

1 HOUSE BILL NO. 136

2 INTRODUCED BY WISEMAN

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA PUBLIC-PRIVATE PARTNERSHIP
6 BOND ACT; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE
7 SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE BOARD OF INVESTMENTS
8 TO ADMINISTER THE PROGRAM; AND PROVIDING AN EFFECTIVE DATE."

9
10 STATEMENT OF INTENT

11 A statement of intent is required for this bill because the bill gives the board of investments
12 authority to adopt administrative rules. In adopting rules, the board should look to existing rules that have
13 been adopted for similar programs, such as the health facility authority. The rules should be designed to
14 implement the policy provided for in [section 2].

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **NEW SECTION. Section 1. Short title.** [Sections 1 through 29] shall be known as the "Montana
19 Public-Private Partnership Bond Act".

20
21 **NEW SECTION. Section 2. Legislative declaration -- policy.** (1) The legislature finds that:

22 (a) it is often difficult for private parties to obtain the necessary capital to provide services under
23 contract with various governmental units;

24 (b) alternatives to traditional financial methods may enable the state and providers to improve the
25 implementation of offering these essential public services; and

26 (c) lowering the cost of borrowing to private parties should enable services to be provided to the
27 state at a lower cost to the taxpayer.

28 (2) It is the policy of the state of Montana to promote partnerships between governmental units
29 and the private sector when the state can achieve cost-effectiveness in providing services by:

30 (a) fostering and promoting, by all reasonable means, efficient capital markets and facilities for

1 borrowing money by governmental units or private parties to pay for capital improvements necessary for
2 the delivery of statutorily mandated services;

3 (b) reducing, to the extent possible, the costs of providing services by affording governmental units
4 and private parties an appropriate degree of flexibility and choice in obtaining financing for projects and
5 minimizing marketing rates;

6 (c) creating a means for governmental units and private parties to achieve more efficient access
7 to the credit market through the use of [sections 1 through 29]; and

8 (d) providing additional security for the payment of bonds held by investors and by further reducing
9 borrowing costs.

10

11 **NEW SECTION. Section 3. Definitions.** As used in [sections 1 through 29], unless the context
12 requires otherwise, the following definitions apply:

13 (1) "Agency" has the meaning provided in 2-18-101.

14 (2) "Board" means the board of investments created in 2-15-1808.

15 (3) "Bond" means any bond, refunding or advanced refunding bond, debenture, certificate, or other
16 evidence of financial indebtedness issued by the board pursuant to [sections 1 through 29].

17 (4) "Finance" means the process of supplying capital to allow a project to be completed.

18 (5) "Governmental unit" means any unit within a state agency that is charged with providing a
19 statutorily mandated service and that is authorized by statute to use private parties under contract in
20 providing the statutorily mandated services.

21 (6) "Partnership" means a contractual relationship between a governmental unit and a private party
22 for the delivery of services.

23 (7) "Private party" means an individual, partnership, for-profit or not-for-profit corporation, limited
24 liability company, limited liability partnership, or other entity, that has received or is being considered for
25 receiving a contract from a governmental unit to provide a service.

26 (8) (a) "Project" means a facility necessary for the provision of a service required to be provided
27 by the state through a governmental unit that for purposes of economy, efficiency, or flexibility is provided
28 under contract by a private party.

29 (b) Project includes a facility for persons with developmental disabilities, corrections, alcohol and
30 drug treatment, prerelease, health treatment, mental health treatment, and child care and any facility

1 required by an agency that has determined that it is in the best interests of the state to pursue the
2 establishment of a partnership to provide statutorily mandated services.

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

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

5 (b) the actual cost of construction of all or any part of a project, including architect and engineering
6 fees;

7 (c) all expenses in connection with the authorization, sale, and issuance of bonds to finance a
8 project;

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

11 (e) the interest on bonds for a reasonable time prior to construction until a period not later than 6
12 months after completion of construction.

13 (10) "Reserve fund" means the fund created in [section 16].

14 (11) "Service" means a function authorized to be provided through state government.

15

16 **NEW SECTION. Section 4. Liberal construction.** [Sections 1 through 29] and the powers granted
17 in [sections 1 through 29] must be liberally construed to effectuate the policies and purposes stated in
18 [sections 1 through 29].

19

20 **NEW SECTION. Section 5. Board to implement.** The board may make and enforce orders, rules,
21 and bylaws that are necessary or desirable for the implementation of [sections 1 through 29].

22

23 **NEW SECTION. Section 6. Participation voluntary.** The use of the financing mechanism created
24 by [sections 1 through 29] is entirely voluntary. A governmental unit or private party may not be required
25 to sell bonds, bond anticipation notes, or notes to the board. The board is not obligated and may not be
26 compelled to issue bonds under [sections 1 through 29].

27

28 **NEW SECTION. Section 7. Powers of board.** In addition to all other powers conferred on the
29 board by law, the board may:

30 (1) sue and be sued;

1 (2) adopt all procedural and substantive rules necessary for the administration of [sections 1
2 through 29];

3 (3) make contracts, agreements, and other instruments necessary or convenient for the exercise
4 of its powers under [sections 1 through 29];

5 (4) purchase or hold bonds at prices and in a manner that the board considers advisable;

6 (5) sell bonds acquired or held by the board at prices without relation to cost and in a manner that
7 the board considers advisable;

8 (6) issue bonds for the purpose of defraying all or a portion of the cost of a project and securing
9 the payment of the bonds as provided in [sections 1 through 29];

10 (7) invest funds not required for immediate use, as the board considers appropriate, subject to any
11 agreements with bondholders;

12 (8) with regard to a partnership:

13 (a) prescribe the form of application or procedure required for a loan, the issuance of bonds, or the
14 purchase of obligations;

15 (b) fix the terms and conditions of the bond issuance or obligation purchase; and

16 (c) enter into agreements with respect to the issuance of bonds or the purchase of obligations;

17 (9) arrange for lines of credit from and enter into participation agreements with financial
18 institutions;

19 (10) render services to partnerships in connection with public or private sales of bonds that are
20 eligible for purchase by the board under [sections 1 through 29] and charge the governmental unit, the
21 private party, or the partnership for the services;

22 (11) establish terms, interest rates, and provisions with respect to a purchase of bonds, anticipation
23 notes, or other obligations, including:

24 (a) the date and maturities of the bonds, bond anticipation notes, or other obligations;

25 (b) provisions for redemption or payment before maturity; and

26 (c) any other matters that the board determines to be necessary, desirable, or advisable for the loan
27 or purchase;

28 (12) in connection with any loan to a partnership or in connection with the purchase of bonds,
29 bond anticipation notes, or other obligations, consider:

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

- 1 (b) the ability of the partnership to secure money from other sources and the costs of borrowing;
- 2 (c) the ability of the partnership to repay the loan, bonds, bond anticipation notes, or other
- 3 obligations;
- 4 (13) appoint, employ, or contract for the services of officers, employees, agents, professional
- 5 advisers, and consultants and pay compensation for their services;
- 6 (14) procure insurance against any losses in connection with its property, operations, or assets in
- 7 amounts and from insurers as it considers desirable;
- 8 (15) subject to any agreement with bondholders, consent to the modification of the rate of interest,
- 9 time of payment, and payment of any installment of principal, interest, security, or any other term of any
- 10 contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment,
- 11 construction loan, advance contract, or other agreement;
- 12 (16) enter into agreements or other transactions with and accept grants and the cooperation of any
- 13 governmental unit in furtherance of [sections 1 through 29];
- 14 (17) sell, purchase, or insure loans to finance project costs;
- 15 (18) service, contract for, and pay for the servicing of loans;
- 16 (19) accept services, appropriations, gifts, grants, bequests, and devises and use or dispose of
- 17 them in carrying out [sections 1 through 29];
- 18 (20) enter into agreements or other transactions with a federal agency, a governmental unit, a
- 19 county, a consolidated government, a municipality, a private organization, or any other entity or
- 20 organization in carrying out [sections 1 through 29];
- 21 (21) with regard to property:
- 22 (a) acquire real property, personal property, or any right, interest, or easement in real or personal
- 23 property by gift, purchase, transfer, foreclosure, lease, or otherwise;
- 24 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of property;
- 25 (c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by the board or
- 26 in its control or custody;
- 27 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,
- 28 including any equity or right of redemption;
- 29 (e) make any disposition by public or private sale, with or without public bidding;
- 30 (f) commence any action to protect or enforce any right conferred upon the board by law,

1 mortgage, contract, or other agreement;

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

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

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

11 (23) procure insurance or guaranties in amounts and in the form that the board considers necessary
12 or desirable, from any party, against any loss in connection with its lease agreements, loan agreements,
13 mortgage loans, and other assets or property; and

14 (24) do all acts and things necessary, convenient, or desirable to carry out the powers expressly
15 granted or necessarily implied in [sections 1 through 29].

16

17 **NEW SECTION. Section 8. Powers of governmental unit.** (1) A governmental unit applying for
18 funding of a project under [sections 1 through 29] may:

19 (a) enter into contracts with private parties, for a period no longer than 20 years, in order to obtain
20 the availability of facilities necessary for providing a service. A contract may contain a provision allowing
21 the governmental unit the right to provide for the uninterrupted delivery of a service, including the right of
22 reentry, even if the governmental unit determines that the private party is deficient or incapable of
23 performing the contract to provide the service.

