregoing by public or private  
 13 sale, with or without public bidding; commence any action to  
 14 protect or enforce any right conferred upon it by any law,  
 15 mortgage, contract, or other agreement; bid for and purchase  
 16 property at any foreclosure or other sale or acquire or take  
 17 possession of it in lieu of foreclosure; and operate,  
 18 manage, lease, dispose of, and otherwise deal with such  
 19 property in any manner necessary or desirable to protect its  
 20 interests and the holders of its bonds or notes and  
 21 consistent with any agreement with such holders;  
 22 (10) service and contract and pay for the servicing of  
 23 loans;  
 24 (11) provide general technical services in the  
 25 analysis, planning, design, processing, construction,

1 rehabilitation, and management of housing developments for  
2 persons and families of lower income where these services  
3 are not otherwise available;

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

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

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

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

1 construction loan, advance contract, or agreement of any  
2 kind, subject to any agreement with bondholders and  
3 noteholders;

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

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

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

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

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

25 ~~(21) lend money to the economic development board to~~

1 ~~establish the Montana economic development guaranty fund~~  
2 ~~created by [section 18]."~~

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

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

11 ~~NEW SECTION.~~ Section 32. Coordination instruction.  
12 House Bill 871 as amended by the legislature is nearly  
13 identical to House Bill 700 except for the provisions  
14 relating to the financing of major projects. If both House  
15 Bill 871 and House Bill 700 are passed and approved, the  
16 code commissioner shall not codify both bills in their  
17 entirety, but shall only codify those parts of House Bill  
18 871 that differ from the companion parts of House Bill 700.

-End-

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 871

## 3 House Economic Development Committee

4

5 A statement of intent is required for House Bill 871  
6 because it provides rulemaking authority for the Montana  
7 economic development board in Section 21 of the bill.

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

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

THIRD READING

-2-

HB 871

## HOUSE BILL NO. 871

INTRODUCED BY FAGG, HANNAH

BY REQUEST OF THE SELECT

COMMITTEE ON ECONOMIC DEVELOPMENT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC  
DEVELOPMENT AUTHORITY BOARD; CREATING AN ECONOMIC  
DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF  
BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO  
BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE  
PROGRAM; AND PROVIDING RULEMAKING AUTHORITY; AMENDING  
SECTION 90-6-104, MCA."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

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

(3) "Department" means the department of commerce

provided for in 2-15-1801.

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

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

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

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

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

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

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

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

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

1 (1) sue and be sued;  
 2 (2) have a seal;  
 3 (3) adopt all procedural and substantive rules  
 4 necessary for the administration of [sections 1 through 26];  
 5 (4) make contracts, agreements, and other instruments  
 6 necessary or convenient for the exercise of its powers under  
 7 [sections 1 through 26];  
 8 (5) invest any funds not required for immediate use,  
 9 as the board considers appropriate, subject to any  
 10 agreements with its bondholders and noteholders;  
 11 (6) arrange for lines of credit from and enter into  
 12 participation agreements with any financial institutions;  
 13 (7) issue bonds for the purpose of defraying the cost  
 14 of acquiring or improving any project or projects and  
 15 securing the payment of the bonds as provided in [sections 1  
 16 through 26];  
 17 (8) enter into agreements or other transactions with  
 18 and accept grants and the cooperation of any governmental  
 19 agency in furtherance of [sections 1 through 26];  
 20 (9) sell, purchase, or insure loans to finance the  
 21 costs of projects;  
 22 (10) accept services, appropriations, gifts, grants,  
 23 bequests, and devise and utilize or dispose of them in  
 24 carrying out [sections 1 through 26];  
 25 (11) enter into agreements or other transactions with a

1 federal agency, an agency or instrumentality of the state, a  
 2 municipality, a private organization, or any other entity or  
 3 organization in carrying out [sections 1 through 26];  
 4 (12) with regard to property:  
 5 (a) acquire real or personal property or any right,  
 6 interest, or easement therein by gift, purchase, transfer,  
 7 foreclosure, lease, or otherwise;  
 8 (b) hold, sell, assign, lease, encumber, mortgage, or  
 9 otherwise dispose of such property;  
 10 (c) hold, sell, assign, or otherwise dispose of any  
 11 lease, mortgage, or loan owned by it or in its control or  
 12 custody;  
 13 (d) release or relinquish any right, title, claim,  
 14 interest, easement, or demand, however acquired, including  
 15 any equity or right of redemption;  
 16 (e) make any disposition by public or private sale,  
 17 with or without public bidding;  
 18 (f) commence any action to protect or enforce any  
 19 right conferred upon it by any law, mortgage, contract, or  
 20 other agreement;  
 21 (g) bid for and purchase property at any foreclosure  
 22 or other sale or acquire or take possession of it in lieu of  
 23 foreclosure;  
 24 (h) operate, manage, lease, dispose of, and otherwise  
 25 deal with such property in any manner necessary or desirable



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

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

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

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

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

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

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

4 (18) perform any other acts necessary and convenient to  
5 carry out the purposes of the board and [sections 1 through  
6 26].

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

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

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

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

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

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

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

(3) Except as otherwise expressly provided by resolution of the board, every issue of its bonds is an obligation of the board payable out of any revenue, assets,

or money of the board, subject only to agreements with the holders of particular notes or bonds pledging particular revenues, assets, or money.

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

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

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

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

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

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

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

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

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

1 notes for:

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

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

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

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

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

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

1 to:

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

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

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

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

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

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

1 or bonds;

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

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

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

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

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

24 NEW SECTION. Section 7. Personal liability. The board  
25 and employees of the department are not personally liable or

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

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

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

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

16 NEW SECTION. Section 9. Trust indenture. (1) In the  
17 discretion of the board, the bonds may be secured by a trust  
18 indenture between the board and a corporate trustee, which  
19 may be a trust company or bank having the power of a trust  
20 company, either inside or outside the state. A trust  
21 indenture may contain provisions for protecting and  
22 enforcing bondholders' rights and remedies that are  
23 reasonable, proper, and not in violation of law, including  
24 covenants setting forth the duties of the authority in  
25 relation to the exercise of its powers and the custody,

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

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

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

14 **NEW\_SECTION.** Section 11. Signatures of board members.  
15 If board members whose signatures appear on notes, bonds, or  
16 coupons cease to be members before the delivery of the notes  
17 or bonds, their signatures shall nevertheless be valid and  
18 sufficient for all purposes the same as if the members had  
19 remained in office until delivery.

