

HOUSE BILL NO. 367

INTRODUCED BY O'KEEFE, GALT, WEEDING, IVERSON, WESTLAKE,
REHBERG, SPAETH, SCHYE, HARPER, THOFT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

IN THE HOUSE

JANUARY 24, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
JANUARY 25, 1989	FIRST READING.
FEBRUARY 8, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1989	PRINTING REPORT.
FEBRUARY 10, 1989	SECOND READING, DO PASS. ENGROSSING REPORT.
FEBRUARY 13, 1989	THIRD READING, PASSED. AYES, 92; NOES, 2. TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON AGRICULTURE, LIVESTOCK & IRRIGATION. FIRST READING.
MARCH 20, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 21, 1989	SECOND READING, PASS CONSIDERATION.
MARCH 22, 1989	SECOND READING, CONCURRED IN.
MARCH 27, 1989	THIRD READING, CONCURRED IN. AYES, 48; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 30, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 31, 1989

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 367
 2 INTRODUCED BY Rehberg
 3 Westlake BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES Rehberg
 4 Gravel AND CONSERVATION Rehberg
 5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT FUNDS FROM
 7 THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND THE
 8 WATER DEVELOPMENT ACCOUNT TO BE USED, UNDER CERTAIN
 9 CONDITIONS, TO PROTECT THE STATE'S INTEREST IN PROPERTY FOR
 10 WHICH A WATER DEVELOPMENT LOAN HAS BEEN SECURED; AMENDING
 11 SECTIONS 85-1-102, 85-1-604, 85-1-615, 85-1-618, AND
 12 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 13

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

15 **Section 1.** Section 85-1-102, MCA, is amended to read:

16 "85-1-102. Definitions. Unless the context requires
 17 otherwise, in this chapter the following definitions apply:

18 (1) "Administrative costs" means costs incurred by the
 19 department:

20 (a) for the purpose of protecting the department's
 21 properties and assets;

22 (b) to oversee the operation and maintenance of the
 23 projects;

24 (c) to administer contracts and receivables;

25 (d) to maintain project financial records;

1 (e) to provide technical assistance for operating,
 2 maintaining, and rehabilitating the projects; and

3 (f) to assist in securing funds for operating,
 4 maintaining, and rehabilitating the projects.

5 (2) "Board" means the board of natural resources and
 6 conservation provided for in 2-15-3302.

7 (3) "Cost of operation and maintenance" means the
 8 costs of operation, maintenance, and routine repairs and the
 9 costs incurred by the water users' association or the
 10 department in the distribution of water from the project,
 11 excluding the department's administrative costs.

12 (4) "Cost of works" means the cost of construction,
 13 including any rehabilitation or alteration of the project;
 14 the cost of all lands, property, rights, easements, and
 15 franchises acquired which are deemed necessary for the
 16 construction; the cost of all water rights acquired or
 17 exercised by the department in connection with those works;
 18 the cost of all machinery and equipment, financing charges,
 19 interest prior to and during construction and for a period
 20 not exceeding 3 years after the completion of construction;
 21 cost of engineering and legal expenses, plans,
 22 specifications, surveys, estimates of cost, and other
 23 expenses necessary or incident to determining the
 24 feasibility or practicability of any project; administrative
 25 expense; and such other expenses as may be necessary or

incident to the financing herein authorized in this part and the construction of the works and the placing of the same works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual, association, partnership, corporation, or other nongovernmental entity not eligible for loans and grants under 85-1-605 but does not include a governmental entity such as an agency, local government, or political subdivision of the state, the United States, or any agency thereof, or any other governmental entity.

(8) "Project" means any one of the works herein defined in this section or any combination of such works which are physically connected or jointly managed and operated as a single unit.

(9) "Public benefits" means those benefits that accrue from a water development project or activity to persons other than the private grant or loan recipient and that

enhance the common well-being of the people of Montana. Public benefits include but are not limited to recreation, flood control, erosion reduction, agricultural flood damage reduction, water quality enhancement, sediment reduction, access to recreation opportunities, and wildlife conservation.

(10) "Water development account" means a separate account created by 85-1-617 within the state special revenue fund of the state treasury to finance loans under the provisions of the water development program to agencies, local governments, and political subdivisions of the state, private persons, and any other eligible recipients and to purchase liens and operate property, as provided in 85-1-615, from proceeds of bonds issued under part 6 of this chapter.

(11) "Water development activity" means an action or program to protect and enhance water-based recreation or to protect or enhance water resources for the benefit of agriculture, flood control, or other uses, including but not limited to ~~such purposes as~~ the promotion of efficient use of water in agriculture, the improvement of water quality in agriculture and other nonpoint source uses, the protection and enhancement of water-based recreation, the control of erosion of streambanks and control of sedimentation of rivers and streams, and providing greater local and state

control of Montana water resources. Water development activities may provide any combination of marketable and nonmarketable benefits.

(12) "Water development state special revenue account" means a separate account created by 85-1-604 within the state special revenue fund of the state treasury for the purposes of the water development program as set forth in 85-1-604.

(13) "Water development project" means a project as defined in subsection (8), except that water development projects are not limited to projects owned or operated by the department.

(14) "Water development debt service fund" means a separate fund created by 85-1-603 within the debt service fund type of the state treasury to be used as provided in 85-1-619.

(15) "Works" means all property, and rights, easements, and franchises relating thereto to property and deemed considered necessary or convenient for their the operation of the works and all water rights acquired or exercised by the department in connection with those works and includes all means of conserving and distributing water, including, without limiting the generality of the foregoing, reservoirs, dams, diversion canals, distributing canals, waste canals, drainage canals, dikes, lateral ditches and

pumping units, mains, pipelines, and waterworks systems and includes all such works for the conservation, development, storage, distribution, and utilization of water, including without limiting the generality of the foregoing, works for the purpose of irrigation, flood prevention, drainage, fish and wildlife, recreation, development of power, watering of stock, supplying of water for public, domestic, industrial, or other uses and for fire protection."

Section 2. Section 85-1-604, MCA, is amended to read:

"85-1-604. Water development state special revenue account created -- revenues allocated -- limitations on appropriations from account. (1) There is created a water development state special revenue account within the state special revenue fund established in 17-2-102.

(2) Except to the extent that they are required to be credited to the water development debt service fund pursuant to 85-1-603, there shall be paid into the water development state special revenue account:

(a) all revenues of the works and other money as provided in 85-1-332;

(b) 30% of the interest income of the resource indemnity trust fund as provided in and subject to the conditions of 15-38-202;

(c) the excess of the coal severance tax proceeds allocated by 85-1-603 to the water development debt service

1 fund above debt service requirements as provided in and
2 subject to the conditions of 85-1-619; and

3 (d) any fees or charges collected by the department
4 pursuant to 85-1-616 for the servicing of loans, including
5 arrangements for obtaining security interests.

6 (3) Appropriations may be made from the water
7 development state special revenue account for the following
8 purposes and subject to the following conditions:

9 (a) An amount less than or equal to that paid into the
10 account under 85-1-332 and only that amount may be
11 appropriated for the operation and maintenance of
12 state-owned projects and works. If the amount of money
13 available for appropriation under this subsection (3)(a) is
14 greater than that necessary for operation and maintenance
15 expenses, the excess may be appropriated as provided in
16 subsection (3)(b).