24 (b) assign contracts for the benefit of bondholders and other parities; or

25 (c) subject to subsection (2), enter into other contracts or agreements and make covenants
26 reasonably required by the board, its underwriters, or trustee.

27 (2) An agency's use of the financing alternatives under [sections 1 through 29] may not be
28 construed as a general obligation of the state of Montana or as a commitment from the legislature to
29 provide for the continued payment of debt service on any obligation issued under [sections 1 through 29].

30

1 **NEW SECTION. Section 9. Availability to private party.** A private party may apply for financing
2 under [sections 1 through 29], subject to the following conditions:

3 (1) There must be a demonstrated willingness by both a governmental unit and the private party
4 to form a partnership for the delivery of a service.

5 (2) There must be documentation that the service to be provided is statutorily mandated and that
6 the governmental unit has the authority to provide the service.

7
8 **NEW SECTION. Section 10. Procedure prior to financing projects.** In addition to meeting the other
9 requirements contained in [sections 1 through 29] or in state or federal law, the following requirements
10 must be met before financing is finalized and provided:

11 (1) A contract must be approved by the board and executed by the governmental unit and the
12 private party.

13 (2) The governmental unit, the private party, and any other third parties involved in the financing
14 are required to execute, covenant, deliver, and assign as necessary all documents, representations,
15 assignments, collateral, and any other conditions that the board, its agents, underwriters, or attorneys may
16 reasonably determine to be necessary to adequately protect the board, the governmental unit, and the state
17 from default, financial loss, or other harm and to provide an opportunity to achieve the greatest cost
18 savings on the bonds.

19 (3) The financing must be determined by the public hearing process provided for in [section 11]
20 to be in the public interest and to be consistent with the legislative purposes and findings set forth in
21 [section 2].

22 (4) The applicant shall submit a statement indicating that contracts to construct the project will
23 require all contractors to comply with Title 18, chapter 2, part 4.

24 (5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement
25 regarding a project to provide for the payment of debt service on the bonds issued to finance the project,
26 to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of
27 issuing and servicing the bonds.

28
29 **NEW SECTION. Section 11. Public hearing.** A governmental unit seeking funding under [sections
30 1 through 29] shall hold a public hearing to determine whether or not the proposed project is in the public

1 interest. The decision regarding public interest is determined by the governmental unit, not the board.
2 Notice of the public hearing must be published in a newspaper of general circulation in the community
3 where the project would be located. Notice must be given at least once a week for 2 weeks prior to the
4 date of the public hearing. The notice must include the time and place of the hearing, the general nature
5 of the project, the name of the borrower or user of the project, and the estimated cost of the project.

6

7 **NEW SECTION. Section 12. Criteria for public hearing.** The criteria for considering and evaluating
8 public input from the public hearing or public comment during a comment period must be in accordance
9 with criteria established by rule by the agency to which the governmental unit is attached.

10

11 **NEW SECTION. Section 13. Bonds of board.** (1) From time to time, the board may by resolution
12 issue negotiable bonds:

13 (a) to finance loans or refinance its loans to partnerships;

14

(b) to finance the purchase of bonds, loans, or mortgages or from governmental units or private
15 parties;

16

(c) to establish or replenish reserves securing the payment of its bonds;

17

(d) to finance all other expenditures of the board incident to and necessary or convenient in
18 carrying out [sections 1 through 29];

19

(e) to renew bonds and notes and to pay notes, including interest;

20

(f) to refund bonds by the issuance of new bonds, whether or not the bonds to be refunded have
21 matured;

22

(g) to, in part, refund outstanding bonds and, in part, finance any of its other purposes; and

23

(h) in anticipation of the sale of its securities under [sections 1 through 29] and in conjunction with
24 temporary notes and renewal notes.

25

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

28

(3) The bonds must be authorized by resolutions of the board, must bear a date, and must mature
29 at times as provided in the resolutions. The bonds may be issued as serial bonds payable in annual
30 installments, as term bonds, or as a combination of serial and term bonds. The bonds must:

- 1 (a) bear interest at a rate or rates;
- 2 (b) be in denominations;
- 3 (c) be in a form, either coupon or registered;
- 4 (d) carry registration privileges;
- 5 (e) be executed to effectuate validity;
- 6 (f) be payable in a medium of payment, at places inside or outside the state; and
- 7 (g) be subject to terms of redemption as provided in resolutions of the board.
- 8 (4) The bonds may be sold at public or private sale at prices, which may be above or below par,
- 9 that are determined by the board.

10

11 **NEW SECTION. Section 14. Limitation on amounts.** The board may not issue any bonds or notes,

12 except for bonds or notes issued to fund or refund outstanding bonds or notes, that cause the total

13 outstanding indebtedness of the board under [sections 1 through 29] to exceed \$50 million.

14

15 **NEW SECTION. Section 15. Provisions of resolutions or indenture.** Subject to existing

16 agreements, a resolution or indenture authorizing bonds may contain provisions that include:

17 (1) pledging all or any part of the revenue, property, or assets of the board, including lease

18 agreements, loan agreements, mortgages, and obligations securing them, in order to secure the payment

19 of the bonds;

20 (2) the use and disposition of the gross income from lease agreements, loan agreements, and

21 mortgages owned by the board and the payment of the principal of mortgages owned by the board;

22 (3) the setting aside of reserves for debt service funds in the hands of a trustee, paying agents,

23 and other depositories and the regulation and disposition of reserves;

24 (4) limitations on the purpose for which the proceeds of the sale of bonds may be applied and the

25 pledge of the proceeds to secure the payment of the bonds;

26 (5) limitations on the issuance of additional bonds, the terms upon which additional bonds may be

27 issued and secured, and the refunding of outstanding bonds;

28 (6) the procedure, if any, by which the terms of any contract with bondholders may be amended

29 or abrogated, the amount of bonds the holders of which shall consent to the amendment or abrogation, and

30 the manner in which consent may be given;

- 1 (7) a commitment to:
- 2 (a) employ adequate and competent personnel at reasonable compensation;
- 3 (b) set salaries, fees, and charges as may be determined by the board in conjunction with the
- 4 agency; and
- 5 (c) maintain suitable facilities and services for the purpose of carrying out its programs;
- 6 (8) vesting in a trustee property, rights, powers, and duties as the board determines to be
- 7 necessary;
- 8 (9) defining the acts or omissions that constitute a default in the obligations and duties of the board
- 9 to the holders of the bonds and providing for the rights and remedies of the holders of the bonds in the
- 10 event of default, including as a matter of right the appointment of a receiver; and
- 11 (10) any other matters of like or different character that in any way affect the security or protection
- 12 of the holders of the bonds.

13

14 **NEW SECTION. Section 16. Reserve fund.** (1) The board may establish and maintain a reserve

15 fund, into which the following may be deposited or transferred:

- 16 (a) all proceeds of bonds required to be deposited in the fund by terms of a contract between the
- 17 board and its bondholders or a resolution of the board with respect to the proceeds of bonds;
- 18 (b) the proceeds of any bond issue that is authorized for purpose of deposit;
- 19 (c) all money appropriated to the reserve fund; and
- 20 (d) any other money or funds of the board that it decides to deposit in the fund.

21 (2) (a) All money held in the reserve fund must be used solely for:

22 (i) the payment of the principal of or interest on the bonds secured in whole or in part by the fund

23 or the debt service fund payments with respect to the bonds; or

24 (ii) the purchase or redemption of the bonds, or the payment of interest on the bonds, or the

25 payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity.

26 (b) (i) Subject to subsection (2)(b)(ii), money in the reserve fund may not be withdrawn at any time

27 in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements

28 established in the resolutions or indentures of the board for the fund.

29 (ii) With respect to bonds secured in whole or in part by the fund, money may be withdrawn for

30 the purpose of making payment when due of principal, interest, redemption premiums, and debt service

1 fund payments for which other money that is pledged is not available.

2 (3) Money in the reserve fund in excess of the required amount may be withdrawn at any time by
3 the board, but may only be transferred to another fund or account established for purposes of [sections 1
4 through 29].

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

10

11 **NEW SECTION. Section 17. Additional reserves, funds, and accounts.** The board may in its
12 discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to
13 further the accomplishment of the purposes of [sections 1 through 29] or to comply with the provisions
14 of its resolution or agreements.

15

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

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

27

28 **NEW SECTION. Section 19. Refunding bonds.** The board may provide for the issuance of
29 refunding bonds to refund any outstanding bonds that have been issued under [sections 1 through 29],
30 including the payment of any redemption of the bonds. The issuance of bonds, the maturities and other

1 details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the
2 appropriate provisions of [sections 1 through 29] that relate to the issuance of bonds. The proceeds of
3 refunding bonds may be applied to the purchase, redemption, or payment of outstanding bonds. Pending
4 the application of the proceeds of refunding bonds and other available funds to the payment of principal,
5 accrued interests, and any redemption premium on the bonds being refunded and, if permitted in the
6 resolution authorizing the issuance of the refunding bonds or in the trust agreement securing them, to the
7 payment of interest on refunding bonds and expenses in connection with refunding, the proceeds may be
8 invested in securities as the board considers appropriate.

9
10 **NEW SECTION. Section 20. Negotiability of bonds.** A bond issued under [sections 1 through 29]
11 is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9, and
12 a holder or owner of a bond or of a coupon appurtenant to it, by accepting the bond or coupon, is
13 conclusively presumed to have agreed that the bond or coupon is fully negotiable for all purposes of the
14 Uniform Commercial Code.