20 **NEW\_SECTION.** Section 12. Accounts. The board may  
21 create funds and accounts necessary to complement [sections  
22 1 through 26]. The funds and accounts may include:

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

25 (2) a common bond fund consisting of:

- 1 (a) a common debt service account;
- 2 (b) a capital reserve account as provided in [section
- 3 15]; and
- 4 (c) an operating account for defraying the operational
- 5 costs of the board; and
- 6 (3) other funds or accounts.

7 **NEW\_SECTION.** Section 13. Reserve funds and  
8 appropriations. (1) The board may establish a capital  
9 reserve account and pay into it any:

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

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

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

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

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

9 NEW SECTION. Section 15. Refunding obligations. The  
 10 board may provide for the issuance of refunding obligations  
 11 for refunding any obligations then outstanding that have  
 12 been issued under [sections 1 through 26], including the  
 13 payment of any redemption of the obligations. The issuance  
 14 of obligations, the maturities and other details, the rights  
 15 of the holders, and the rights, duties, and obligations of  
 16 the authority are governed by the appropriate provisions of  
 17 [sections 1 through 26] that relate to the issuance of  
 18 obligations. The proceeds of refunding obligations may be  
 19 applied to the purchase, redemption, or payment of  
 20 outstanding obligations. Pending the application of the  
 21 proceeds of refunding obligations and other available funds  
 22 to the payment of principal, accrued interests, and any  
 23 redemption premium on the obligations being refunded and, if  
 24 permitted in the resolution authorizing the issuance of the  
 25 refunding obligations or in the trust agreement securing

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

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

14 **NEW SECTION.** Section 17. Project guaranty program.  
15 (1) The board may guarantee and make commitments to  
16 guarantee payment required by a loan, lease, or other credit  
17 arrangement for any project funded under [sections 1 through  
18 26] or under 90-5-101 through 90-5-112, upon such terms and  
19 conditions as the board may prescribe in accordance with  
20 [sections 1 through 26]. In administering the guaranty  
21 program, the board may require the payment of a fee or  
22 premium, establish application fees, and prescribe  
23 application, notification, contract and guaranty forms,  
24 rules, regulations, and guidelines.

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

1 26] must:

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

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

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

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

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



1       (4) Any contract of guaranty made by the board under  
 2 the authorization of [sections 1 through 26] must provide  
 3 that claims payable thereunder must be paid from any amounts  
 4 available in the economic development guaranty fund and from  
 5 any amounts available under the terms of any applicable  
 6 contract or agreement with the financial institution which  
 7 originated the guaranteed loan. The obligation of the board  
 8 to make payments under any such contract is limited solely  
 9 to such sources and does not constitute a debt or liability  
 10 of the state. Any guaranty contract and any rule,  
 11 regulation, or guideline of the board implementing the  
 12 guaranty program may contain such other terms, provisions,  
 13 or conditions as the board considers necessary or  
 14 appropriate, including without limitation those relating to  
 15 the payment of guaranty premiums, the giving of notice,  
 16 claim procedure, the sources of payment for claims, the  
 17 priority of competing claims for payment, the release or  
 18 termination of loan security and borrower liability, the  
 19 timing of payment, the maintenance and disposition of  
 20 projects and the use of amounts received during periods of  
 21 loan delinquency or upon default, and any other provision  
 22 concerning the rights of insured parties or conditions to  
 23 the payment of guaranty claims. Any premiums for the  
 24 guarantee of loan payments under the provisions of [sections  
 25 1 through 26] may be determined on such basis and be payable

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

5       **NEW SECTION.** Section 18. Economic development  
 6 guaranty fund. (1) The board shall create an economic  
 7 development guaranty fund. The fund must be held by a  
 8 trustee or other fiduciary designated by the board. There  
 9 must be deposited into the fund amounts, insurance fees,  
 10 premiums, and such other revenues and assets as the board  
 11 considers necessary to comply with any contract or agreement  
 12 entered into by the board under [sections 1 through 26]. The  
 13 board may borrow from and deposit in the economic  
 14 development guaranty fund up to \$275 25 million from any  
 15 available state fund, including funds of the Montana board  
 16 of housing.

17       (2) The amounts in the fund must be used to satisfy  
 18 any claim resulting from a defaulted loan, lease, or other  
 19 credit agreement. The amounts in the fund may also be used  
 20 for any other purpose prescribed by the board in accordance  
 21 with guaranty contracts with financial institutions entered  
 22 into pursuant to [sections 1 through 26], including without  
 23 limitation the protection of the interest of the board in  
 24 projects during periods of delinquency or upon default.

25       (3) The minimum reserve requirement for the economic

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

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

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

**NEW SECTION.** Section 19. Adoption of rules. (1) The

board shall adopt rules to establish:

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

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

(i) the applicant's net worth;

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

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

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

(v) any other factors the board may prescribe.

(2) The board shall adopt rules for the:

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

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

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

1 must include the time and place of the hearing; the general  
2 nature of the project; the name of the lessee, borrower, or  
3 user of the project; and the estimated cost of the project.

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

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

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

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

1 ~~accountability~~ INCLUDE AT LEAST ONE PERSON REPRESENTING EACH  
2 OF THE FOLLOWING: THE FINANCIAL COMMUNITY, SMALL BUSINESS,  
3 AGRICULTURE, ORGANIZED LABOR, AND THE GENERAL PUBLIC.

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

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

9 (5) The board is allocated to the department of  
10 commerce for administrative purposes only as provided in  
11 2-15-121. The board has authority over its own personnel as  
12 provided in [section 28].