17 (b) An amount less than or equal to that paid into the
18 account from the resource indemnity trust account plus any
19 excess from subsection (3)(a) and only that amount may be
20 appropriated from the account for:

21 (i) the rehabilitation of state-owned projects and
22 works, including the rehabilitation of spillways of
23 state-owned dams;

24 (ii) the formulation of downstream emergency warning
25 and evacuation plans for state-owned dams;

1 (iii) the development of the hydropower potential of
2 state-owned dams;

3 (iv) assistance in the implementation of the water
4 reservations established under 85-2-316 of conservation
5 districts;

6 (v) the promotion of the development of offstream and
7 tributary storage;

8 (vi) the promotion of joint state-tribal,
9 state-federal, and state-tribal-federal water development;

10 (vii) administrative expenses, including but not
11 limited to the salaries and expenses of personnel,
12 equipment, office space, and other necessities incurred in
13 the administration of the water development program except
14 the administration of loans and grants; and

15 (viii) any other expenditures that meet the policies
16 and objectives of the state water development program.

17 (c) An amount less than or equal to that paid into the
18 account from the sources provided for in (c) and (d) of
19 subsection (2) and only that amount may be appropriated from
20 the account for loans and grants for water development
21 projects and activities; for purchase of liens and operation
22 of property as provided in 85-1-615; for administrative
23 expenses, including but not limited to the salaries and
24 expenses of personnel, equipment, and office space; for the
25 servicing of loans, including arrangements for obtaining

1 security interests; and for other necessities incurred in
2 administering the loans and grants."

3 **Section 3.** Section 85-1-615, MCA, is amended to read:

4 **"85-1-615. Security interests -- purchase and**
5 **operation of encumbered property.** (1) The state has a lien
6 upon a project constructed with money from the water
7 development state special revenue account or water
8 development account for the amount of the loan and interest
9 due the state. This lien may attach to any project
10 facilities, equipment, easements, real property, and
11 property of any kind or nature owned by the debtor,
12 including all water rights. The department shall file with
13 the county clerk and recorder of each county in which a part
14 of the project is located either a financing statement or a
15 real estate mortgage covering the loan, its amount, terms,
16 and a description of the security. The county clerk and
17 recorder shall record and index the lien as other liens are
18 required by law to be recorded and indexed. The lien shall
19 be valid until paid in full or otherwise discharged. The
20 lien shall be foreclosed in accordance with applicable state
21 law governing foreclosure of mortgages and liens.

22 (2) From the funds available under 85-1-604(3)(c) or
23 85-1-617, the state may:

24 (a) purchase a lien that is prior to the state's lien
25 if:

1 (i) the director of the department determines that the
2 loan is in default and the prospects for collecting the loan
3 may be materially increased by purchasing the prior lien;
4 and

5 (ii) the amount to be paid for the prior lien does not
6 exceed the appraised value of the property;

7 (b) operate property that is subject to the state's
8 lien if the director of the department determines that the
9 loan is in default and the prospects for collecting the loan
10 may be materially increased by operating the property that
11 is subject to the state's lien; or

12 (c) purchase a prior lien as provided in (2)(a) and
13 operate property as provided in (2)(b)."

14 **Section 4.** Section 85-1-618, MCA, is amended to read:

15 **"85-1-618. Bond Restrictions on use of bond proceeds**
16 **only-for-loans.** Water development bond proceeds may be used
17 only for the purpose of making loans as provided in the
18 water development program or for purchasing liens and
19 operating property as provided in 85-1-615."

20 **Section 5.** Section 85-1-623, MCA, is amended to read:

21 **"85-1-623. Authorization of water development bonds.**
22 The legislature, through the enactment of this section by a
23 two-thirds vote of the members of each house, authorizes the
24 creation of state debt in an amount not to exceed \$10
25 million and the issuance and sale of water development bonds

1 in this amount for the purpose of providing funds
2 appropriated to the water development account for loans as
3 provided in the water development program or for the
4 purchase of liens and operation of property as provided in
5 85-1-615."

6 NEW SECTION. **Section 6.** Extension of authority. Any
7 existing authority to make rules on the subject of the
8 provisions of [this act] is extended to the provisions of
9 [this act].

10 NEW SECTION. **Section 7.** Effective date. [This act] is
11 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB367, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB367 would permit funds from the water development state special revenue account and the water development account to be used under certain circumstances to protect the state's interest in property for which a water development loan has been secured.

ASSUMPTIONS:

1. This change to current law would be revenue neutral in the long run.
2. In any short period of time, the Department of Natural Resources could incur loss of interest on funds tied up while the principal value of a loan was being recovered. For example, a loan of \$200,000 goes into default, there is a prior lien of \$100,000 and the appraised value of the property is \$307,000. First mortgage holder forecloses and forces a sheriff's sale. The state would need to purchase the property and then sell it. If it took one year to sell, the calculation would be:
 $\$100,000 \text{ purchase price} \times .07 \text{ interest rate} \times \text{one year} = \$7,000 \text{ lost interest to the state}$; sale of property for \$307,000 pays back the \$200,000 loan plus the \$100,000 purchase price plus the \$7,000 interest the state would have earned that year.
3. This legislation could reduce the grant funds available for a short period of time.
4. This legislation would ensure stability of grant funds in the long run because if loan repayments are not available due to defaults, the coal severance tax makes up the shortfall in the bond debt service and, therefore, is not available for grants.
5. It is impossible to forecast the amount of future foreclosures and the related cost of purchasing property to protect state investments.

Ray Shackelford 1/31/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

Mark O'Keefe 2/1/88
MARK O'KEEFE, PRIMARY SPONSOR DATE
Fiscal Note for HB367, as introduced

HB 367

APPROVED BY COMM. ON
NATURAL RESOURCES

HOUSE BILL NO. 367

INTRODUCED BY O'KEEFE, GALT, WEEDING, IVERSON, WESTLAKE,

REHBERG, SPAETH, SCHYE, HARPER, THOFT

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT FUNDS FROM THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND THE WATER DEVELOPMENT ACCOUNT TO BE USED, UNDER CERTAIN CONDITIONS, TO PROTECT THE STATE'S INTEREST IN PROPERTY FOR WHICH A WATER DEVELOPMENT LOAN HAS BEEN SECURED; AMENDING SECTIONS 85-1-102, 85-1-604, 85-1-615, 85-1-618, AND 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

This bill would allow the department of natural resources and conservation to use funds in the water development special revenue account and water development general obligation bond proceeds to protect loans made under the water development private loan program.

The program has made approximately 55 loans totalling \$4 million to private individuals, primarily for irrigation projects. In the event that any lien holder or the department would have to foreclose on any of these loans, the department would need to be in a position to protect its

security interests. These loans are primarily secured with real estate mortgages. In those instances where the department is not in first lien position and a foreclosure is necessary, the department would need funds to buy out the first lien holder to gain control of the property. The property would then be resold to recoup the funds used to buy out the first lien as well as the department's initial loan funds.

This bill would also allow the department to use these funds to operate a project if a loan should go into default. If the loan recipient should walk away from a project, the department may need to temporarily operate the project to secure its interests until foreclosure proceedings are complete. An example would be a hydropower project that requires continual attention to guard against breakdown or damage.

This bill is intended to give the department access to funds that would be used to protect its security interests when other loan collection efforts have not worked. It is the intent of the legislature that every effort be made to avoid forced loan collections. It is further the intent of the legislature that any property acquired in the manner provided for in HB 367 be resold as expeditiously as possible to recover funds used under 85-1-65 and funds loaned to the borrower."