15
16 **NEW SECTION. Section 21. Tax-exempt status.** Except for inheritance, estate, and gift taxes,
17 bonds issued under [sections 1 through 29], their transfer, and their income, including any profits made
18 on their sale, are free from taxation by the state or any political subdivision or other instrumentality of the
19 state. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

20
21 **NEW SECTION. Section 22. Validity of pledge.** A pledge by the board is valid and binding from
22 the time that the pledge is made. The revenue, money, or property pledged and received by the board is
23 immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any
24 pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise
25 against the board, regardless of whether the parties have notice of the lien. The resolution or any other
26 instrument by which a pledge is created is not required to be recorded. After issuance, all bonds of the
27 board are conclusively presumed to be fully authorized by and issued under all the laws of this state, and
28 any person or governmental unit is estopped from questioning their proper authorization, sale, issuance,
29 execution, or delivery by the board.

30

1 **NEW SECTION. Section 23. Signatures of board members.** If any of the board members whose
2 signatures appear on bonds or coupons cease to be members before the delivery of the bonds, their
3 signatures are valid and sufficient for all purposes as if the members had remained in office until delivery.
4

5 **NEW SECTION. Section 24. Exemption from execution and sale.** All property of the board, other
6 than its revenue or funds received pursuant to [sections 1 through 29], is exempt from levy and sale by
7 virtue of an execution, and an execution or other judicial process may not issue against the property. A
8 judgment against the board may constitute a charge or lien upon the revenue or funds pledged by the
9 board.
10

11 **NEW SECTION. Section 25. Taxation of projects.** (1) Notwithstanding the fact that title to a
12 project may be in the board or a governmental unit, a project is subject to taxation to the same extent, in
13 the same manner, and under the same procedures as privately owned property in similar circumstances if
14 the project is leased to or held by a private interest on both the assessment date and the date that the levy
15 is made in that year. A project is not subject to taxation in any year if the project is not leased to or held
16 by a private interest on both the assessment date and the date that the levy is made in that year.

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

21 **NEW SECTION. Section 26. Nonimpairment by state.** In accordance with the constitutions of the
22 United States and the state of Montana, the state pledges that it will not in any way impair the obligations
23 of any agreement between the board and a partnership or between the board and the holders of bonds
24 issued by the board, including but not limited to an agreement to administer a loan program financed by
25 the issuance of bonds and to employ a staff sufficient and competent for this purpose.
26

27 **NEW SECTION. Section 27. Credit of state not pledged.** Obligations issued under the provisions
28 of [sections 1 through 29] do not constitute a liability or obligation or a pledge of the faith and credit of the
29 state but are payable solely from revenue or funds of the board generated or received for purposes of
30 [sections 1 through 29]. An obligation issued under [sections 1 through 29] must contain on the face of

1 the obligation a statement to the effect that the state of Montana is not liable for the obligation, the
2 obligation is not a debt of the state, and the faith, credit, and taxing power of the state are not pledged to
3 the payment of the principal of or the interest on the obligation.

4

5 NEW SECTION. Section 28. Annual audit. The board's books and records must be audited at least
6 once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit must be
7 paid from the board's funds.

8

9 NEW SECTION. Section 29. Annual report. By December 31 of each year, the board shall publish
10 a financial report for distribution to the governor, the legislature, and the public. Distribution to the
11 legislature is accomplished by providing two copies to the legislative services division and a copy to a
12 legislator on request. The report must include a statement of the board's current financial position with
13 respect to its activities under [sections 1 through 29] and a summary of its activities pursuant to [sections
14 1 through 29] during the previous year.

15

16 NEW SECTION. Section 30. Severability. If a part of [this act] is invalid, all valid parts that are
17 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
18 applications, the part remains in effect in all valid applications that are severable from the invalid
19 applications.

20

21 NEW SECTION. Section 31. Effective date. [This act] is effective July 1, 1997.

22

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0136, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing the Montana Public-Private Partnership Bond Act; providing for the issuance of revenue bonds to provide funding for state services being contracted to a private entity; authorizing the Board of Investments to administer the program and providing an effective date.

ASSUMPTIONS:

1. The Board of Investments (BOI) currently operates a program under which it issues tax-exempt bonds and lends the proceeds to state and local government agencies for a variety of purposes. Under the proposed legislation, the BOI would issue tax-exempt bonds to provide funding to private entities under contract with state agencies. However, the ultimate responsibility/authority for delivering the services provided by the private entity lies with the state agency with which it contracts.
2. The proposed law would be used primarily by those entities whose sole existence depends upon providing services to state-mandated clients, such as inmates, court-ordered residents, foster care children/youth. Providers who only incidentally provide services to this cliental would most likely access other financing sources. The BOI would carry out the program with existing staff levels and within current operating budgets. Bond issuance costs would be paid from bond proceeds.
3. The Department of Corrections believes that passage of this legislation would result in increased availability of community pre-release beds at a lower cost than incarceration costs at the Montana State Prison and Women's Correctional Center, thereby reducing the costs of care and custody. However, the department is unable to calculate the number of additional community beds which would be made available. Therefore, an estimate of the savings cannot be determined.


FISCAL IMPACT:


Expenditures:

No increase in expenditures. Long-term savings not subject to reasonable estimate.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional community beds could result in more tax revenues as facilities are expanded or constructed.


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


WILLIAM WISEMAN, PRIMARY SPONSOR DATE

Fiscal Note for HB0136, as introduced

HB 136

HOUSE BILL NO. 136

INTRODUCED BY WISEMAN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "~~AN ACT ESTABLISHING THE MONTANA PUBLIC-PRIVATE PARTNERSHIP BOND ACT; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE CORRECTIONAL SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE BOARD OF INVESTMENTS MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER THE PROGRAM; AMENDING SECTIONS 90-7-102, 90-7-103, 90-7-104, 90-7-111, 90-7-202, 90-7-204, 90-7-211, 90-7-213, 90-7-214, 90-7-303, 90-7-304, 90-7-305, 90-7-307, AND 90-7-317, MCA; AND PROVIDING AN EFFECTIVE DATE.~~"

~~STATEMENT OF INTENT~~

~~A statement of intent is required for this bill because the bill gives the board of investments authority to adopt administrative rules. In adopting rules, the board should look to existing rules that have been adopted for similar programs, such as the health facility authority. The rules should be designed to implement the policy provided for in {section 2}.~~

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 90-7-102, MCA, is amended to read:

"90-7-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

- (1) "Authority" means the Montana health facility authority created in 2-15-1815.
- (2) "Capital reserve account" means the account established in 90-7-317.
- (3) "Costs" means costs allowed under 90-7-103.
- (4) ~~"Health facility"~~ **"Facility"** means any health care facility or prerelease center provided for in 90-7-104.
- (5) ~~"Health institution"~~ **"Institution"** means any public or private;

1 (a) nonprofit hospital, corporation, or other organization authorized to provide or operate a health
2 facility in this state; or

3 **(b) prerelease center, corporation, or other organization authorized to operate a prerelease center**
4 **in this state.**

5 (6) "Participating ~~health~~ institution" means a health institution or prerelease center that undertakes
6 the financing, refunding, or refinancing of obligations on the construction or acquisition of a ~~health~~ facility
7 pursuant to the provisions of this chapter.

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

11

12 **Section 2.** Section 90-7-103, MCA, is amended to read:

13 **"90-7-103. Allowable costs.** Costs eligible for financing or refinancing under this chapter include:

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

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

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

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

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

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

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

1 (8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and
2 (9) all other expenses necessary and incidental to the construction and acquisition of the facility,
3 the financing of ~~such~~ construction, and the acquisition and placing of the facility into operation."
4

5 **Section 3.** Section 90-7-104, MCA, is amended to read:

6 **"90-7-104. Eligible health facility.** (1) Eligible ~~health~~ facility means any structure or building used
7 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; center for persons
8 with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing
9 school; medical teaching facility; laboratory; dental care facility; prerelease center; or other structure or
10 facility related to any of the foregoing or required or useful for the operation of a ~~health~~ facility. These
11 related facilities include supporting service structures and all necessary, useful, and related equipment,
12 furnishings, and appurtenances and include without limitation the acquisition, preparation, and development
13 of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

14 (2) An eligible ~~health~~ facility does not include such items as food, fuel, supplies, or other items that
15 are customarily considered as current operating expenses; and an eligible health facility does not include
16 a structure used or to be used primarily for sectarian instruction or study or as a place for devotional
17 activities or religious worship."
18

19 **Section 4.** Section 90-7-111, MCA, is amended to read:

20 **"90-7-111. Credit of state not pledged -- statement on obligation required.** (1) Obligations issued
21 under the provisions of this chapter do not constitute a debt, liability, obligation, or pledge of the faith and
22 credit of the state but are payable solely from the revenues or assets of the ~~health~~ institution being
23 financed.