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

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

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

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

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

1 Section 29. Section 90-6-104, MCA, is amended to read:  
 2 "90-6-104. General powers of the board. The board may:  
 3 (1) sue and be sued;  
 4 (2) have a seal;  
 5 (3) adopt all procedural and substantive rules  
 6 necessary for the administration of this part, including  
 7 rules concerning its mortgage, construction, and temporary  
 8 lending programs;  
 9 (4) make contracts, agreements, and other instruments  
 10 necessary or convenient for the exercise of its powers under  
 11 this part;  
 12 (5) enter into agreements or other transactions with  
 13 any federal, state, or local governmental agency, any  
 14 persons, and any domestic or foreign partnership,  
 15 corporation, association, or organization in carrying out  
 16 this part;  
 17 (6) enter into agreements under its rules with  
 18 sponsors, mortgagors, or lending institutions for the  
 19 purpose of regulating the analysis, planning, development,  
 20 and management of housing developments financed in whole or  
 21 in part by the proceeds of its loans or securities and  
 22 mortgage purchase programs;  
 23 (7) enter into agreements or other transactions with,  
 24 and accept grants and the cooperation of, any governmental  
 25 agency in furtherance of this part, including but not

1 limited to the development, leasing, maintenance, operation,  
 2 and financing of any housing development;  
 3 (8) accept services, appropriations, gifts, grants,  
 4 bequests, and devises and utilize or dispose of them in  
 5 carrying out this part;  
 6 (9) acquire real or personal property or any right,  
 7 interest, or easement therein by gift, purchase, transfer,  
 8 foreclosure, lease, or otherwise; hold, sell, assign, lease,  
 9 encumber, mortgage, or otherwise dispose thereof; hold,  
 10 sell, assign, or otherwise dispose of any mortgage or loan  
 11 owned by it or in its control or custody; release or  
 12 relinquish any right, title, claim, interest, easement, or  
 13 demand, however acquired, including any equity or right of  
 14 redemption; do any of the foregoing by public or private  
 15 sale, with or without public bidding; commence any action to  
 16 protect or enforce any right conferred upon it by any law,  
 17 mortgage, contract, or other agreement; bid for and purchase  
 18 property at any foreclosure or other sale or acquire or take  
 19 possession of it in lieu of foreclosure; and operate,  
 20 manage, lease, dispose of, and otherwise deal with such  
 21 property in any manner necessary or desirable to protect its  
 22 interests and the holders of its bonds or notes and  
 23 consistent with any agreement with such holders;  
 24 (10) service and contract and pay for the servicing of  
 25 loans;

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

3 **NEW SECTION.** Section 20. Pledge of the state. In  
4 accordance with the constitutions of the United States and  
5 the state of Montana, the state pledges that it will not in  
6 any way impair the obligations of any agreement between the  
7 board and the holders of notes and bonds issued by the  
8 board, including but not limited to an agreement to  
9 administer a loan program financed by the issuance of bonds  
10 and to employ a staff sufficient and competent for this  
11 purpose.

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

23 **NEW SECTION.** Section 22. Taxation of projects. (1)  
24 Notwithstanding the fact that title to a project may be in  
25 the board, such projects are subject to taxation to the same

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

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

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

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

21 (b) insurance companies;

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

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

1 fiduciaries; and

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

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

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

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

14 (b) the financing to be provided by the board for a  
15 project does not exceed either \$10 million or 90% of the  
16 appraised value of the project, whichever is less;

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

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

25 (e) adequate provision is made in the loan agreement,

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

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

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

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

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

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

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

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

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

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

23 (15) consent, whenever it deems it necessary or  
24 desirable in fulfilling its purposes, to the modification of  
25 the rate of interest, time, and payment of any installment

1 of principal or interest, security, or any other term of any  
2 contract, mortgage, mortgage loan, mortgage loan commitment,  
3 construction loan, advance contract, or agreement of any  
4 kind, subject to any agreement with bondholders and  
5 noteholders;

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

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

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

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

23 (20) develop special programs for housing developments  
24 for veterans of the armed forces of the United States who  
25 are unable to acquire safe and sanitary housing through

1 lending institutions by conventional means; and  
 2 ~~(2) lend money to the economic development board to~~  
 3 ~~establish the Montana economic development guaranty fund~~  
 4 ~~created by [section 18]."~~

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

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

13 **NEW SECTION.** Section 32. Coordination instruction.  
 14 House Bill 871 as amended by the legislature is nearly  
 15 identical to House Bill 700 except for the provisions  
 16 relating to the financing of major projects. If both House  
 17 Bill 871 and House Bill 700 are passed and approved, the  
 18 code commissioner shall not codify both bills in their  
 19 entirety, but shall only codify those parts of House Bill  
 20 871 that differ from the companion parts of House Bill 700.

-End-



SENATE STANDING COMMITTEE REPORT  
(Business and Industry)

That House Bill No. 871 be amended as follows:

1. Page 2, line 8.

Following: Line 7.

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

(6) "Major project" means a project whose cost or appraised value exceeds \$800,000."

Renumber: subsequent subsections.

2. Page 15, line 21.

Following: "to"

Strike: "complement"

Insert: "implement"

3. Page 15, line 22.

Following: "26]."

Strike: remainder of line 22 through line 6 on page 16 in their entirety.

4. Page 27, line 16.

Following: Line 15.

Insert: "cost or"

5. Page 27, line 18.

Following: "project"

Insert: "if the cost or appraised value is less than \$1 million"

6. Page 27, line 20.

Following: "board"

Insert: ", provided however that participation by a financial institution in projects of over \$1 million is at the discretion of the board"

7. Page 27, line 22.

Following: "private"

Insert: "or"

8. Page 30, line 1.

Following: "accountability"

Strike: remainder of line 1 through "PUBLIC" on line 3.

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

## 1 STATEMENT OF INTENT

## 2 HOUSE BILL 871

## 3 House Economic Development Committee

4

5 A statement of intent is required for House Bill 871  
6 because it provides rulemaking authority for the Montana  
7 economic development board in Section 21 of the bill.