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

Section 1. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(4) "Cost of works" means the cost of construction,

including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized in this part and the construction of the works and the placing of the same works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual,

1 association, partnership, corporation, or other
 2 nongovernmental entity not eligible for loans and grants
 3 under 85-1-605 but does not include a governmental entity
 4 such as an agency, local government, or political
 5 subdivision of the state, the United States, or any agency
 6 thereof, or any other governmental entity.

7 (8) "Project" means any one of the works herein
 8 defined in this section or any combination of such works
 9 which are physically connected or jointly managed and
 10 operated as a single unit.

11 (9) "Public benefits" means those benefits that accrue
 12 from a water development project or activity to persons
 13 other than the private grant or loan recipient and that
 14 enhance the common well-being of the people of Montana.
 15 Public benefits include but are not limited to recreation,
 16 flood control, erosion reduction, agricultural flood damage
 17 reduction, water quality enhancement, sediment reduction,
 18 access to recreation opportunities, and wildlife
 19 conservation.

20 (10) "Water development account" means a separate
 21 account created by 85-1-617 within the state special revenue
 22 fund of the state treasury to finance loans under the
 23 provisions of the water development program to agencies,
 24 local governments, and political subdivisions of the state,
 25 private persons, and any other eligible recipients and to

1 purchase liens and operate property, as provided in
 2 85-1-615, from proceeds of bonds issued under part 6 of this
 3 chapter.

4 (11) "Water development activity" means an action or
 5 program to protect and enhance water-based recreation or to
 6 protect or enhance water resources for the benefit of
 7 agriculture, flood control, or other uses, including but not
 8 limited to ~~such purposes as~~ the promotion of efficient use
 9 of water in agriculture, the improvement of water quality in
 10 agriculture and other nonpoint source uses, the protection
 11 and enhancement of water-based recreation, the control of
 12 erosion of streambanks and control of sedimentation of
 13 rivers and streams, and providing greater local and state
 14 control of Montana water resources. Water development
 15 activities may provide any combination of marketable and
 16 nonmarketable benefits.

17 (12) "Water development state special revenue account"
 18 means a separate account created by 85-1-604 within the
 19 state special revenue fund of the state treasury for the
 20 purposes of the water development program as set forth in
 21 85-1-604.

22 (13) "Water development project" means a project as
 23 defined in subsection (8), except that water development
 24 projects are not limited to projects owned or operated by
 25 the department.

1 (14) "Water development debt service fund" means a
2 separate fund created by 85-1-603 within the debt service
3 fund type of the state treasury to be used as provided in
4 85-1-619.

5 (15) "Works" means all property, and rights, easements,
6 and franchises relating thereto to property and deemed
7 considered necessary or convenient for their the operation
8 of the works and all water rights acquired or exercised by
9 the department in connection with those works and includes
10 all means of conserving and distributing water, including,
11 without limiting the generality of the foregoing,
12 reservoirs, dams, diversion canals, distributing canals,
13 waste canals, drainage canals, dikes, lateral ditches and
14 pumping units, mains, pipelines, and waterworks systems and
15 includes all such works for the conservation, development,
16 storage, distribution, and utilization of water, including
17 without limiting the generality of the foregoing, works for
18 the purpose of irrigation, flood prevention, drainage, fish
19 and wildlife, recreation, development of power, watering of
20 stock, supplying of water for public, domestic, industrial,
21 or other uses and for fire protection."

22 **Section 2.** Section 85-1-604, MCA, is amended to read:

23 "85-1-604. Water development state special revenue
24 account created -- revenues allocated -- limitations on
25 appropriations from account. (1) There is created a water

1 development state special revenue account within the state
2 special revenue fund established in 17-2-102.

3 (2) Except to the extent that they are required to be
4 credited to the water development debt service fund pursuant
5 to 85-1-603, there shall be paid into the water development
6 state special revenue account:

7 (a) all revenues of the works and other money as
8 provided in 85-1-332;

9 (b) 30% of the interest income of the resource
10 indemnity trust fund as provided in and subject to the
11 conditions of 15-38-202;

12 (c) the excess of the coal severance tax proceeds
13 allocated by 85-1-603 to the water development debt service
14 fund above debt service requirements as provided in and
15 subject to the conditions of 85-1-619; and

16 (d) any fees or charges collected by the department
17 pursuant to 85-1-616 for the servicing of loans, including
18 arrangements for obtaining security interests.

19 (3) Appropriations may be made from the water
20 development state special revenue account for the following
21 purposes and subject to the following conditions:

22 (a) An amount less than or equal to that paid into the
23 account under 85-1-332 and only that amount may be
24 appropriated for the operation and maintenance of
25 state-owned projects and works. If the amount of money

1 available for appropriation under this subsection (3)(a) is
 2 greater than that necessary for operation and maintenance
 3 expenses, the excess may be appropriated as provided in
 4 subsection (3)(b).

5 (b) An amount less than or equal to that paid into the
 6 account from the resource indemnity trust account plus any
 7 excess from subsection (3)(a) and only that amount may be
 8 appropriated from the account for:

9 (i) the rehabilitation of state-owned projects and
 10 works, including the rehabilitation of spillways of
 11 state-owned dams;

12 (ii) the formulation of downstream emergency warning
 13 and evacuation plans for state-owned dams;

14 (iii) the development of the hydropower potential of
 15 state-owned dams;

16 (iv) assistance in the implementation of the water
 17 reservations established under 85-2-316 of conservation
 18 districts;

19 (v) the promotion of the development of offstream and
 20 tributary storage;

21 (vi) the promotion of joint state-tribal,
 22 state-federal, and state-tribal-federal water development;

23 (vii) administrative expenses, including but not
 24 limited to the salaries and expenses of personnel,
 25 equipment, office space, and other necessities incurred in

1 the administration of the water development program except
 2 the administration of loans and grants; and

3 (viii) any other expenditures that meet the policies
 4 and objectives of the state water development program.

5 (c) An amount less than or equal to that paid into the
 6 account from the sources provided for in (c) and (d) of
 7 subsection (2) and only that amount may be appropriated from
 8 the account for loans and grants for water development
 9 projects and activities; for purchase of liens and operation
 10 of property as provided in 85-1-615; for administrative
 11 expenses, including but not limited to the salaries and
 12 expenses of personnel, equipment, and office space; for the
 13 servicing of loans, including arrangements for obtaining
 14 security interests; and for other necessities incurred in
 15 administering the loans and grants."

16 **Section 3.** Section 85-1-615, MCA, is amended to read:

17 **"85-1-615. Security interests -- purchase, and**
 18 **operation, AND RESALE of encumbered property.** (1) The state
 19 has a lien upon a project constructed with money from the
 20 water development state special revenue account or water
 21 development account for the amount of the loan and interest
 22 due the state. This lien may attach to any project
 23 facilities, equipment, easements, real property, and
 24 property of any kind or nature owned by the debtor,
 25 including all water rights. The department shall file with

the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604(3)(c) or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in (2)(a) and

operate property as provided in (2)(b).

(3) ANY PROPERTY ACQUIRED UNDER THE PROVISIONS OF THIS SECTION MUST BE RESOLD AS EXPEDITIOUSLY AS POSSIBLE TO RECOVER FUNDS USED UNDER THIS SECTION AND FUNDS LOANED TO THE BORROWER."