24 (2) An obligation issued under this chapter must contain on the face ~~thereof~~ of the obligation a
25 statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt
26 of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment
27 of the principal of or the interest on the obligation."
28

29 **Section 5.** Section 90-7-202, MCA, is amended to read:

30 **"90-7-202. Powers of authority.** The authority may:

- 1 (1) sue and be sued;
- 2 (2) have a seal;
- 3 (3) adopt all procedural and substantive rules necessary for the administration of this chapter;
- 4 (4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or
5 refunding bonds;
- 6 (5) invest any funds obtained from the issuance of bonds and notes ~~which~~ that are not required
7 for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title
8 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for
9 investment, must be deposited in an enterprise fund to the credit of the authority;
- 10 (6) contract in its own name for the investment of funds, borrowing of funds, or any other
11 purposes it considers appropriate to carry out the purposes of this chapter;
- 12 (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;
- 13 (8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding
14 of eligible facilities;
- 15 (9) enter into agreements or make advance commitments to insure repayments required by loan
16 agreements made by a lender. ~~Such~~ The agreements are subject to terms and conditions established by the
17 authority.
- 18 (10) sell, purchase, or insure loans to finance the costs of eligible facilities;
- 19 (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state,
20 a municipality, or any other source;
- 21 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality
22 of the state, a municipality, a private organization, or any other entity consistent with the exercise of any
23 power under this chapter;
- 24 (13) with regard to property:
 - 25 (a) acquire real or personal property or any right, interest, or easement ~~therein~~ in the property by
26 gift, purchase, transfer, foreclosure, lease, or otherwise;
 - 27 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose ~~thereof~~ of property;
 - 28 (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control
29 or custody;
 - 30 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,

1 including any equity or right of redemption;

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

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

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

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

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

11 (15) provide general technical services in the analysis, planning, design, processing, construction,
12 rehabilitation, and management of eligible ~~health~~ facilities whenever considered appropriate;

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

18 (17) collect reasonable interest, fees, and charges from participating institutions in connection with
19 making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments,
20 and other evidences of indebtedness. The interest, fees, and charges ~~shall~~ must be deposited to an
21 enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required
22 to pay the costs of the authority, including operating and administrative expenses and reasonable
23 allowances for losses that may be incurred.

24 (18) perform any other acts necessary and convenient to carry out the purposes of this chapter."
25

26 **Section 6.** Section 90-7-204, MCA, is amended to read:

27 **"90-7-204. Agent of the authority.** The authority may designate a participating ~~health~~ institution
28 as its agent for determining the location and character of an eligible ~~health~~ facility undertaken by that
29 institution under the provisions of this chapter. As agent, the institution may acquire, construct,
30 reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into

1 contracts for any and all such purposes, including contracts for the management and operation of the
2 facility."

3

4 **Section 7.** Section 90-7-211, MCA, is amended to read:

5 **"90-7-211. Necessary expenses -- fees.** (1) All expenses of the authority incurred in carrying out
6 the provisions of this chapter are payable solely from funds provided under the authority of this chapter,
7 and ~~no~~ liability may not be incurred by the authority beyond the extent to which money has been provided
8 under this chapter, except for the purposes of meeting the necessary expenses of initial organization and
9 operation and until ~~such~~ the date as that the authority derives money from funds provided under this
10 chapter. The authority may borrow money for necessary expenses of organization and operation. ~~Such~~ The
11 borrowed money must be repaid within a reasonable time after the authority receives funds provided for
12 under this chapter.

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

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

24 (b) necessary administrative expenses; and

25 (c) reserves for anticipated future expenses.

26 (3) The authority may, for a negotiated fee, retain the services of any other public or private
27 person, firm, partnership, association, or corporation for the furnishing of services and data for use by the
28 authority in determining the need for and location of any eligible ~~health~~ facility for which application is being
29 made or for ~~such~~ other services or surveys ~~as that~~ the authority considers necessary to carry out the
30 purposes of this chapter."

1 **Section 8.** Section 90-7-213, MCA, is amended to read:

2 "**90-7-213. Loan limitation.** ~~No~~ A loan made by the authority may not exceed the total cost of the
3 eligible ~~health~~ facility being financed as ~~such cost is~~ determined by the participating institution and approved
4 by the authority."

5

6 **Section 9.** Section 90-7-214, MCA, is amended to read:

7 "**90-7-214. Restriction on operating facility -- leases.** (1) The authority may not operate an eligible
8 ~~health~~ facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate
9 to pay the principal and interest due on bonds and to create and maintain ~~such~~ reserves and accounts for
10 depreciation as the authority determines necessary.

11 (2) The lease may contain terms and conditions that the authority considers proper. The lease may
12 be terminated upon failure of the participating ~~health~~ institution to comply with any obligation under the
13 lease. The lease may include a renewal or an option to purchase provision upon ~~such~~ terms or conditions
14 as the authority considers desirable.

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

17

18 **Section 10.** Section 90-7-303, MCA, is amended to read:

19 "**90-7-303. Procedure for issuance of bonds.** (1) The authority may not undertake to finance any
20 eligible ~~health~~ facility unless, prior to the issuance of any bonds or notes, the members find that ~~such the~~
21 facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health
22 care facilities or by a prerelease center for purpose of preparing persons to reenter society.

23 (2) The authority may not allow the proceeds of any bonds or notes to be expended for any health
24 care facility unless ~~such the~~ facility has been reviewed and approved by the appropriate regional and state
25 health planning boards and has received any approval required by Title 50, chapter 5, part 3.

26 (3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
27 until it has been shown that ~~such the~~ facility is financially feasible and that there will be sufficient revenues
28 to ~~assure~~ ensure that principal and interest payments are made when they become due.

29 (4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
30 until it has considered the ability of the ~~health~~ institution to operate ~~such a the~~ facility based on the ~~health~~

1 institution's experience and expertise.

2 (5) The authority ~~must insure~~ shall ensure that its financings consistently provide fair and realistic
3 terms and covenants sufficient to protect the position of the lenders or bondholders."

4

5 **Section 11.** Section 90-7-304, MCA, is amended to read:

6 **"90-7-304. Security of bondholders.** (1) The payment of the principal of and interest on any bonds
7 issued under this chapter must be secured by a pledge of the revenues out of which ~~each~~ the bonds are
8 made payable.

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

11 (a) a mortgage covering all or any part of the participating ~~health~~ institution;

12 (b) a pledge of the lease or loan agreement relating to ~~each~~ the facility; or

13 (c) ~~such other~~ another security device ~~as may be~~ that is considered most advantageous by the
14 authority.

15 (3) The proceedings under which the bonds are authorized to be issued under the provisions of this
16 chapter and any mortgage given to secure the ~~same~~ bonds, including a mortgage given by the borrower
17 or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds,
18 as the authority considers advisable. ~~Such~~ The provisions may not be in conflict with the provisions of this
19 chapter, including without limitation provisions relating to:

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

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

23 (c) maintenance and insurance of ~~each~~ the facility;

24 (d) creation and maintenance of special funds from the revenues of ~~each~~ the facility; and

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

27 (4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage,
28 including a mortgage given by the lessee or borrower, securing ~~each~~ bonds may provide that in the event
29 of a default in the payment of the principal of or the interest on ~~each~~ the bonds or in the performance of
30 any agreement contained in ~~each~~ the proceedings or mortgage, ~~each~~ the payment and performance may

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

4 (5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide
 5 that, in the event of a default in the payment ~~thereof~~ of the bonds or the violation of any agreement
 6 contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in
 7 equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the
 8 mortgage or the holder of any of the bonds secured ~~thereby~~ by the mortgage may become the purchaser
 9 at any foreclosure sale if ~~he the trustee~~ is the highest bidder ~~therefor~~. ~~No A~~ breach of ~~any such an~~
 10 agreement may not impose any pecuniary liability upon the authority."
 11

12 **Section 12.** Section 90-7-305, MCA, is amended to read:
 13 **"90-7-305. Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued
 14 under this chapter may be secured by a trust agreement between the authority and a corporate trustee,
 15 which may be any trust company or bank having the powers of a trust company in Montana. The trust
 16 agreement or the resolution providing for the issuance of ~~such~~ bonds may pledge or assign the revenues
 17 to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project
 18 or any portion ~~thereof~~ of the project. The trust agreement or resolution providing for the issuance of ~~such~~
 19 bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders
 20 as may be reasonable and proper and not in violation of law, including particularly ~~such~~ provisions ~~as that~~
 21 have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any
 22 bank or trust company incorporated under the laws of this state, which may act as depository of the
 23 proceeds of bonds or of revenues or other money, may furnish ~~such~~ indemnifying bonds or pledge ~~such~~
 24 securities as may be required by the authority. ~~Any such A~~ trust agreement may set forth the rights and
 25 remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action
 26 by bondholders. In addition, ~~any such a~~ trust agreement or resolution may contain ~~such~~ other provisions
 27 ~~as that~~ the authority may consider reasonable and proper for the security of the bondholders. All expenses
 28 incurred in carrying out ~~such the~~ trust agreement or resolution may be treated as a part of the cost of the
 29 operation of an eligible ~~health~~ facility."
 30

1 **Section 13.** Section 90-7-307, MCA, is amended to read:

2 **"90-7-307. Conveyance of title to health institution.** When the principal and interest on bonds
 3 issued by the authority to finance the cost of eligible ~~health~~ facilities or to refinance outstanding
 4 indebtedness of one or more participating ~~health~~ institutions, including any refunding bonds issued to refund
 5 and refinance ~~such~~ bonds, have been fully paid and retired or when adequate provision has been made to
 6 fully pay and retire the ~~same~~ bonds and all other conditions of the resolution, lease, trust indenture, and
 7 mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the
 8 ~~same~~ bonds have been satisfied and the lien of the mortgage or deed of trust or any other form of security
 9 arrangement has been released in accordance with the provisions ~~thereof~~ of the security arrangement, the
 10 authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to
 11 deed of trust or any other form of security arrangement to secure the bonds to the participating ~~health~~
 12 institution or institutions."