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

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

REFERENCE BILL

HB 871

## HOUSE BILL NO. 871

INTRODUCED BY FAGG, HANNAH

BY REQUEST OF THE SELECT

COMMITTEE ON ECONOMIC DEVELOPMENT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC DEVELOPMENT AUTHORITY BOARD; CREATING AN ECONOMIC DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE PROGRAM; AND PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 90-6-104, MCA."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

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

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

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

(3) "Department" means the department of commerce

provided for in 2-15-1801.

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

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

~~(6) "MAJOR PROJECT" MEANS A PROJECT WHOSE COST OR APPRAISED VALUE EXCEEDS \$800,000.~~

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

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

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

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

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

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

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

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

9 (1) sue and be sued;

10 (2) have a seal;

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

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

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

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

21 (7) issue bonds for the purpose of defraying the cost  
22 of acquiring or improving any project or projects and  
23 securing the payment of the bonds as provided in [sections 1  
24 through 26];

25 (8) enter into agreements or other transactions with

1 and accept grants and the cooperation of any governmental  
2 agency in furtherance of [sections 1 through 26];

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

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

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

12 (12) with regard to property:

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

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

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

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

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

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

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

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

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

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

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

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements,

loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

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

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

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

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

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such

1 projects to others for such rentals and upon such terms and  
2 conditions as determined by the board; or

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

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

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

24 (2) The board may by resolution, from time to time,  
25 issue notes to renew notes and bonds or to pay notes,

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

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

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

1 at public or private sale, at prices above or below par, as  
2 determined by the board, and in a manner such that interest  
3 on the bonds is either exempt from or subject to federal  
4 income tax.

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

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

15 **NEW SECTION.** Section 5. Bond anticipation notes --  
16 issuance -- payment of principal and interest. (1) The board  
17 may, pending the issuance of bonds, issue temporary notes in  
18 anticipation of the proceeds to be derived from the sale of  
19 the bonds. The notes shall be designated as "bond  
20 anticipation notes". The proceeds of the sale of the bond  
21 anticipation notes must be used only for the purpose for  
22 which the proceeds of the bonds could be used, including  
23 costs of issuance. If, prior to the issuance of the bonds,  
24 it becomes necessary to redeem outstanding notes, additional  
25 bond anticipation notes may be issued to redeem the

1 outstanding notes. No renewal of any note may be issued  
2 after the sale of bonds in anticipation of which the  
3 original notes were issued.

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

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

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

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

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

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

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

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

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

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

1 credit may be evidenced by negotiable or nonnegotiable notes  
2 or other evidences of indebtedness, containing such terms  
3 and conditions as the board may authorize in the resolution  
4 approving the same.

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

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

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

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

24 (4) the setting aside of reserves for sinking funds in  
25 the hands of trustees, paying agents, and other depositories



1 and the regulation and disposition thereof;

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

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

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

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

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

23 (10) defining the acts or omissions that shall  
24 constitute a default in the obligations and duties of the  
25 board to the holders of the notes or bonds and providing for

1 the rights and remedies of the holders of the notes or bonds  
2 in the event of such default, including as a matter of right  
3 the appointment of a receiver; and

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

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

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

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

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

24 NEW SECTION. Section 9. Trust indenture. (1) In the  
25 discretion of the board, the bonds may be secured by a trust

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

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

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

22 **NEW SECTION.** Section 11. Signatures of board members.  
 23 If board members whose signatures appear on notes, bonds, or  
 24 coupons cease to be members before the delivery of the notes  
 25 or bonds, their signatures shall nevertheless be valid and

1 sufficient for all purposes the same as if the members had  
 2 remained in office until delivery.

3 **NEW SECTION.** Section 12. Accounts. The board may  
 4 create funds and accounts necessary to complement **IMPLEMENT**  
 5 [sections 1 through 26]. ~~The funds and accounts may include:~~  
 6 ~~(1) a bond proceeds fund into which bond proceeds are~~  
 7 ~~deposited;~~  
 8 ~~(2) a common bond fund consisting of:~~  
 9 ~~(a) a common debt service account;~~  
 10 ~~(b) a capital reserve account as provided in section~~  
 11 ~~15j; and~~  
 12 ~~(c) an operating account for defraying the operational~~  
 13 ~~costs of the board; and~~  
 14 ~~(3) other funds or accounts.~~

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

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

20 (b) proceeds of the sale of notes or bonds to the  
 21 extent provided in the resolutions or indentures of the  
 22 board authorizing their issuance; and

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

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

1 be used solely for the payment of the principal of or  
 2 interest on the bonds secured in whole or in part by the  
 3 account or the sinking fund payments with respect to the  
 4 bonds, the purchase or redemption of the bonds, the payment  
 5 of interest on the bonds, or the payment of any redemption  
 6 premium required to be paid when the bonds are redeemed  
 7 prior to maturity. Funds in the account may not be withdrawn  
 8 at any time in an amount that reduces the account to an  
 9 amount less than the sum of minimum capital reserve  
 10 requirements established in the resolutions or indentures of  
 11 the board for the account except, with respect to bonds  
 12 secured in whole or in part by the account, for the purpose  
 13 of making payment, when due, of principal, interest,  
 14 redemption premiums, and sinking fund payments for the  
 15 payment of which other money pledged is not available. Any  
 16 income or interest earned by or incremental to the capital  
 17 reserve account due to its investment may be transferred to  
 18 other accounts of the board to an extent that does not  
 19 reduce the amount of the capital reserve account below the  
 20 sum of minimum capital reserve requirements for the account.