Section 4. Section 85-1-618, MCA, is amended to read:

"85-1-618. Bond Restrictions on use of bond proceeds only--for-loans. Water development bond proceeds may be used only for the purpose of making loans as provided in the water development program or for purchasing liens and operating property as provided in 85-1-615."

Section 5. Section 85-1-623, MCA, is amended to read:

"85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program or for the purchase of liens and operation of property as provided in 85-1-615."

NEW SECTION. Section 6. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. **Section 7.** Effective date. [This act] is

3 effective on passage and approval.

-End-

1 HOUSE BILL NO. 367

2 INTRODUCED BY O'KEEFE, GALT, WEEDING, IVERSON, WESTLAKE,

3 REHBERG, SPAETH, SCHYE, HARPER, THOFT

4 BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES

5 AND CONSERVATION

6
7 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT FUNDS FROM
8 THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND THE
9 WATER DEVELOPMENT ACCOUNT TO BE USED, UNDER CERTAIN
10 CONDITIONS, TO PROTECT THE STATE'S INTEREST IN PROPERTY FOR
11 WHICH A WATER DEVELOPMENT LOAN HAS BEEN SECURED; AMENDING
12 SECTIONS 85-1-102, 85-1-604, 85-1-615, 85-1-618, AND
13 85-1-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14
15 STATEMENT OF INTENT

16 This bill would allow the department of natural
17 resources and conservation to use funds in the water
18 development special revenue account and water development
19 general obligation bond proceeds to protect loans made under
20 the water development private loan program.

21 The program has made approximately 55 loans totalling
22 \$4 million to private individuals, primarily for irrigation
23 projects. In the event that any lien holder or the
24 department would have to foreclose on any of these loans,
25 the department would need to be in a position to protect its

1 security interests. These loans are primarily secured with
2 real estate mortgages. In those instances where the
3 department is not in first lien position and a foreclosure
4 is necessary, the department would need funds to buy out the
5 first lien holder to gain control of the property. The
6 property would then be resold to recoup the funds used to
7 buy out the first lien as well as the department's initial
8 loan funds.

9 This bill would also allow the department to use these
10 funds to operate a project if a loan should go into default.
11 If the loan recipient should walk away from a project, the
12 department may need to temporarily operate the project to
13 secure its interests until foreclosure proceedings are
14 complete. An example would be a hydropower project that
15 requires continual attention to guard against breakdown or
16 damage.

17 This bill is intended to give the department access to
18 funds that would be used to protect its security interests
19 when other loan collection efforts have not worked. It is
20 the intent of the legislature that every effort be made to
21 avoid forced loan collections. It is further the intent of
22 the legislature that any property acquired in the manner
23 provided for in HB 367 be resold as expeditiously as
24 possible to recover funds used under 85-1-65 and funds
25 loaned to the borrower."

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

Section 1. Section 85-1-102, MCA, is amended to read:

"85-1-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Administrative costs" means costs incurred by the department:

(a) for the purpose of protecting the department's properties and assets;

(b) to oversee the operation and maintenance of the projects;

(c) to administer contracts and receivables;

(d) to maintain project financial records;

(e) to provide technical assistance for operating, maintaining, and rehabilitating the projects; and

(f) to assist in securing funds for operating, maintaining, and rehabilitating the projects.

(2) "Board" means the board of natural resources and conservation provided for in 2-15-3302.

(3) "Cost of operation and maintenance" means the costs of operation, maintenance, and routine repairs and the costs incurred by the water users' association or the department in the distribution of water from the project, excluding the department's administrative costs.

(4) "Cost of works" means the cost of construction,

including any rehabilitation or alteration of the project; the cost of all lands, property, rights, easements, and franchises acquired which are deemed necessary for the construction; the cost of all water rights acquired or exercised by the department in connection with those works; the cost of all machinery and equipment, financing charges, interest prior to and during construction and for a period not exceeding 3 years after the completion of construction; cost of engineering and legal expenses, plans, specifications, surveys, estimates of cost, and other expenses necessary or incident to determining the feasibility or practicability of any project; administrative expense; and such other expenses as may be necessary or incident to the financing herein authorized in this part and the construction of the works and the placing of the same works in operation.

(5) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(6) "Owner" means all individuals, irrigation districts, drainage districts, flood control districts, incorporated companies, societies, or associations having any title or interest in any properties, rights, easements, or franchises to be acquired.

(7) "Private person" means any individual,

1 association, partnership, corporation, or other
2 nongovernmental entity not eligible for loans and grants
3 under 85-1-605 but does not include a governmental entity
4 such as an agency, local government, or political
5 subdivision of the state, the United States, or any agency
6 thereof, or any other governmental entity.

7 (8) "Project" means any one of the works herein
8 defined in this section or any combination of such works
9 which are physically connected or jointly managed and
10 operated as a single unit.

11 (9) "Public benefits" means those benefits that accrue
12 from a water development project or activity to persons
13 other than the private grant or loan recipient and that
14 enhance the common well-being of the people of Montana.
15 Public benefits include but are not limited to recreation,
16 flood control, erosion reduction, agricultural flood damage
17 reduction, water quality enhancement, sediment reduction,
18 access to recreation opportunities, and wildlife
19 conservation.

20 (10) "Water development account" means a separate
21 account created by 85-1-617 within the state special revenue
22 fund of the state treasury to finance loans under the
23 provisions of the water development program to agencies,
24 local governments, and political subdivisions of the state,
25 private persons, and any other eligible recipients and to

1 purchase liens and operate property, as provided in
2 85-1-615, from proceeds of bonds issued under part 6 of this
3 chapter.

4 (11) "Water development activity" means an action or
5 program to protect and enhance water-based recreation or to
6 protect or enhance water resources for the benefit of
7 agriculture, flood control, or other uses, including but not
8 limited to ~~such purposes as~~ the promotion of efficient use
9 of water in agriculture, the improvement of water quality in
10 agriculture and other nonpoint source uses, the protection
11 and enhancement of water-based recreation, the control of
12 erosion of streambanks and control of sedimentation of
13 rivers and streams, and providing greater local and state
14 control of Montana water resources. Water development
15 activities may provide any combination of marketable and
16 nonmarketable benefits.

17 (12) "Water development state special revenue account"
18 means a separate account created by 85-1-604 within the
19 state special revenue fund of the state treasury for the
20 purposes of the water development program as set forth in
21 85-1-604.

22 (13) "Water development project" means a project as
23 defined in subsection (8), except that water development
24 projects are not limited to projects owned or operated by
25 the department.

1 (14) "Water development debt service fund" means a
 2 separate fund created by 85-1-603 within the debt service
 3 fund type of the state treasury to be used as provided in
 4 85-1-619.

5 (15) "Works" means all property, and rights, easements,
 6 and franchises relating thereto to property and deemed
 7 considered necessary or convenient for their the operation
 8 of the works and all water rights acquired or exercised by
 9 the department in connection with those works and includes
 10 all means of conserving and distributing water, including,
 11 without limiting the generality of the foregoing,
 12 reservoirs, dams, diversion canals, distributing canals,
 13 waste canals, drainage canals, dikes, lateral ditches and
 14 pumping units, mains, pipelines, and waterworks systems and
 15 includes all such works for the conservation, development,
 16 storage, distribution, and utilization of water, including
 17 without limiting the generality of the foregoing, works for
 18 the purpose of irrigation, flood prevention, drainage, fish
 19 and wildlife, recreation, development of power, watering of
 20 stock, supplying of water for public, domestic, industrial,
 21 or other uses and for fire protection."