13

14 **Section 14.** Section 90-7-317, MCA, is amended to read:

15 **"90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund
 16 provided for in 90-7-202(17).

17 (2) The authority shall deposit into the capital reserve account:

18 (a) funds from state appropriations received for deposit into the account, as provided in 90-7-319,
 19 for bonds issued to finance capital projects for community health facilities that contract with the state to
 20 provide health care services, ~~or~~ bonds issued to finance the facilities described in 90-7-220 and 90-7-221,
 21 or bonds used to finance prerelease centers that contract with the state;

22 (b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures
 23 of the authority authorizing their issuance;

24 (c) revenue from fees and charges imposed by the authority;

25 (d) income from the investment of funds belonging to the authority; and

26 (e) any other funds that may be available to the authority for the purpose of the account from any
 27 other source, including loans authorized under 90-7-320."

28

29 **NEW SECTION. Section 15. Procedure prior to financing projects.** In addition to meeting the other
 30 requirements contained in this chapter or in state or federal law, the following requirements must be met

1 before financing is finalized and provided for a prerelease center:

2 (1) A contract must be approved by the authority and executed by the department of corrections
3 and the institution.

4 (2) The department of corrections, the institution, and any other third parties involved in the
5 financing are required to execute, covenant, deliver, and assign as necessary all documents,
6 representations, assignments, collateral, and any other conditions that the authority or its agents,
7 underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority,
8 the department of corrections, and the state from default, financial loss, or other harm and to provide an
9 opportunity to lower borrowing costs.

10 (3) The prerelease center project must be determined to be in the public interest and to be
11 consistent with the legislative policies governing the provision of the services.

12 (4) The applicant shall submit a statement indicating that contracts to construct the prerelease
13 center project will require all contractors to comply with Title 18, chapter 2, part 4.

14 (5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement
15 regarding a prerelease center project to provide for the payment of debt service on the bonds issued to
16 finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs
17 and expenses of issuing and servicing the bonds.

18
19 **NEW SECTION. Section 16. Public hearing.** The department of corrections, when seeking funding
20 under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the
21 public interest. The decision regarding public interest is determined by the department of corrections, not
22 the authority. Notice of the public hearing must be published in a newspaper of general circulation in the
23 community where the prerelease center would be located. Notice must be given at least once a week for
24 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing,
25 the general nature of the prerelease center project, the name of the borrower or user of the project, the
26 estimated cost of the project, and the maximum amount of financing assistance to be provided under this
27 chapter. A determination by the department of corrections that a prerelease center project is in the public
28 interest does not require that it be financed under this chapter.

29
30 **NEW SECTION. Section 17. Additional reserves, funds, and accounts.** The authority may in its

1 discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to
2 further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution
3 or agreements.

4

5 NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 19. Codification instruction.** [Sections 15 through 17] are intended to be
11 codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to
12 [sections 15 through 17].

13

14 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 1997.

15

-END-

HOUSE BILL NO. 136

INTRODUCED BY WISEMAN

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT ~~ESTABLISHING THE MONTANA PUBLIC PRIVATE PARTNERSHIP BOND ACT;~~ PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE CORRECTIONAL SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE BOARD OF INVESTMENTS MONTANA HEALTH FACILITY AUTHORITY TO ADMINISTER THE PROGRAM; AMENDING SECTIONS 90-7-102, 90-7-103, 90-7-104, 90-7-111, 90-7-202, 90-7-204, 90-7-211, 90-7-213, 90-7-214, 90-7-303, 90-7-304, 90-7-305, 90-7-307, AND 90-7-317, MCA; AND PROVIDING AN EFFECTIVE DATE."

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6 ~~BOND ACT~~; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE
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 20 acquiring any land to which ~~such~~ the building or structure may be moved, the cost of all machinery and
 21 equipment, financing charges, interest prior to and during construction and, if judged advisable by the
 22 authority, for a period after completion of ~~such~~ construction, and the cost of financing the facility, including
 23 interest on bonds and notes issued by the authority to finance the facility;

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

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

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

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

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

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

2 (9) all other expenses necessary and incidental to the construction and acquisition of the facility,
3 the financing of ~~such~~ construction, and the acquisition and placing of the facility into operation."
4

5 **Section 3.** Section 90-7-104, MCA, is amended to read:

6 **"90-7-104. Eligible health facility.** (1) Eligible ~~health~~ facility means any structure or building used
7 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; center for persons
8 with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing
9 school; medical teaching facility; laboratory; dental care facility; prerelease center; or other structure or
10 facility related to any of the foregoing or required or useful for the operation of a ~~health~~ facility. These
11 related facilities include supporting service structures and all necessary, useful, and related equipment,
12 furnishings, and appurtenances and include without limitation the acquisition, preparation, and development
13 of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

14 (2) An eligible ~~health~~ facility does not include such items as food, fuel, supplies, or other items that
15 are customarily considered as current operating expenses, ~~and~~ an eligible ~~health~~ facility does not include
16 a structure used or to be used primarily for sectarian instruction or study or as a place for devotional
17 activities or religious worship."
18

19 **Section 4.** Section 90-7-111, MCA, is amended to read:

20 **"90-7-111. Credit of state not pledged -- statement on obligation required.** (1) Obligations issued
21 under the provisions of this chapter do not constitute a debt, liability, obligation, or pledge of the faith and
22 credit of the state but are payable solely from the revenues or assets of the ~~health~~ institution being
23 financed.

24 (2) An obligation issued under this chapter must contain on the face ~~thereof~~ of the obligation a
25 statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt
26 of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment
27 of the principal of or the interest on the obligation."
28

29 **Section 5.** Section 90-7-202, MCA, is amended to read:

30 **"90-7-202. Powers of authority.** The authority may:

- 1 (1) sue and be sued;
- 2 (2) have a seal;
- 3 (3) adopt all procedural and substantive rules necessary for the administration of this chapter;
- 4 (4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or
- 5 refunding bonds;
- 6 (5) invest any funds obtained from the issuance of bonds and notes ~~which~~ that are not required
- 7 for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title
- 8 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for
- 9 investment, must be deposited in an enterprise fund to the credit of the authority;
- 10 (6) contract in its own name for the investment of funds, borrowing of funds, or any other
- 11 purposes it considers appropriate to carry out the purposes of this chapter;
- 12 (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;
- 13 (8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding
- 14 of eligible facilities;
- 15 (9) enter into agreements or make advance commitments to insure repayments required by loan
- 16 agreements made by a lender. ~~Such~~ The agreements are subject to terms and conditions established by the
- 17 authority.
- 18 (10) sell, purchase, or insure loans to finance the costs of eligible facilities;
- 19 (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state,
- 20 a municipality, or any other source;
- 21 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality
- 22 of the state, a municipality, a private organization, or any other entity consistent with the exercise of any
- 23 power under this chapter;
- 24 (13) with regard to property:
 - 25 (a) acquire real or personal property or any right, interest, or easement ~~therein~~ in the property by
 - 26 gift, purchase, transfer, foreclosure, lease, or otherwise;
 - 27 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose ~~thereof~~ of property;
 - 28 (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control
 - 29 or custody;
 - 30 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,

- 1 including any equity or right of redemption;
- 2 (e) make any disposition by public or private sale, with or without public bidding;
- 3 (f) commence any action to protect or enforce any right conferred upon it by any law, mortgage,
4 contract, or other agreement;
- 5 (g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of
6 it in lieu of foreclosure; and
- 7 (h) operate, manage, lease, dispose of, and otherwise deal with ~~such~~ property in any manner
8 necessary or desirable to protect its interests or the holders of its bonds or notes if ~~such~~ the action is
9 consistent with any agreement with ~~such~~ the holders;
- 10 (14) service, contract, and pay for the servicing of loans;
- 11 (15) provide general technical services in the analysis, planning, design, processing, construction,
12 rehabilitation, and management of eligible ~~health~~ facilities whenever considered appropriate;
- 13 (16) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the
14 modification of the rate of interest, time, or payment of any installment of principal, interest, or security
15 or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage
16 loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement
17 with bondholders and noteholders;
- 18 (17) collect reasonable interest, fees, and charges from participating institutions in connection with
19 making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments,
20 and other evidences of indebtedness. The interest, fees, and charges ~~shall~~ must be deposited to an
21 enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required
22 to pay the costs of the authority, including operating and administrative expenses and reasonable
23 allowances for losses that may be incurred.
- 24 (18) perform any other acts necessary and convenient to carry out the purposes of this chapter."
25

26 **Section 6.** Section 90-7-204, MCA, is amended to read:

27 **"90-7-204. Agent of the authority.** The authority may designate a participating ~~health~~ institution
28 as its agent for determining the location and character of an eligible ~~health~~ facility undertaken by that
29 institution under the provisions of this chapter. As agent, the institution may acquire, construct,
30 reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into

1 contracts for any and all such purposes, including contracts for the management and operation of the
2 facility."

3

4 **Section 7.** Section 90-7-211, MCA, is amended to read:

5 **"90-7-211. Necessary expenses -- fees.** (1) All expenses of the authority incurred in carrying out
6 the provisions of this chapter are payable solely from funds provided under the authority of this chapter,
7 and no liability may not be incurred by the authority beyond the extent to which money has been provided
8 under this chapter, except for the purposes of meeting the necessary expenses of initial organization and
9 operation and until ~~such~~ the date ~~as~~ that the authority derives money from funds provided under this
10 chapter. The authority may borrow money for necessary expenses of organization and operation. ~~Such~~ The
11 borrowed money must be repaid within a reasonable time after the authority receives funds provided for
12 under this chapter.