21 **NEW SECTION.** Section 14. Maintenance of capital  
 22 reserve account. (1) In order to assure the maintenance of  
 23 the capital reserve account, the chairman of the board  
 24 shall, on or before September 1 in each year preceding the  
 25 convening of the legislature, deliver to the governor a

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

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

17 **NEW SECTION.** Section 15. Refunding obligations. The  
 18 board may provide for the issuance of refunding obligations  
 19 for refunding any obligations then outstanding that have  
 20 been issued under [sections 1 through 26], including the  
 21 payment of any redemption of the obligations. The issuance  
 22 of obligations, the maturities and other details, the rights  
 23 of the holders, and the rights, duties, and obligations of  
 24 the authority are governed by the appropriate provisions of  
 25 [sections 1 through 26] that relate to the issuance of

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

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

22 **NEW SECTION.** Section 17. Project guaranty program.  
 23 (1) The board may guarantee and make commitments to  
 24 guarantee payment required by a loan, lease, or other credit  
 25 arrangement for any project funded under [sections 1 through

1 26] or under 90-5-101 through 90-5-112, upon such terms and  
 2 conditions as the board may prescribe in accordance with  
 3 [sections 1 through 26]. In administering the guaranty  
 4 program, the board may require the payment of a fee or  
 5 premium, establish application fees, and prescribe  
 6 application, notification, contract and guaranty forms,  
 7 rules, regulations, and guidelines.

8 (2) Guaranties by the board under [sections 1 through  
 9 26] must:

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

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

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

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

21 (3) The board is authorized from time to time to enter  
 22 into guaranties, insurance contracts, or any other  
 23 agreements or contracts with respect to the economic  
 24 development guaranty fund and any guaranteed loan lease or  
 25 other credit agreement. Any such agreement or contract may

1 contain terms and provisions necessary or desirable in  
 2 connection with the guaranty program, subject to the  
 3 requirements established, including without limitation terms  
 4 and provisions relating to loan documentation, review,  
 5 approval procedures, origination and servicing rights and  
 6 responsibilities, default obligations, procedures and  
 7 obligations, and obligations with respect to guaranty  
 8 contracts made under [sections 1 through 26].

9 (4) Any contract of guaranty made by the board under  
 10 the authorization of [sections 1 through 26] must provide  
 11 that claims payable thereunder must be paid from any amounts  
 12 available in the economic development guaranty fund and from  
 13 any amounts available under the terms of any applicable  
 14 contract or agreement with the financial institution which  
 15 originated the guaranteed loan. The obligation of the board  
 16 to make payments under any such contract is limited solely  
 17 to such sources and does not constitute a debt or liability  
 18 of the state. Any guaranty contract and any rule,  
 19 regulation, or guideline of the board implementing the  
 20 guaranty program may contain such other terms, provisions,  
 21 or conditions as the board considers necessary or  
 22 appropriate, including without limitation those relating to  
 23 the payment of guaranty premiums, the giving of notice,  
 24 claim procedure, the sources of payment for claims, the  
 25 priority of competing claims for payment, the release or

1 termination of loan security and borrower liability, the  
 2 timing of payment, the maintenance and disposition of  
 3 projects and the use of amounts received during periods of  
 4 loan delinquency or upon default, and any other provision  
 5 concerning the rights of insured parties or conditions to  
 6 the payment of guaranty claims. Any premiums for the  
 7 guarantee of loan payments under the provisions of [sections  
 8 1 through 26] may be determined on such basis and be payable  
 9 by such person in such amounts and at such times as the  
 10 board determines, and the amount of the premium need not be  
 11 uniform among the various loans, leases, or other credit  
 12 agreements guaranteed.

13 NEW SECTION. Section 18. Economic development  
 14 guaranty fund. (1) The board shall create an economic  
 15 development guaranty fund. The fund must be held by a  
 16 trustee or other fiduciary designated by the board. There  
 17 must be deposited into the fund amounts, insurance fees,  
 18 premiums, and such other revenues and assets as the board  
 19 considers necessary to comply with any contract or agreement  
 20 entered into by the board under [sections 1 through 26]. The  
 21 board may borrow from and deposit in the economic  
 22 development guaranty fund up to ~~\$2.5~~ \$5 million from any  
 23 available state fund, including funds of the Montana board  
 24 of housing.

25 (2) The amounts in the fund must be used to satisfy

1 any claim resulting from a defaulted loan, lease, or other  
2 credit agreement. The amounts in the fund may also be used  
3 for any other purpose prescribed by the board in accordance  
4 with guaranty contracts with financial institutions entered  
5 into pursuant to [sections 1 through 26], including without  
6 limitation the protection of the interest of the board in  
7 projects during periods of delinquency or upon default.

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

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

1 restore the economic development guaranty fund to the  
2 minimum reserve requirement.

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

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

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

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

15 (i) the applicant's net worth;

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

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

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

23 (v) any other factors the board may prescribe.

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

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

1 of project applicants;

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

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

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

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

20 **NEW\_SECTION.** Section 21. Credit of state not pledged.  
21 Obligations issued under the provisions of [sections 1  
22 through 26] do not constitute a debt, liability, obligation,  
23 or pledge of the faith and credit of the state but are  
24 payable solely from the revenues or assets of the board. An  
25 obligation issued under this part must contain on the face

1 thereof a statement to the effect that the state of Montana  
2 is not liable on the obligation, the obligation is not a  
3 debt of the state, and neither the faith and credit nor the  
4 taxing power of the state is pledged to the payment of the  
5 principal or interest on the obligation.

6 **NEW\_SECTION.** Section 22. Taxation of projects. (1)  
7 Notwithstanding the fact that title to a project may be in  
8 the board, such projects are subject to taxation to the same  
9 extent, in the same manner, and under the same procedures as  
10 privately owned property in similar circumstances if such  
11 projects are leased to or held by private interests on both  
12 the assessment date and the date the levy is made in that  
13 year. Such projects are not subject to taxation in any year  
14 if they are not leased to or held by private interests on  
15 both the assessment date and the date the levy is made in  
16 that year.

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

22 **NEW\_SECTION.** Section 23. Bonds as legal investment.  
23 (1) Bonds issued by the board under the provisions of  
24 [sections 1 through 26] are securities in which all funds  
25 may be legally and properly invested, including capital in

the control of or belonging to:

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

(b) insurance companies;

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

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

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

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

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

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

(b) the financing to be provided by the board for a project does not exceed either \$10 million or 90% of the COST OR appraised value of the project, whichever is less;

(c) a financial institution will participate in

financing the project IF THE COST OR APPRAISED VALUE IS LESS THAN \$1 MILLION, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, PROVIDED, HOWEVER, THAT PARTICIPATION BY A FINANCIAL INSTITUTION IN PROJECTS OF OVER \$1 MILLION IS AT THE DISCRETION OF THE BOARD;

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

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

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

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

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



1 prescribes.