22 **Section 2.** Section 85-1-604, MCA, is amended to read:

23 "85-1-604. Water development state special revenue
 24 account created -- revenues allocated -- limitations on
 25 appropriations from account. (1) There is created a water

1 development state special revenue account within the state
 2 special revenue fund established in 17-2-102.

3 (2) Except to the extent that they are required to be
 4 credited to the water development debt service fund pursuant
 5 to 85-1-603, there shall be paid into the water development
 6 state special revenue account:

7 (a) all revenues of the works and other money as
 8 provided in 85-1-332;

9 (b) 30% of the interest income of the resource
 10 indemnity trust fund as provided in and subject to the
 11 conditions of 15-38-202;

12 (c) the excess of the coal severance tax proceeds
 13 allocated by 85-1-603 to the water development debt service
 14 fund above debt service requirements as provided in and
 15 subject to the conditions of 85-1-619; and

16 (d) any fees or charges collected by the department
 17 pursuant to 85-1-616 for the servicing of loans, including
 18 arrangements for obtaining security interests.

19 (3) Appropriations may be made from the water
 20 development state special revenue account for the following
 21 purposes and subject to the following conditions:

22 (a) An amount less than or equal to that paid into the
 23 account under 85-1-332 and only that amount may be
 24 appropriated for the operation and maintenance of
 25 state-owned projects and works. If the amount of money

1 available for appropriation under this subsection (3)(a) is
 2 greater than that necessary for operation and maintenance
 3 expenses, the excess may be appropriated as provided in
 4 subsection (3)(b).

5 (b) An amount less than or equal to that paid into the
 6 account from the resource indemnity trust account plus any
 7 excess from subsection (3)(a) and only that amount may be
 8 appropriated from the account for:

9 (i) the rehabilitation of state-owned projects and
 10 works, including the rehabilitation of spillways of
 11 state-owned dams;

12 (ii) the formulation of downstream emergency warning
 13 and evacuation plans for state-owned dams;

14 (iii) the development of the hydropower potential of
 15 state-owned dams;

16 (iv) assistance in the implementation of the water
 17 reservations established under 85-2-316 of conservation
 18 districts;

19 (v) the promotion of the development of offstream and
 20 tributary storage;

21 (vi) the promotion of joint state-tribal,
 22 state-federal, and state-tribal-federal water development;

23 (vii) administrative expenses, including but not
 24 limited to the salaries and expenses of personnel,
 25 equipment, office space, and other necessities incurred in

1 the administration of the water development program except
 2 the administration of loans and grants; and

3 (viii) any other expenditures that meet the policies
 4 and objectives of the state water development program.

5 (c) An amount less than or equal to that paid into the
 6 account from the sources provided for in (c) and (d) of
 7 subsection (2) and only that amount may be appropriated from
 8 the account for loans and grants for water development
 9 projects and activities; for purchase of liens and operation
 10 of property as provided in 85-1-615; for administrative
 11 expenses, including but not limited to the salaries and
 12 expenses of personnel, equipment, and office space; for the
 13 servicing of loans, including arrangements for obtaining
 14 security interests; and for other necessities incurred in
 15 administering the loans and grants."

16 **Section 3.** Section 85-1-615, MCA, is amended to read:

17 **"85-1-615. Security interests -- purchase, and**
 18 **operation, AND RESALE of encumbered property.** (1) The state
 19 has a lien upon a project constructed with money from the
 20 water development state special revenue account or water
 21 development account for the amount of the loan and interest
 22 due the state. This lien may attach to any project
 23 facilities, equipment, easements, real property, and
 24 property of any kind or nature owned by the debtor,
 25 including all water rights. The department shall file with

the county clerk and recorder of each county in which a part of the project is located either a financing statement or a real estate mortgage covering the loan, its amount, terms, and a description of the security. The county clerk and recorder shall record and index the lien as other liens are required by law to be recorded and indexed. The lien shall be valid until paid in full or otherwise discharged. The lien shall be foreclosed in accordance with applicable state law governing foreclosure of mortgages and liens.

(2) From the funds available under 85-1-604(3)(c) or 85-1-617, the state may:

(a) purchase a lien that is prior to the state's lien if:

(i) the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by purchasing the prior lien; and

(ii) the amount to be paid for the prior lien does not exceed the appraised value of the property;

(b) operate property that is subject to the state's lien if the director of the department determines that the loan is in default and the prospects for collecting the loan may be materially increased by operating the property that is subject to the state's lien; or

(c) purchase a prior lien as provided in (2)(a) and

operate property as provided in (2)(b).

(3) ANY PROPERTY ACQUIRED UNDER THE PROVISIONS OF THIS SECTION MUST BE RESOLD AS EXPEDITIOUSLY AS POSSIBLE TO RECOVER FUNDS USED UNDER THIS SECTION AND FUNDS LOANED TO THE BORROWER."

Section 4. Section 85-1-618, MCA, is amended to read:

"85-1-618. Bond Restrictions on use of bond proceeds only--for-loans. Water development bond proceeds may be used only for the purpose of making loans as provided in the water development program or for purchasing liens and operating property as provided in 85-1-615."

Section 5. Section 85-1-623, MCA, is amended to read:

"85-1-623. Authorization of water development bonds. The legislature, through the enactment of this section by a two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program or for the purchase of liens and operation of property as provided in 85-1-615."

NEW SECTION. Section 6. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of

1 [this act].

2 NEW SECTION. **Section 7.** Effective date. [This act] is

3 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

page 1 of 4
March 20, 1989

MR. PRESIDENT,

We, your committee on Agriculture, Livestock, and Irrigation, having had under consideration HB 367 (third reading copy -- blue), respectfully report that HB 367 be amended and as so amended be concurred in:

Sponsor: O'Keefe (Weeding)

1. Title, line 11.
Following: "SECURED;"
Insert: "CREATING THE WATER DEVELOPMENT LOAN LOSS RESERVE FUND;"

2. Title, line 12.
Following: "85-1-102,"
Insert: "85-1-603,"
Following: "85-1-604,"
Insert: "85-1-613,"
Following: "85-1-615"
Insert: "85-1-617"

3. Page 7, line 22.
Following: line 21
Insert: "Section 2. Section 85-1-603, MCA, is amended to read:
"85-1-603. Water development debt service fund created -- coal severance tax allocated -- water development loan loss reserve fund created. (1)(a) There is created a water development debt service fund within the debt service fund type established in 17-2-102.
(2) (b) The state pledges and allocates and directs to be credited to the water development debt service fund, as received:
+a+(i) 1% of all money from time to time received from the coal severance tax collected under Title 15, chapter 35, and remaining after allocation of such tax under 15-35-108(1) and (2);
+b+(ii) any principal and accrued interest under 85-1-613(3)(a) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617;
+c+(iii) all interest income earned on proceeds of water development bonds; and
+d+(iv) revenue or money otherwise required to be paid into the water development state special revenue account pursuant to 85-1-604, as determined by the board of examiners in connection with the issuance of bonds pursuant to 85-1-617; and
(v) money received from the water development loan loss reserve fund as the result of a loan loss.