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

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

24 (b) necessary administrative expenses; and

25 (c) reserves for anticipated future expenses.

26 (3) The authority may, for a negotiated fee, retain the services of any other public or private
27 person, firm, partnership, association, or corporation for the furnishing of services and data for use by the
28 authority in determining the need for and location of any eligible ~~health~~ facility for which application is being
29 made or for ~~such~~ other services or surveys ~~as~~ that the authority considers necessary to carry out the
30 purposes of this chapter."

1 **Section 8.** Section 90-7-213, MCA, is amended to read:

2 **"90-7-213. Loan limitation.** ~~No~~ A loan made by the authority may not exceed the total cost of the
3 eligible health facility being financed as ~~such cost~~ is determined by the participating institution and approved
4 by the authority."

5
6 **Section 9.** Section 90-7-214, MCA, is amended to read:

7 **"90-7-214. Restriction on operating facility -- leases.** (1) The authority may not operate an eligible
8 health facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate
9 to pay the principal and interest due on bonds and to create and maintain ~~such~~ reserves and accounts for
10 depreciation as the authority determines necessary.

11 (2) The lease may contain terms and conditions that the authority considers proper. The lease may
12 be terminated upon failure of the participating health institution to comply with any obligation under the
13 lease. The lease may include a renewal or an option to purchase provision upon ~~such~~ terms or conditions
14 as the authority considers desirable.

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

17

18 **Section 10.** Section 90-7-303, MCA, is amended to read:

19 **"90-7-303. Procedure for issuance of bonds.** (1) The authority may not undertake to finance any
20 eligible health facility unless, prior to the issuance of any bonds or notes, the members find that ~~such the~~
21 facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health
22 care facilities or by a prerelease center for purpose of preparing persons to reenter society.

23 (2) The authority may not allow the proceeds of any bonds or notes to be expended for any health
24 care facility unless ~~such the~~ facility has been reviewed and approved by the appropriate regional and state
25 health planning boards and has received any approval required by Title 50, chapter 5, part 3.

26 (3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
27 until it has been shown that ~~such the~~ facility is financially feasible and that there will be sufficient revenues
28 to ~~assure~~ ensure that principal and interest payments are made when they become due.

29 (4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
30 until it has considered the ability of the health institution to operate ~~such a the~~ facility based on the health

1 institution's experience and expertise.

2 (5) The authority ~~must insure~~ shall ensure that its financings consistently provide fair and realistic
3 terms and covenants sufficient to protect the position of the lenders or bondholders."

4

5 **Section 11.** Section 90-7-304, MCA, is amended to read:

6 **"90-7-304. Security of bondholders.** (1) The payment of the principal of and interest on any bonds
7 issued under this chapter must be secured by a pledge of the revenues out of which ~~such~~ the bonds are
8 made payable.

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

11 (a) a mortgage covering all or any part of the participating ~~health~~ institution;

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

13 (c) ~~such other~~ another security device ~~as may be~~ that is considered most advantageous by the
14 authority.

15 (3) The proceedings under which the bonds are authorized to be issued under the provisions of this
16 chapter and any mortgage given to secure the ~~same~~ bonds, including a mortgage given by the borrower
17 or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds,
18 as the authority considers advisable. ~~Such~~ The provisions may not be in conflict with the provisions of this
19 chapter, including without limitation provisions relating to:

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

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

23 (c) maintenance and insurance of ~~such~~ the facility;

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

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

27 (4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage,
28 including a mortgage given by the lessee or borrower, securing ~~such~~ bonds may provide that in the event
29 of a default in the payment of the principal of or the interest on ~~such~~ the bonds or in the performance of
30 any agreement contained in ~~such~~ the proceedings or mortgage, ~~such~~ the payment and performance may

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

4 (5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide
 5 that, in the event of a default in the payment ~~thereof~~ of the bonds or the violation of any agreement
 6 contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in
 7 equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the
 8 mortgage or the holder of any of the bonds secured ~~thereby~~ by the mortgage may become the purchaser
 9 at any foreclosure sale if ~~he~~ the trustee is the highest bidder ~~therefor~~. ~~No~~ A breach of ~~any such an~~
 10 agreement may not impose any pecuniary liability upon the authority."

11
 12 **Section 12.** Section 90-7-305, MCA, is amended to read:

13 **"90-7-305. Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued
 14 under this chapter may be secured by a trust agreement between the authority and a corporate trustee,
 15 which may be any trust company or bank having the powers of a trust company in Montana. The trust
 16 agreement or the resolution providing for the issuance of ~~such~~ bonds may pledge or assign the revenues
 17 to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project
 18 or any portion ~~thereof~~ of the project. The trust agreement or resolution providing for the issuance of ~~such~~
 19 bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders
 20 as may be reasonable and proper and not in violation of law, including particularly ~~such~~ provisions as that
 21 have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any
 22 bank or trust company incorporated under the laws of this state, which may act as depository of the
 23 proceeds of bonds or of revenues or other money, may furnish ~~such~~ indemnifying bonds or pledge ~~such~~
 24 securities as may be required by the authority. ~~Any such~~ A trust agreement may set forth the rights and
 25 remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action
 26 by bondholders. In addition, ~~any such a~~ a trust agreement or resolution may contain ~~such~~ other provisions
 27 as that the authority may consider reasonable and proper for the security of the bondholders. All expenses
 28 incurred in carrying out ~~such~~ the trust agreement or resolution may be treated as a part of the cost of the
 29 operation of an eligible ~~health~~ facility."

1 **Section 13.** Section 90-7-307, MCA, is amended to read:

2 "**90-7-307. Conveyance of title to health institution.** When the principal and interest on bonds
3 issued by the authority to finance the cost of eligible ~~health~~ facilities or to refinance outstanding
4 indebtedness of one or more participating ~~health~~ institutions, including any refunding bonds issued to refund
5 and refinance ~~such~~ bonds, have been fully paid and retired or when adequate provision has been made to
6 fully pay and retire the ~~same~~ bonds and all other conditions of the resolution, lease, trust indenture, and
7 mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the
8 ~~same~~ bonds have been satisfied and the lien of the mortgage or deed of trust or any other form of security
9 arrangement has been released in accordance with the provisions ~~thereof~~ of the security arrangement, the
10 authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to
11 deed of trust or any other form of security arrangement to secure the bonds to the participating ~~health~~
12 institution or institutions."

13

14 **Section 14.** Section 90-7-317, MCA, is amended to read:

15 "**90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund
16 provided for in 90-7-202(17).

17 (2) The authority shall deposit into the capital reserve account:

18 (a) funds from state appropriations received for deposit into the account, as provided in 90-7-319,
19 for bonds issued to finance capital projects for community health facilities that contract with the state to
20 provide health care services, ~~or~~ bonds issued to finance the facilities described in 90-7-220 and 90-7-221,
21 or bonds used to finance prerelease centers that contract with the state;

22 (b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures
23 of the authority authorizing their issuance;

24 (c) revenue from fees and charges imposed by the authority;

25 (d) income from the investment of funds belonging to the authority; and

26 (e) any other funds that may be available to the authority for the purpose of the account from any
27 other source, including loans authorized under 90-7-320."

28

29 **NEW SECTION. Section 15. Procedure prior to financing projects.** In addition to meeting the other
30 requirements contained in this chapter or in state or federal law, the following requirements must be met

1 before financing is finalized and provided for a prerelease center:

2 (1) A contract must be approved by the authority and executed by the department of corrections
3 and the institution.

4 (2) The department of corrections, the institution, and any other third parties involved in the
5 financing are required to execute, covenant, deliver, and assign as necessary all documents,
6 representations, assignments, collateral, and any other conditions that the authority or its agents,
7 underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority,
8 the department of corrections, and the state from default, financial loss, or other harm and to provide an
9 opportunity to lower borrowing costs.

10 (3) The prerelease center project must be determined to be in the public interest and to be
11 consistent with the legislative policies governing the provision of the services.

12 (4) The applicant shall submit a statement indicating that contracts to construct the prerelease
13 center project will require all contractors to comply with Title 18, chapter 2, part 4.

14 (5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement
15 regarding a prerelease center project to provide for the payment of debt service on the bonds issued to
16 finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs
17 and expenses of issuing and servicing the bonds.

18

19 **NEW SECTION. Section 16. Public hearing.** The department of corrections, when seeking funding
20 under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the
21 public interest. The decision regarding public interest is determined by the department of corrections, not
22 the authority. Notice of the public hearing must be published in a newspaper of general circulation in the
23 community where the prerelease center would be located. Notice must be given at least once a week for
24 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing,
25 the general nature of the prerelease center project, the name of the borrower or user of the project, the
26 estimated cost of the project, and the maximum amount of financing assistance to be provided under this
27 chapter. A determination by the department of corrections that a prerelease center project is in the public
28 interest does not require that it be financed under this chapter.

29

30 **NEW SECTION. Section 17. Additional reserves, funds, and accounts.** The authority may in its

1 discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to
2 further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution
3 or agreements.

4

5 NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 19. Codification instruction.** [Sections 15 through 17] are intended to be
11 codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to
12 [sections 15 through 17].

13

14 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 1997.