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

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

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

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

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

8 (2) The board consists of seven members, who shall be  
9 appointed by the governor as prescribed in 2-15-124. The  
10 board must be broadly representative of the state, seeking  
11 to balance professional expertise and public interest and  
12 accountability ~~INCLUDE AT LEAST ONE PERSON REPRESENTING EACH~~  
13 ~~OF THE FOLLOWING: THE FINANCIAL COMMUNITY, SMALL BUSINESS,~~  
14 ~~AGRICULTURE, ORGANIZED LABOR, AND THE GENERAL PUBLIC~~ BE  
15 BROADLY REPRESENTATIVE OF THE STATE, SEEKING TO BALANCE  
16 PROFESSIONAL EXPERTISE AND PUBLIC INTEREST AND  
17 ACCOUNTABILITY.

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

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

23 (5) The board is allocated to the department of  
24 commerce for administrative purposes only as provided in  
25 2-15-121. The board has authority over its own personnel as

1 provided in [section 28].

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

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

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

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

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

15 Section 29. Section 90-6-104, MCA, is amended to read:  
16 "90-6-104. General powers of the board. The board may:

17 (1) sue and be sued;

18 (2) have a seal;

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

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

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

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

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

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

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

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

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

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

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

25       (13) invest any funds not required for immediate use,

1   subject to any agreements with its bondholders and  
 2   noteholders, as provided in Title 17, chapter 6, except all  
 3   investment income from funds of the board less the cost for  
 4   investment as prescribed by law shall be deposited in the  
 5   housing finance account;

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

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

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

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

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

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

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

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

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

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

25 **NEW SECTION.** Section 31. Effective date. This act is

1 effective on passage and approval.

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

-End-

1 HOUSE BILL NO. 871  
 2 INTRODUCED BY FAGG, HANNAH  
 3 BY REQUEST OF THE SELECT  
 4 COMMITTEE ON ECONOMIC DEVELOPMENT  
 5  
 6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING AN ECONOMIC  
 7 DEVELOPMENT ~~AUTHORITY~~ BOARD; CREATING AN ECONOMIC  
 8 DEVELOPMENT GUARANTY FUND; PROVIDING FOR THE ISSUANCE OF  
 9 BONDS TO FINANCE PROJECTS; DESIGNATING TYPES OF PROJECTS TO  
 10 BE FUNDED; CREATING ACCOUNTS NECESSARY FOR CARRYING OUT THE  
 11 PROGRAM; AND PROVIDING RULEMAKING AUTHORITY; AMENDING  
 12 SECTION 90-6-104, MCA."  
 13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 15 (Refer to Introduced Bill)  
 16 Strike everything after the enacting clause and insert:  
 17 NEW SECTION. Section 1. Definitions. As used in  
 18 [sections 1 through 26], unless the context requires  
 19 otherwise, the following definitions apply:  
 20 (1) "Board" means the Montana economic development  
 21 board created in [section 27].  
 22 (2) "Bond" means any bond, note, debenture, interim  
 23 certificate, or other evidence of financial indebtedness  
 24 issued by the board pursuant to [sections 1 through 26].  
 25 (3) "Department" means the department of commerce

1 provided for in 2-15-1801.  
 2 (4) "Financial institution" means any bank, savings  
 3 and loan association, credit union, development credit  
 4 corporation, insurance company, investment company, trust  
 5 company, savings institution, or other financial institution  
 6 approved by the board and maintaining an office in the  
 7 state.  
 8 (5) "LOCAL GOVERNMENT" MEANS THE CITY IN WHICH THE  
 9 PROJECT IS LOCATED. IF THE PROJECT IS LOCATED WITHIN AN  
 10 INCORPORATED MUNICIPALITY, OR THE COUNTY IF THE PROJECT IS  
 11 LOCATED WITHIN THE COUNTY BUT OUTSIDE THE BOUNDARIES OF AN  
 12 INCORPORATED MUNICIPALITY.  
 13 (6) "MAJOR PROJECT" MEANS A PROJECT WHOSE COST OR  
 14 APPRAISED VALUE EXCEEDS \$800,000.  
 15 ~~(5)(7)~~ "Project" means a project as defined in  
 16 90-5-101.  
 17 ~~(6)(8)~~ "Project costs" means the costs of acquiring or  
 18 improving any project, including the following:  
 19 (a) the actual cost of acquiring or improving real  
 20 estate for any project;  
 21 (b) the actual cost of construction of all or any part  
 22 of a project, including architects' and engineers' fees;  
 23 (c) all expenses in connection with the authorization,  
 24 sale, and issuance of the bonds to finance such acquisition  
 25 or improvement;

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

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

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

(1) sue and be sued;

(2) have a seal;

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

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

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

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

(7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in [sections 1 through 26];

(8) enter into agreements or other transactions with

and accept grants and the cooperation of any governmental agency in furtherance of [sections 1 through 26];

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

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

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

(12) with regard to property:

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

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

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

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

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

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

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

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

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

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

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

(16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements,

loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.

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

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

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

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

(b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such

1 projects to others for such rentals and upon such terms and  
2 conditions as determined by the board; or

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

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

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

24 (2) The board may by resolution, from time to time,  
25 issue notes to renew notes and bonds or to pay notes,

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

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

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



1 at public or private sale, at prices above or below par, as  
2 determined by the board, and in a manner such that interest  
3 on the bonds is either exempt from or subject to federal  
4 income tax.