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SENATE COMMITTEE ON AGRICULTURE, HB 367
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(2)(a) There is created a water development loan loss reserve fund within the debt service fund type established in 17-2-102.
(b) The state pledges and allocates and directs to be credited to the water development loan loss reserve fund all accrued interest under 85-1-613(3)(b) received in repayment of a loan made from the proceeds of bonds issued under 85-1-617.
(c) If the department determines that a loan loss has occurred on a loan made pursuant to this part, funds from the water development loan loss reserve fund must be transferred to the water development debt service fund in an amount equal to the amount that would otherwise be available for debt service under subsection (1)(b) as a result of the loan loss."
Renumber: subsequent section

4. Page 10, line 16.
Following: line 15
Insert: "Section 4. Section 85-1-613, MCA, is amended to read:
"85-1-613. Limits on loans. (1) No loan for a water development project or activity may be made from the water development state special revenue account or water development account that exceeds the least of \$200,000, 10% of the estimated total funds potentially available for loans in the water development state special revenue account and water development account in the biennium in which the loan will be made, or 80% of the fair market value of the security given therefor. In determining the fair market value for the security given for a loan, the department shall consider appraisals made by qualified appraisers and other factors it considers important.
(2) The period for repayment of loans may not exceed 30 years.
(3) The board shall from time to time establish the interest rate at which loans may be made under this part that is sufficient to:
(a) cover the bond debt service for a loan; and
(b) establish and maintain a loan loss reserve fund to be used for bond debt service if a loan loss occurs."
Renumber: subsequent section

5. Page 12, line 6.
Following: line 5
Insert: "Section 6. Section 85-1-617, MCA, is amended to read:
"85-1-617. Issuing bonds. (1) When authorized by the legislature and within the limits of the authorization and within the further limitations established in this section, the board of examiners may issue and sell water development bonds of the state

HB 367

SENATE

continued

in the amount and manner it considers necessary and proper to finance the water development loan program. The full faith and credit and taxing powers of the state are pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of water development bonds may be issued by the board of examiners, upon request of the board of natural resources and conservation, at public or private sale, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board of examiners shall determine subject to the limitations contained in this section and 17-5-731.

(3) In the issuance of each series of water development bonds, the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the water development debt service fund will in the judgment of the board of examiners be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects, the board of examiners is authorized to prescribe the form and terms of the bonds and notes and shall do whatever is lawful and necessary for their issuance and payment. Such bonds, notes, and any interest coupons appurtenant thereto must be signed by the members of the board of examiners, and the bonds and notes must be issued under the great seal of the state of Montana. The bonds, notes, and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds and notes issued and sold.

(5) There is created a water development account within the state special revenue fund established in 17-2-102.

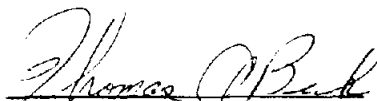
(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development debt service fund and the water development loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Renumber: subsequent sections

AND AS AMENDED BE CONCURRED IN

Signed:


Thomas A. Beck, Chairman

HOUSE BILL NO. 367

INTRODUCED BY O'KEEFE, GALT, WEEDING, IVERSON, WESTLAKE,
REHBERG, SPAETH, SCHYE, HARPER, THOPT
BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT FUNDS FROM
THE WATER DEVELOPMENT STATE SPECIAL REVENUE ACCOUNT AND THE
WATER DEVELOPMENT ACCOUNT TO BE USED, UNDER CERTAIN
CONDITIONS, TO PROTECT THE STATE'S INTEREST IN PROPERTY FOR
WHICH A WATER DEVELOPMENT LOAN HAS BEEN SECURED; TO CREATE
THE WATER DEVELOPMENT LOAN LOSS RESERVE FUND; AMENDING
SECTIONS 85-1-102, 85-1-603, 85-1-604, 85-1-613, 85-1-615,
85-1-617, 85-1-618, AND 85-1-623, MCA; AND PROVIDING AN
IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

This bill would allow the department of natural
resources and conservation to use funds in the water
development special revenue account and water development
general obligation bond proceeds to protect loans made under
the water development private loan program.

The program has made approximately 55 loans totalling
\$4 million to private individuals, primarily for irrigation
projects. In the event that any lien holder or the

department would have to foreclose on any of these loans,
the department would need to be in a position to protect its
security interests. These loans are primarily secured with
real estate mortgages. In those instances where the
department is not in first lien position and a foreclosure
is necessary, the department would need funds to buy out the
first lien holder to gain control of the property. The
property would then be resold to recoup the funds used to
buy out the first lien as well as the department's initial
loan funds.

This bill would also allow the department to use these
funds to operate a project if a loan should go into default.
If the loan recipient should walk away from a project, the
department may need to temporarily operate the project to
secure its interests until foreclosure proceedings are
complete. An example would be a hydropower project that
requires continual attention to guard against breakdown or
damage.

This bill is intended to give the department access to
funds that would be used to protect its security interests
when other loan collection efforts have not worked. It is
the intent of the legislature that every effort be made to
avoid forced loan collections. It is further the intent of
the legislature that any property acquired in the manner
provided for in HB 367 be resold as expeditiously as

1 possible to recover funds used under 85-1-65 and funds
2 loaned to the borrower."

3
4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

5 **Section 1.** Section 85-1-102, MCA, is amended to read:

6 **"85-1-102. Definitions.** Unless the context requires
7 otherwise, in this chapter the following definitions apply:

8 (1) "Administrative costs" means costs incurred by the
9 department:

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11 properties and assets;

12 (b) to oversee the operation and maintenance of the
13 projects;

14 (c) to administer contracts and receivables;

15 (d) to maintain project financial records;

16 (e) to provide technical assistance for operating,
17 maintaining, and rehabilitating the projects; and

18 (f) to assist in securing funds for operating,
19 maintaining, and rehabilitating the projects.

20 (2) "Board" means the board of natural resources and
21 conservation provided for in 2-15-3302.

22 (3) "Cost of operation and maintenance" means the
23 costs of operation, maintenance, and routine repairs and the
24 costs incurred by the water users' association or the
25 department in the distribution of water from the project,

1 excluding the department's administrative costs.

2 (4) "Cost of works" means the cost of construction,
3 including any rehabilitation or alteration of the project;
4 the cost of all lands, property, rights, easements, and
5 franchises acquired which are deemed necessary for the
6 construction; the cost of all water rights acquired or
7 exercised by the department in connection with those works;
8 the cost of all machinery and equipment, financing charges,
9 interest prior to and during construction and for a period
10 not exceeding 3 years after the completion of construction;
11 cost of engineering and legal expenses, plans,
12 specifications, surveys, estimates of cost, and other
13 expenses necessary or incident to determining the
14 feasibility or practicability of any project; administrative
15 expense; and such other expenses as may be necessary or
16 incident to the financing ~~herein~~ authorized in this part and
17 the construction of the works and the placing of the ~~same~~
18 works in operation.

19 (5) "Department" means the department of natural
20 resources and conservation provided for in Title 2, chapter
21 15, part 33.

22 (6) "Owner" means all individuals, irrigation
23 districts, drainage districts, flood control districts,
24 incorporated companies, societies, or associations having
25 any title or interest in any properties, rights, easements,

1 or franchises to be acquired.

2 (7) "Private person" means any individual,
3 association, partnership, corporation, or other
4 nongovernmental entity not eligible for loans and grants
5 under 85-1-605 but does not include a governmental entity
6 such as an agency, local government, or political
7 subdivision of the state, the United States, or any agency
8 thereof, or any other governmental entity.

9 (8) "Project" means any one of the works herein
10 defined in this section or any combination of such works
11 which are physically connected or jointly managed and
12 operated as a single unit.