15

-END-

1 HOUSE BILL NO. 136

2 INTRODUCED BY WISEMAN

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS

4
 5 A BILL FOR AN ACT ENTITLED: "~~AN ACT ESTABLISHING THE MONTANA PUBLIC PRIVATE PARTNERSHIP~~
 6 ~~BOND ACT~~; PROVIDING FOR THE ISSUANCE OF REVENUE BONDS TO PROVIDE FUNDING FOR STATE
 7 CORRECTIONAL SERVICES BEING CONTRACTED TO A PRIVATE ENTITY; AUTHORIZING THE ~~BOARD OF~~
 8 ~~INVESTMENTS MONTANA HEALTH FACILITY AUTHORITY~~ TO ADMINISTER THE PROGRAM; AMENDING
 9 SECTIONS 90-7-102, 90-7-103, 90-7-104, 90-7-111, 90-7-202, 90-7-204, 90-7-211, 90-7-213, 90-7-214,
 10 90-7-303, 90-7-304, 90-7-305, 90-7-307, AND 90-7-317, MCA; AND PROVIDING AN EFFECTIVE DATE."

11
12 ~~STATEMENT OF INTENT~~

13 ~~A statement of intent is required for this bill because the bill gives the board of investments~~
 14 ~~authority to adopt administrative rules. In adopting rules, the board should look to existing rules that have~~
 15 ~~been adopted for similar programs, such as the health facility authority. The rules should be designed to~~
 16 ~~implement the policy provided for in {section 2}.~~

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 (Refer to Introduced Bill)

20 Strike everything after the enacting clause and insert:

21
22 **Section 1.** Section 90-7-102, MCA, is amended to read:23 **"90-7-102. Definitions.** As used in this chapter, unless the context requires otherwise, the
24 following definitions apply:

25 (1) "Authority" means the Montana health facility authority created in 2-15-1815.

26 (2) "Capital reserve account" means the account established in 90-7-317.

27 (3) "Costs" means costs allowed under 90-7-103.

28 (4) ~~"Health facility"~~ **"Facility"** means any health care facility or prerelease center provided for in
29 90-7-104.30 (5) ~~"Health institution"~~ **"Institution"** means any public or private;

1 (a) nonprofit hospital, corporation, or other organization authorized to provide or operate a health
2 facility in this state; or

3 (b) NONPROFIT prerelease center, corporation, or other organization authorized to operate a
4 prerelease center in this state.

5 (6) "Participating ~~health~~ institution" means a health institution or prerelease center that undertakes
6 the financing, refunding, or refinancing of obligations on the construction or acquisition of a ~~health~~ facility
7 pursuant to the provisions of this chapter.

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

11

12 **Section 2.** Section 90-7-103, MCA, is amended to read:

13 "**90-7-103. Allowable costs.** Costs eligible for financing or refinancing under this chapter include:

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

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

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

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

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

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

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

2 (9) all other expenses necessary and incidental to the construction and acquisition of the facility,
3 the financing of ~~such~~ construction, and the acquisition and placing of the facility into operation."

4
5 **Section 3.** Section 90-7-104, MCA, is amended to read:

6 **"90-7-104. Eligible health facility.** (1) Eligible ~~health~~ facility means any structure or building used
7 as a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101; center for persons
8 with developmental disabilities; center for the handicapped; chemical dependency treatment center; nursing
9 school; medical teaching facility; laboratory; dental care facility; prerelease center; or other structure or
10 facility related to any of the foregoing or required or useful for the operation of a ~~health~~ facility. These
11 related facilities include supporting service structures and all necessary, useful, and related equipment,
12 furnishings, and appurtenances and include without limitation the acquisition, preparation, and development
13 of all lands and real and personal property necessary or convenient as a site for any of the foregoing.

14 (2) An eligible ~~health~~ facility does not include such items as food, fuel, supplies, or other items that
15 are customarily considered as current operating expenses, and an eligible ~~health~~ facility does not include
16 a structure used or to be used primarily for sectarian instruction or study or as a place for devotional
17 activities or religious worship."

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20 **"90-7-111. Credit of state not pledged -- statement on obligation required.** (1) Obligations issued
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22 credit of the state but are payable solely from the revenues or assets of the ~~health~~ institution being
23 financed.

24 (2) An obligation issued under this chapter must contain on the face ~~thereof~~ of the obligation a
25 statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt
26 of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment
27 of the principal of or the interest on the obligation."

28
29 **Section 5.** Section 90-7-202, MCA, is amended to read:

30 **"90-7-202. Powers of authority.** The authority may:

- 1 (1) sue and be sued;
- 2 (2) have a seal;
- 3 (3) adopt all procedural and substantive rules necessary for the administration of this chapter;
- 4 (4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or
- 5 refunding bonds;
- 6 (5) invest any funds obtained from the issuance of bonds and notes ~~which~~ that are not required
- 7 for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title
- 8 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for
- 9 investment, must be deposited in an enterprise fund to the credit of the authority;
- 10 (6) contract in its own name for the investment of funds, borrowing of funds, or any other
- 11 purposes it considers appropriate to carry out the purposes of this chapter;
- 12 (7) participate with any financial institution in the purchase or guarantee of any loan or obligation;
- 13 (8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding
- 14 of eligible facilities;
- 15 (9) enter into agreements or make advance commitments to insure repayments required by loan
- 16 agreements made by a lender. ~~Such~~ The agreements are subject to terms and conditions established by the
- 17 authority.
- 18 (10) sell, purchase, or insure loans to finance the costs of eligible facilities;
- 19 (11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state,
- 20 a municipality, or any other source;
- 21 (12) enter into contracts or other transactions with a federal agency, an agency or instrumentality
- 22 of the state, a municipality, a private organization, or any other entity consistent with the exercise of any
- 23 power under this chapter;
- 24 (13) with regard to property:
 - 25 (a) acquire real or personal property or any right, interest, or easement ~~therein~~ in the property by
 - 26 gift, purchase, transfer, foreclosure, lease, or otherwise;
 - 27 (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose ~~thereof~~ of property;
 - 28 (c) hold, sell, assign, or otherwise dispose of any mortgage or loan owned by it or in its control
 - 29 or custody;
 - 30 (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,

1 including any equity or right of redemption;

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

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

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

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

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

11 (15) provide general technical services in the analysis, planning, design, processing, construction,
12 rehabilitation, and management of eligible ~~health~~ facilities whenever considered appropriate;

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

18 (17) collect reasonable interest, fees, and charges from participating institutions in connection with
19 making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments,
20 and other evidences of indebtedness. The interest, fees, and charges ~~shall~~ must be deposited to an
21 enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required
22 to pay the costs of the authority, including operating and administrative expenses and reasonable
23 allowances for losses that may be incurred.

24 (18) perform any other acts necessary and convenient to carry out the purposes of this chapter."
25

26 **Section 6.** Section 90-7-204, MCA, is amended to read:

27 "**90-7-204. Agent of the authority.** The authority may designate a participating ~~health~~ institution
28 as its agent for determining the location and character of an eligible ~~health~~ facility undertaken by that
29 institution under the provisions of this chapter. As agent, the institution may acquire, construct,
30 reconstruct, renovate, replace, improve, maintain, repair, operate, lease, as lessee or lessor, and enter into

1 contracts for any and all such purposes, including contracts for the management and operation of the
2 facility."

3

4 **Section 7.** Section 90-7-211, MCA, is amended to read:

5 **"90-7-211. Necessary expenses -- fees.** (1) All expenses of the authority incurred in carrying out
6 the provisions of this chapter are payable solely from funds provided under the authority of this chapter,
7 and ~~no~~ liability may not be incurred by the authority beyond the extent to which money has been provided
8 under this chapter, except for the purposes of meeting the necessary expenses of initial organization and
9 operation and until ~~such~~ the date as that the authority derives money from funds provided under this
10 chapter. The authority may borrow money for necessary expenses of organization and operation. ~~Such~~ The
11 borrowed money must be repaid within a reasonable time after the authority receives funds provided for
12 under this chapter.

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

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

24 (b) necessary administrative expenses; and

25 (c) reserves for anticipated future expenses.

26 (3) The authority may, for a negotiated fee, retain the services of any other public or private
27 person, firm, partnership, association, or corporation for the furnishing of services and data for use by the
28 authority in determining the need for and location of any eligible ~~health~~ facility for which application is being
29 made or for ~~such~~ other services or surveys as that the authority considers necessary to carry out the
30 purposes of this chapter."

1 **Section 8.** Section 90-7-213, MCA, is amended to read:

2 "90-7-213. **Loan limitation.** ~~No~~ A loan made by the authority may not exceed the total cost of the
3 eligible ~~health~~ facility being financed as ~~such cost~~ is determined by the participating institution and approved
4 by the authority."

5

6 **Section 9.** Section 90-7-214, MCA, is amended to read:

7 "90-7-214. **Restriction on operating facility -- leases.** (1) The authority may not operate an eligible
8 ~~health~~ facility as a business other than as a lessee or lessor. The lease must provide for rentals adequate
9 to pay the principal and interest due on bonds and to create and maintain ~~such~~ reserves and accounts for
10 depreciation as the authority determines necessary.

11 (2) The lease may contain terms and conditions that the authority considers proper. The lease may
12 be terminated upon failure of the participating ~~health~~ institution to comply with any obligation under the
13 lease. The lease may include a renewal or an option to purchase provision upon ~~such~~ terms or conditions
14 as the authority considers desirable.