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

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

15 NEW SECTION. Section 5. Bond anticipation notes --  
16 issuance -- payment of principal and interest. (1) The board  
17 may, pending the issuance of bonds, issue temporary notes in  
18 anticipation of the proceeds to be derived from the sale of  
19 the bonds. The notes shall be designated as "bond  
20 anticipation notes". The proceeds of the sale of the bond  
21 anticipation notes must be used only for the purpose for  
22 which the proceeds of the bonds could be used, including  
23 costs of issuance. If, prior to the issuance of the bonds,  
24 it becomes necessary to redeem outstanding notes, additional  
25 bond anticipation notes may be issued to redeem the

1 outstanding notes. No renewal of any note may be issued  
2 after the sale of bonds in anticipation of which the  
3 original notes were issued.

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

11 (a) Describe the need for the proceeds of the notes to  
12 be issued; and

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

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

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

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

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

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

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

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

1 credit may be evidenced by negotiable or nonnegotiable notes  
2 or other evidences of indebtedness, containing such terms  
3 and conditions as the board may authorize in the resolution  
4 approving the same.

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

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

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

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

24 (4) the setting aside of reserves for sinking funds in  
25 the hands of trustees, paying agents, and other depositories

1 and the regulation and disposition thereof;

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

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

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

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

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

23 (10) defining the acts or omissions that shall  
24 constitute a default in the obligations and duties of the  
25 board to the holders of the notes or bonds and providing for

1 the rights and remedies of the holders of the notes or bonds  
2 in the event of such default, including as a matter of right  
3 the appointment of a receiver; and

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

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

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

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

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

24 NEW SECTION. Section 9. Trust indenture. (1) In the  
25 discretion of the board, the bonds may be secured by a trust

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

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

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

22 NEW SECTION. Section 11. Signatures of board members.  
 23 If board members whose signatures appear on notes, bonds, or  
 24 coupons cease to be members before the delivery of the notes  
 25 or bonds, their signatures shall nevertheless be valid and

1 sufficient for all purposes the same as if the members had  
 2 remained in office until delivery.

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

6 ~~{1}--a--bond-proceeds-fund-into-which-bond-proceeds-are~~  
 7 ~~deposited;~~

8 ~~{2}--a--common-bond-fund-consisting-of:~~

9 ~~{a}--a--common-debt-service-account;~~

10 ~~{b}--a--capital-reserve-account-as-provided-in--{section~~  
 11 ~~15}--and~~

12 ~~{c}--an-operating-account-for-defraying-the-operational~~  
 13 ~~costs-of-the-board; and~~

14 ~~{3}--other-funds-or-accounts;~~

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

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

20 (b) proceeds of the sale of notes or bonds to the  
 21 extent provided in the resolutions or indentures of the  
 22 board authorizing their issuance; and

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

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

1 be used solely for the payment of the principal of or  
 2 interest on the bonds secured in whole or in part by the  
 3 account or the sinking fund payments with respect to the  
 4 bonds, the purchase or redemption of the bonds, the payment  
 5 of interest on the bonds, or the payment of any redemption  
 6 premium required to be paid when the bonds are redeemed  
 7 prior to maturity. Funds in the account may not be withdrawn  
 8 at any time in an amount that reduces the account to an  
 9 amount less than the sum of minimum capital reserve  
 10 requirements established in the resolutions or indentures of  
 11 the board for the account except, with respect to bonds  
 12 secured in whole or in part by the account, for the purpose  
 13 of making payment, when due, of principal, interest,  
 14 redemption premiums, and sinking fund payments for the  
 15 payment of which other money pledged is not available. Any  
 16 income or interest earned by or incremental to the capital  
 17 reserve account due to its investment may be transferred to  
 18 other accounts of the board to an extent that does not  
 19 reduce the amount of the capital reserve account below the  
 20 sum of minimum capital reserve requirements for the account.

21 NEW SECTION. Section 14. Maintenance of capital  
 22 reserve account. (1) In order to assure the maintenance of  
 23 the capital reserve account, the chairman of the board  
 24 shall, on or before September 1 in each year preceding the  
 25 convening of the legislature, deliver to the governor a

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

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

17 NEW SECTION. Section 15. Refunding obligations. The  
 18 board may provide for the issuance of refunding obligations  
 19 for refunding any obligations then outstanding that have  
 20 been issued under [sections 1 through 26], including the  
 21 payment of any redemption of the obligations. The issuance  
 22 of obligations, the maturities and other details, the rights  
 23 of the holders, and the rights, duties, and obligations of  
 24 the authority are governed by the appropriate provisions of  
 25 [sections 1 through 26] that relate to the issuance of

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

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

22 **NEW SECTION.** Section 17. Project guaranty program.  
 23 (1) The board may guarantee and make commitments to  
 24 guarantee payment required by a loan, lease, or other credit  
 25 arrangement for any project funded under [sections 1 through

1 26] or under 90-5-101 through 90-5-112, upon such terms and  
 2 conditions as the board may prescribe in accordance with  
 3 [sections 1 through 26]. In administering the guaranty  
 4 program, the board may require the payment of a fee or  
 5 premium, establish application fees, and prescribe  
 6 application, notification, contract and guaranty forms,  
 7 rules, regulations, and guidelines.

8 (2) Guaranties by the board under [sections 1 through  
 9 26] must:

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

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

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

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

21 (3) The board is authorized from time to time to enter  
 22 into guaranties, insurance contracts, or any other  
 23 agreements or contracts with respect to the economic  
 24 development guaranty fund and any guaranteed loan lease or  
 25 other credit agreement. Any such agreement or contract may

1 contain terms and provisions necessary or desirable in  
 2 connection with the guaranty program, subject to the  
 3 requirements established, including without limitation terms  
 4 and provisions relating to loan documentation, review,  
 5 approval procedures, origination and servicing rights and  
 6 responsibilities, default obligations, procedures and  
 7 obligations, and obligations with respect to guaranty  
 8 contracts made under [sections 1 through 26].