13 (9) "Public benefits" means those benefits that accrue
14 from a water development project or activity to persons
15 other than the private grant or loan recipient and that
16 enhance the common well-being of the people of Montana.
17 Public benefits include but are not limited to recreation,
18 flood control, erosion reduction, agricultural flood damage
19 reduction, water quality enhancement, sediment reduction,
20 access to recreation opportunities, and wildlife
21 conservation.

22 (10) "Water development account" means a separate
23 account created by 85-1-617 within the state special revenue
24 fund of the state treasury to finance loans under the
25 provisions of the water development program to agencies,

1 local governments, and political subdivisions of the state,
2 private persons, and any other eligible recipients and to
3 purchase liens and operate property, as provided in
4 85-1-615, from proceeds of bonds issued under part 6 of this
5 chapter.

6 (11) "Water development activity" means an action or
7 program to protect and enhance water-based recreation or to
8 protect or enhance water resources for the benefit of
9 agriculture, flood control, or other uses, including but not
10 limited to ~~such purposes as~~ the promotion of efficient use
11 of water in agriculture, the improvement of water quality in
12 agriculture and other nonpoint source uses, the protection
13 and enhancement of water-based recreation, the control of
14 erosion of streambanks and control of sedimentation of
15 rivers and streams, and providing greater local and state
16 control of Montana water resources. Water development
17 activities may provide any combination of marketable and
18 nonmarketable benefits.

19 (12) "Water development state special revenue account"
20 means a separate account created by 85-1-604 within the
21 state special revenue fund of the state treasury for the
22 purposes of the water development program as set forth in
23 85-1-604.

24 (13) "Water development project" means a project as
25 defined in subsection (8), except that water development

1 projects are not limited to projects owned or operated by
2 the department.

3 (14) "Water development debt service fund" means a
4 separate fund created by 85-1-603 within the debt service
5 fund type of the state treasury to be used as provided in
6 85-1-619.

7 (15) "Works" means all property, and rights, easements,
8 and franchises relating thereto to property and deemed
9 considered necessary or convenient for their the operation
10 of the works and all water rights acquired or exercised by
11 the department in connection with those works and includes
12 all means of conserving and distributing water, including,
13 without limiting the generality of the foregoing,
14 reservoirs, dams, diversion canals, distributing canals,
15 waste canals, drainage canals, dikes, lateral ditches and
16 pumping units, mains, pipelines, and waterworks systems and
17 includes all such works for the conservation, development,
18 storage, distribution, and utilization of water, including
19 without limiting the generality of the foregoing, works for
20 the purpose of irrigation, flood prevention, drainage, fish
21 and wildlife, recreation, development of power, watering of
22 stock, supplying of water for public, domestic, industrial,
23 or other uses and for fire protection."

24 **SECTION 2. SECTION 85-1-603, MCA, IS AMENDED TO READ:**
25 "85-1-603. Water development debt service fund created

1 -- coal severance tax allocated -- water development loan
2 loss reserve fund created. (1) (a) There is created a water
3 development debt service fund within the debt service fund
4 type established in 17-2-102.

5 (2)(b) The state pledges and allocates and directs to
6 be credited to the water development debt service fund, as
7 received:

8 (a)(i) 1 1/4% of all money from time to time received
9 from the coal severance tax collected under Title 15,
10 chapter 35, and remaining after allocation of such tax under
11 15-35-108(1) and (2);

12 (b)(ii) any principal and accrued interest under
13 85-1-613(3)(a) received in repayment of a loan made from the
14 proceeds of bonds issued under 85-1-617;

15 (c)(iii) all interest income earned on proceeds of
16 water development bonds; and

17 (d)(iv) revenue or money otherwise required to be paid
18 into the water development state special revenue account
19 pursuant to 85-1-604, as determined by the board of
20 examiners in connection with the issuance of bonds pursuant
21 to 85-1-617; and

22 (v) money received from the water development loan
23 loss reserve fund as the result of a loan loss.

24 (2) (a) There is created a water development loan loss
25 reserve fund within the debt service fund type established

1 in 17-2-102.

2 (b) The state pledges and allocates and directs to be
3 credited to the water development loan loss reserve fund all
4 accrued interest under 85-1-613(3)(b) received in repayment
5 of a loan made from the proceeds of bonds issued under
6 85-1-617.

7 (c) If the department determines that a loan loss has
8 occurred on a loan made pursuant to this part, funds from
9 the water development loan loss reserve fund must be
10 transferred to the water development debt service fund in an
11 amount equal to the amount that would otherwise be available
12 for debt service under subsection (1)(b) as a result of the
13 loan loss."

14 **Section 3.** Section 85-1-604, MCA, is amended to read:

15 **"85-1-604. Water development state special revenue**
16 **account created -- revenues allocated -- limitations on**
17 **appropriations from account. (1) There is created a water**
18 **development state special revenue account within the state**
19 **special revenue fund established in 17-2-102.**

20 (2) Except to the extent that they are required to be
21 credited to the water development debt service fund pursuant
22 to 85-1-603, there shall be paid into the water development
23 state special revenue account:

24 (a) all revenues of the works and other money as
25 provided in 85-1-332;

1 (b) 30% of the interest income of the resource
2 indemnity trust fund as provided in and subject to the
3 conditions of 15-38-202;

4 (c) the excess of the coal severance tax proceeds
5 allocated by 85-1-603 to the water development debt service
6 fund above debt service requirements as provided in and
7 subject to the conditions of 85-1-619; and

8 (d) any fees or charges collected by the department
9 pursuant to 85-1-616 for the servicing of loans, including
10 arrangements for obtaining security interests.

11 (3) Appropriations may be made from the water
12 development state special revenue account for the following
13 purposes and subject to the following conditions:

14 (a) An amount less than or equal to that paid into the
15 account under 85-1-332 and only that amount may be
16 appropriated for the operation and maintenance of
17 state-owned projects and works. If the amount of money
18 available for appropriation under this subsection (3)(a) is
19 greater than that necessary for operation and maintenance
20 expenses, the excess may be appropriated as provided in
21 subsection (3)(b).

22 (b) An amount less than or equal to that paid into the
23 account from the resource indemnity trust account plus any
24 excess from subsection (3)(a) and only that amount may be
25 appropriated from the account for:

1 (i) the rehabilitation of state-owned projects and
2 works, including the rehabilitation of spillways of
3 state-owned dams;

4 (ii) the formulation of downstream emergency warning
5 and evacuation plans for state-owned dams;

6 (iii) the development of the hydropower potential of
7 state-owned dams;

8 (iv) assistance in the implementation of the water
9 reservations established under 85-2-316 of conservation
10 districts;

11 (v) the promotion of the development of offstream and
12 tributary storage;

13 (vi) the promotion of joint state-tribal,
14 state-federal, and state-tribal-federal water development;

15 (vii) administrative expenses, including but not
16 limited to the salaries and expenses of personnel,
17 equipment, office space, and other necessities incurred in
18 the administration of the water development program except
19 the administration of loans and grants; and

20 (viii) any other expenditures that meet the policies
21 and objectives of the state water development program.

22 (c) An amount less than or equal to that paid into the
23 account from the sources provided for in (c) and (d) of
24 subsection (2) and only that amount may be appropriated from
25 the account for loans and grants for water development

1 projects and activities; for purchase of liens and operation
2 of property as provided in 85-1-615; for administrative
3 expenses, including but not limited to the salaries and
4 expenses of personnel, equipment, and office space; for the
5 servicing of loans, including arrangements for obtaining
6 security interests; and for other necessities incurred in
7 administering the loans and grants."