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

17

18 **Section 10.** Section 90-7-303, MCA, is amended to read:

19 "90-7-303. **Procedure for issuance of bonds.** (1) The authority may not undertake to finance any
20 eligible ~~health~~ facility unless, prior to the issuance of any bonds or notes, the members find that ~~such~~ the
21 facility will be operated by a health institution for the purpose of fulfilling its obligation to provide health
22 care facilities or by a prerelease center for purpose of preparing persons to reenter society.

23 (2) The authority may not allow the proceeds of any bonds or notes to be expended for any health
24 care facility unless ~~such~~ the facility has been reviewed and approved by the appropriate regional and state
25 health planning boards and has received any approval required by Title 50, chapter 5, part 3.

26 (3) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
27 until it has been shown that ~~such~~ the facility is financially feasible and that there will be sufficient revenues
28 to ~~assure~~ ensure that principal and interest payments are made when they become due.

29 (4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility
30 until it has considered the ability of the ~~health~~ institution to operate ~~such a~~ the facility based on the ~~health~~

1 institution's experience and expertise.

2 (5) The authority ~~must insure~~ shall ensure that its financings consistently provide fair and realistic
3 terms and covenants sufficient to protect the position of the lenders or bondholders."

4

5 **Section 11.** Section 90-7-304, MCA, is amended to read:

6 **"90-7-304. Security of bondholders.** (1) The payment of the principal of and interest on any bonds
7 issued under this chapter must be secured by a pledge of the revenues out of which ~~such~~ the bonds are
8 made payable.

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

11 (a) a mortgage covering all or any part of the participating ~~health~~ institution;

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

13 (c) ~~such other~~ another security device ~~as may be~~ that is considered most advantageous by the
14 authority.

15 (3) The proceedings under which the bonds are authorized to be issued under the provisions of this
16 chapter and any mortgage given to secure the ~~same~~ bonds, including a mortgage given by the borrower
17 or lessee, may contain any agreements and provisions customarily contained in instruments securing bonds,
18 as the authority considers advisable. ~~Such~~ The provisions may not be in conflict with the provisions of this
19 chapter, including without limitation provisions relating to:

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

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

23 (c) maintenance and insurance of ~~such~~ the facility;

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

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

27 (4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage,
28 including a mortgage given by the lessee or borrower, securing ~~such~~ bonds may provide that in the event
29 of a default in the payment of the principal of or the interest on ~~such~~ the bonds or in the performance of
30 any agreement contained in ~~such~~ the proceedings or mortgage, ~~such~~ the payment and performance may

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

4 (5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide
 5 that, in the event of a default in the payment ~~thereof~~ of the bonds or the violation of any agreement
 6 contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in
 7 equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the
 8 mortgage or the holder of any of the bonds secured ~~thereby~~ by the mortgage may become the purchaser
 9 at any foreclosure sale if ~~he~~ the trustee is the highest bidder ~~therefor~~. ~~No~~ A breach of ~~any such an~~
 10 agreement may not impose any pecuniary liability upon the authority."
 11

12 **Section 12.** Section 90-7-305, MCA, is amended to read:

13 **"90-7-305. Trust agreement to secure bonds.** In the discretion of the authority, any bonds issued
 14 under this chapter may be secured by a trust agreement between the authority and a corporate trustee,
 15 which may be any trust company or bank having the powers of a trust company in Montana. The trust
 16 agreement or the resolution providing for the issuance of ~~such~~ bonds may pledge or assign the revenues
 17 to be received or proceeds of any contract or contracts pledged and may convey or mortgage the project
 18 or any portion ~~thereof~~ of the project. The trust agreement or resolution providing for the issuance of ~~such~~
 19 bonds may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders
 20 as may be reasonable and proper and not in violation of law, including particularly ~~such~~ provisions ~~as that~~
 21 have been specifically authorized to be included in any resolution of the authority authorizing bonds. Any
 22 bank or trust company incorporated under the laws of this state, which may act as depository of the
 23 proceeds of bonds or of revenues or other money, may furnish ~~such~~ indemnifying bonds or pledge ~~such~~
 24 securities as may be required by the authority. ~~Any such~~ A trust agreement may set forth the rights and
 25 remedies of the bondholders and of the trustee or trustees and may restrict the individual right of action
 26 by bondholders. In addition, ~~any such~~ a trust agreement or resolution may contain ~~such~~ other provisions
 27 ~~as that~~ the authority may consider reasonable and proper for the security of the bondholders. All expenses
 28 incurred in carrying out ~~such~~ the trust agreement or resolution may be treated as a part of the cost of the
 29 operation of an eligible ~~health~~ facility."
 30

1 **Section 13.** Section 90-7-307, MCA, is amended to read:

2 **"90-7-307. Conveyance of title to ~~health institution~~.** When the principal and interest on bonds
3 issued by the authority to finance the cost of eligible ~~health~~ facilities or to refinance outstanding
4 indebtedness of one or more participating ~~health~~ institutions, including any refunding bonds issued to refund
5 and refinance ~~such~~ bonds, have been fully paid and retired or when adequate provision has been made to
6 fully pay and retire the ~~same~~ bonds and all other conditions of the resolution, lease, trust indenture, and
7 mortgage or deed of trust or any other form of security arrangement, if any, authorizing and securing the
8 ~~same~~ bonds have been satisfied and the lien of the mortgage or deed of trust or any other form of security
9 arrangement has been released in accordance with the provisions ~~thereof~~ of the security arrangement, the
10 authority shall promptly convey its interest in the facilities and any other facilities mortgaged or subject to
11 deed of trust or any other form of security arrangement to secure the bonds to the participating ~~health~~
12 institution or institutions."

13

14 **Section 14.** Section 90-7-317, MCA, is amended to read:

15 **"90-7-317. Capital reserve account.** (1) There is a capital reserve account in the enterprise fund
16 provided for in 90-7-202(17).

17 (2) The authority shall deposit into the capital reserve account:

18 (a) funds from state appropriations received for deposit into the account, as provided in 90-7-319,
19 for bonds issued to finance capital projects for community health facilities that contract with the state to
20 provide health care services, ~~or~~ bonds issued to finance the facilities described in 90-7-220 and 90-7-221,
21 or bonds used to finance prerelease centers that contract with the state;

22 (b) proceeds from the sale of bonds or notes to the extent provided in the resolutions or indentures
23 of the authority authorizing their issuance;

24 (c) revenue from fees and charges imposed by the authority;

25 (d) income from the investment of funds belonging to the authority; and

26 (e) any other funds that may be available to the authority for the purpose of the account from any
27 other source, including loans authorized under 90-7-320."

28

29 **NEW SECTION. Section 15. Procedure prior to financing projects.** In addition to meeting the other
30 requirements contained in this chapter or in state or federal law, the following requirements must be met

1 before financing is finalized and provided for a prerelease center:

2 (1) A contract must be approved by the authority and executed by the department of corrections
3 and the institution.

4 (2) The department of corrections, the institution, and any other third parties involved in the
5 financing are required to execute, covenant, deliver, and assign as necessary all documents,
6 representations, assignments, collateral, and any other conditions that the authority or its agents,
7 underwriters, or attorneys may reasonably determine to be necessary to adequately protect the authority,
8 the department of corrections, and the state from default, financial loss, or other harm and to provide an
9 opportunity to lower borrowing costs.

10 (3) The prerelease center project must be determined to be in the public interest and to be
11 consistent with the legislative policies governing the provision of the services.

12 (4) The applicant shall submit a statement indicating that contracts to construct the prerelease
13 center project will require all contractors to comply with Title 18, chapter 2, part 4.

14 (5) Adequate provision must be made in the loan agreement, lease, or other credit arrangement
15 regarding a prerelease center project to provide for the payment of debt service on the bonds issued to
16 finance the project, to create and maintain reserves for payment of the debt service, and to meet all costs
17 and expenses of issuing and servicing the bonds.

18
19 **NEW SECTION. Section 16. Public hearing.** The department of corrections, when seeking funding
20 under this chapter, shall hold a public hearing to determine whether or not the proposed project is in the
21 public interest. The decision regarding public interest is determined by the department of corrections, not
22 the authority. Notice of the public hearing must be published in a newspaper of general circulation in the
23 community where the prerelease center would be located. Notice must be given at least once a week for
24 2 weeks prior to the date of the public hearing. The notice must include the time and place of the hearing,
25 the general nature of the prerelease center project, the name of the borrower or user of the project, the
26 estimated cost of the project, and the maximum amount of financing assistance to be provided under this
27 chapter. A determination by the department of corrections that a prerelease center project is in the public
28 interest does not require that it be financed under this chapter.

29
30 **NEW SECTION. Section 17. Additional reserves, funds, and accounts.** The authority may in its

1 discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to
2 further the accomplishment of the purposes of this chapter or to comply with the provisions of its resolution
3 or agreements.

4

5 NEW SECTION. **Section 18. Severability.** If a part of [this act] is invalid, all valid parts that are
6 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its
7 applications, the part remains in effect in all valid applications that are severable from the invalid
8 applications.

9

10 NEW SECTION. **Section 19. Codification instruction.** [Sections 15 through 17] are intended to be
11 codified as an integral part of Title 90, chapter 7, and the provisions of Title 90, chapter 7, apply to
12 [sections 15 through 17].

13

14 NEW SECTION. **Section 20. Effective date.** [This act] is effective July 1, 1997.

15

-END-