9 (4) Any contract of guaranty made by the board under  
 10 the authorization of [sections 1 through 26] must provide  
 11 that claims payable thereunder must be paid from any amounts  
 12 available in the economic development guaranty fund and from  
 13 any amounts available under the terms of any applicable  
 14 contract or agreement with the financial institution which  
 15 originated the guaranteed loan. The obligation of the board  
 16 to make payments under any such contract is limited solely  
 17 to such sources and does not constitute a debt or liability  
 18 of the state. Any guaranty contract and any rule,  
 19 regulation, or guideline of the board implementing the  
 20 guaranty program may contain such other terms, provisions,  
 21 or conditions as the board considers necessary or  
 22 appropriate, including without limitation those relating to  
 23 the payment of guaranty premiums, the giving of notice,  
 24 claim procedure, the sources of payment for claims, the  
 25 priority of competing claims for payment, the release or

1 termination of loan security and borrower liability, the  
 2 timing of payment, the maintenance and disposition of  
 3 projects and the use of amounts received during periods of  
 4 loan delinquency or upon default, and any other provision  
 5 concerning the rights of insured parties or conditions to  
 6 the payment of guaranty claims. Any premiums for the  
 7 guarantee of loan payments under the provisions of [sections  
 8 1 through 26] may be determined on such basis and be payable  
 9 by such person in such amounts and at such times as the  
 10 board determines, and the amount of the premium need not be  
 11 uniform among the various loans, leases, or other credit  
 12 agreements guaranteed.

13 **NEW SECTION.** Section 18. Economic development  
 14 guaranty fund. (1) The board shall create an economic  
 15 development guaranty fund. The fund must be held by a  
 16 trustee or other fiduciary designated by the board. There  
 17 must be deposited into the fund amounts, insurance fees,  
 18 premiums, and such other revenues and assets as the board  
 19 considers necessary to comply with any contract or agreement  
 20 entered into by the board under [sections 1 through 26]. The  
 21 board may borrow from and deposit in the economic  
 22 development guaranty fund up to \$2.5 ~~12~~ million from any  
 23 available state fund, including funds of the Montana board  
 24 of housing.

25 (2) The amounts in the fund must be used to satisfy

1 any claim resulting from a defaulted loan, lease, or other  
 2 credit agreement. The amounts in the fund may also be used  
 3 for any other purpose prescribed by the board in accordance  
 4 with guaranty contracts with financial institutions entered  
 5 into pursuant to [sections 1 through 26], including without  
 6 limitation the protection of the interest of the board in  
 7 projects during periods of delinquency or upon default.

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

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

1 restore the economic development guaranty fund to the  
 2 minimum reserve requirement.

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

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

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

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

15 (i) the applicant's net worth;

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

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

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

23 (v) any other factors the board may prescribe.

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

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



1 of project applicants;

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

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

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

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

20 NEW SECTION. Section 21. Credit of state not pledged.  
21 Obligations issued under the provisions of [sections 1  
22 through 26] do not constitute a debt, liability, obligation,  
23 or pledge of the faith and credit of the state but are  
24 payable solely from the revenues or assets of the board. An  
25 obligation issued under this part must contain on the face

1 thereof a statement to the effect that the state of Montana  
2 is not liable on the obligation, the obligation is not a  
3 debt of the state, and neither the faith and credit nor the  
4 taxing power of the state is pledged to the payment of the  
5 principal or interest on the obligation.

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

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

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

1 the control of or belonging to:

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

4 (b) insurance companies;

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

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

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

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

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

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

22 (b) the financing to be provided by the board for a  
23 project does not exceed either \$10 million or 90% of the  
24 COST OR appraised value of the project, whichever is less;

25 (c) a financial institution will participate in

1 financing the project IF THE COST OR APPRAISED VALUE IS LESS  
2 THAN \$1 MILLION, either directly or through a letter of  
3 credit, to the extent of at least 10% of the financing to be  
4 provided by the board, PROVIDED, HOWEVER, THAT PARTICIPATION  
5 BY A FINANCIAL INSTITUTION IN PROJECTS OF OVER \$1 MILLION IS  
6 AT THE DISCRETION OF THE BOARD;

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

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

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

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

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

1 prescribes.

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

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

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

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

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

8 (2) The board consists of seven members, who shall be  
9 appointed by the governor as prescribed in 2-15-124. The  
10 board must be broadly representative of the state seeking  
11 to balance professional expertise and public interest and  
12 accountability ~~INCLUDE AT LEAST ONE PERSON REPRESENTING EACH~~  
13 ~~OF THE FOLLOWING: THE FINANCIAL COMMUNITY, SMALL BUSINESS,~~  
14 ~~AGRICULTURE, ORGANIZED LABOR, AND THE GENERAL PUBLIC BE~~  
15 ~~BROADLY REPRESENTATIVE OF THE STATE, SEEKING TO BALANCE~~  
16 ~~PROFESSIONAL EXPERTISE AND PUBLIC INTEREST AND~~  
17 ~~ACCOUNTABILITY INCLUDE AT LEAST ONE PERSON REPRESENTING EACH~~  
18 ~~OF THE FOLLOWING:~~

19 (A) THE FINANCIAL COMMUNITY;

20 (B) SMALL BUSINESS;

21 (C) AGRICULTURE; AND

22 (D) LABOR.

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

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

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

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

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

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

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

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

20 Section 29. Section 90-6-104, MCA, is amended to read:  
21 "90-6-104. General powers of the board. The board may:

22 (1) sue and be sued;

23 (2) have a seal;

24 (3) adopt all procedural and substantive rules  
25 necessary for the administration of this part, including

1 rules concerning its mortgage, construction, and temporary  
2 lending programs;

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

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

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

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

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

25 (9) acquire real or personal property or any right,

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

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

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

25 (12) provide general consultative services to housing

1 developments for persons and families of lower income and  
 2 the residents thereof with respect to counseling and  
 3 training in management, home ownership, and maintenance  
 4 where these services are not otherwise available;

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

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

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

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

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

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

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

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

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

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

24 NEW SECTION. Section 30. Severability. If a part of  
 25 this act is invalid, all valid parts that are severable from

1 the invalid part remain in effect. If a part of this act is  
 2 invalid in one or more of its applications, the part remains  
 3 in effect in all valid applications that are severable from  
 4 the invalid applications.

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

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

-End-