8 **SECTION 4. SECTION 85-1-613, MCA, IS AMENDED TO READ:**

9 "85-1-613. Limits on loans. (1) No loan for a water
10 development project or activity may be made from the water
11 development state special revenue account or water
12 development account that exceeds the least of \$200,000, 10%
13 of the estimated total funds potentially available for loans
14 in the water development state special revenue account and
15 water development account in the biennium in which the loan
16 will be made, or 80% of the fair market value of the
17 security given therefor. In determining the fair market
18 value for the security given for a loan, the department
19 shall consider appraisals made by qualified appraisers and
20 other factors it considers important.

21 (2) The period for repayment of loans may not exceed
22 30 years.

23 (3) The board shall from time to time establish the
24 interest rate at which loans may be made under this part
25 that is sufficient to:

1 (a) cover the bond debt service for a loan; and

2 (b) establish and maintain a loan loss reserve fund to
 3 be used for bond debt service if a loan loss occurs."

4 **Section 5.** Section 85-1-615, MCA, is amended to read:

5 **"85-1-615. Security interests -- purchase, and**
 6 **operation, AND RESALE of encumbered property. (1)** The state
 7 has a lien upon a project constructed with money from the
 8 water development state special revenue account or water
 9 development account for the amount of the loan and interest
 10 due the state. This lien may attach to any project
 11 facilities, equipment, easements, real property, and
 12 property of any kind or nature owned by the debtor,
 13 including all water rights. The department shall file with
 14 the county clerk and recorder of each county in which a part
 15 of the project is located either a financing statement or a
 16 real estate mortgage covering the loan, its amount, terms,
 17 and a description of the security. The county clerk and
 18 recorder shall record and index the lien as other liens are
 19 required by law to be recorded and indexed. The lien shall
 20 be valid until paid in full or otherwise discharged. The
 21 lien shall be foreclosed in accordance with applicable state
 22 law governing foreclosure of mortgages and liens.

23 (2) From the funds available under 85-1-604(3)(c) or
 24 85-1-617, the state may:

25 (a) purchase a lien that is prior to the state's lien

1 if:

2 (i) the director of the department determines that the
 3 loan is in default and the prospects for collecting the loan
 4 may be materially increased by purchasing the prior lien;
 5 and

6 (ii) the amount to be paid for the prior lien does not
 7 exceed the appraised value of the property;

8 (b) operate property that is subject to the state's
 9 lien if the director of the department determines that the
 10 loan is in default and the prospects for collecting the loan
 11 may be materially increased by operating the property that
 12 is subject to the state's lien; or

13 (c) purchase a prior lien as provided in (2)(a) and
 14 operate property as provided in (2)(b).

15 (3) ANY PROPERTY ACQUIRED UNDER THE PROVISIONS OF THIS
 16 SECTION MUST BE RESOLD AS EXPEDITIOUSLY AS POSSIBLE TO
 17 RECOVER FUNDS USED UNDER THIS SECTION AND FUNDS LOANED TO
 18 THE BORROWER."

19 **SECTION 6.** SECTION 85-1-617, MCA, IS AMENDED TO READ:

20 **"85-1-617. Issuing bonds. (1)** When authorized by the
 21 legislature and within the limits of the authorization and
 22 within the further limitations established in this section,
 23 the board of examiners may issue and sell water development
 24 bonds of the state in the amount and manner it considers
 25 necessary and proper to finance the water development loan

1 program. The full faith and credit and taxing powers of the
2 state are pledged for the prompt and full payment of all
3 bonds so issued and interest and redemption premiums payable
4 thereon according to their terms.

5 (2) Each series of water development bonds may be
6 issued by the board of examiners, upon request of the board
7 of natural resources and conservation, at public or private
8 sale, in such denominations and forms, whether payable to
9 bearer with attached interest coupons or registered as to
10 principal or as to both principal and interest, with such
11 provisions for conversion or exchange and for the issuance
12 of notes in anticipation of the issuance of definitive
13 bonds, bearing interest at such rate or rates, maturing at
14 such rate or rates, maturing at such time or times not
15 exceeding 30 years from date of issue, subject to optional
16 or mandatory redemption at such earlier times and prices and
17 upon such notice, with such provisions for payment and
18 discharge by the deposit of funds or securities in escrow
19 for that purpose, and payable at the office of such banking
20 institution or institutions within or outside the state, as
21 the board of examiners shall determine subject to the
22 limitations contained in this section and 17-5-731.

23 (3) In the issuance of each series of water
24 development bonds, the interest rates and the maturities and
25 any mandatory redemption provisions thereof shall be

1 established in such manner that the funds then specifically
2 pledged and appropriated by law to the water development
3 debt service fund will in the judgment of the board of
4 examiners be received in an amount sufficient in each year
5 to pay all principal, redemption premiums, and interest due
6 and payable in that year with respect to that and all prior
7 series of such bonds, except outstanding bonds as to which
8 the obligation of the state has been discharged by the
9 deposit of funds or securities sufficient for their payment
10 in accordance with the terms of the resolutions by which
11 they are authorized to be issued.

12 (4) In all other respects, the board of examiners is
13 authorized to prescribe the form and terms of the bonds and
14 notes and shall do whatever is lawful and necessary for
15 their issuance and payment. Such bonds, notes, and any
16 interest coupons appurtenant thereto must be signed by the
17 members of the board of examiners, and the bonds and notes
18 must be issued under the great seal of the state of Montana.
19 The bonds, notes, and coupons may be executed with facsimile
20 signatures and seal in the manner and subject to the
21 limitations prescribed by law. The state treasurer shall
22 keep a record of all such bonds and notes issued and sold.

23 (5) There is created a water development account
24 within the state special revenue fund established in
25 17-2-102.

(6) All proceeds of bonds or notes issued under this section, other than refunding bonds, must be deposited in the water development account established in subsection (5), except that any principal and accrued interest received in repayment of a loan made from the proceeds of bonds issued under this section must be deposited in the water development debt service fund and the water development loan loss reserve fund pursuant to 85-1-603. All proceeds of refunding bonds must be deposited in the water development debt service fund and applied to the payment and redemption of outstanding bonds issued under this section as directed by the board, whether at maturity or on any earlier date on which they may be prepaid according to their terms.

(7) All actions taken by the board of examiners under this section or 85-1-619 must be authorized by a vote of a majority of the members of the board of examiners."

Section 7. Section 85-1-618, MCA, is amended to read:

"85-1-618. Bond Restrictions on use of bond proceeds only--for-loans. Water development bond proceeds may be used only for the purpose of making loans as provided in the water development program or for purchasing liens and operating property as provided in 85-1-615."

Section 8. Section 85-1-623, MCA, is amended to read:

"85-1-623. **Authorization of water development bonds.** The legislature, through the enactment of this section by a

two-thirds vote of the members of each house, authorizes the creation of state debt in an amount not to exceed \$10 million and the issuance and sale of water development bonds in this amount for the purpose of providing funds appropriated to the water development account for loans as provided in the water development program or for the purchase of liens and operation of property as provided in 85-1-615."

NEW SECTION. Section 9. Extension of authority. Any existing authority to make rules on the subject of the provisions of [this act] is extended to the provisions of [this act].

NEW SECTION. Section 10. Effective date. [This act] is effective on passage and approval.

-End-