House BILL NO. 397

INTRODUCED BY [signature]

BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR CONTINGENT STATE PAYMENTS ON CERTAIN SCHOOL GENERAL OBLIGATION BONDS; PROVIDING ELIGIBILITY CRITERIA AND PAYMENT PROCEDURES; STATUTORILY APPROPRIATING THE GENERAL FUND FOR THE PAYMENTS; AMENDING SECTIONS 17-7-502 AND 20-9-440, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because the superintendent of public instruction is authorized to adopt rules concerning certificates of eligibility for a school district issuing general obligation bonds. The purpose of this bill is to enhance the marketability of school district bonds and achieve a lower interest rate for the bonds by providing for an intercept payment mechanism, and not to create a general obligation of the state.

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

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

(1) "Certificate of eligibility" means a certificate issued by the board pursuant to [section 2].

(2) "District" means an elementary school district, a high school district, or a K-12 school district.

(3) "Paying agent" means the bank or other entity at whose office principal of and interest on a school district issue is payable.

(4) "Superintendent" means the superintendent of public instruction provided for in 20-3-101.

NEW SECTION. **Section 2. Certificate of eligibility.** (1) A district may request that the superintendent issue a certificate evidencing eligibility for the state's assistance under [section 3].

(2) A request must be accompanied by payment of a fee set by the superintendent for processing

the application and any information requested by the superintendent. The information must include:

(a) a copy of the certificate indicating approval of the school bond proposal as provided in 20-9-428; and

(b) a copy of the trustee's resolution to issue bonds as provided in 20-9-429. The resolution must include a covenant to provide the following documents before the delivery of bonds to the underwriter or purchaser:

(i) a copy of the official statement or other offering document for the bonds;

(ii) a copy of the attorney general's report on the examination of the validity of the bonds as provided in 20-9-463;

(iii) a copy of the agreement, if any, with the paying agent for the bonds; and

(iv) the name, address, and telephone number of the paying agent.

(3) If, after reviewing the request, the superintendent determines the district is eligible, the superintendent shall issue the certificate to the requesting district. The certificate of eligibility is valid for 1 year.

(4) If a principal and interest payment is made for a district under [section 3], the district may not receive a certificate of eligibility for additional bonds until:

(a) all payment obligations of the district to the superintendent under [section 3] are satisfied; and

(b) the district has submitted a corrective action plan as requested by the superintendent.

(5) A district may not receive a certificate of eligibility if the annual principal and interest payments on the bonds for which a certificate of eligibility is sought would exceed its annual payment of state guaranteed tax base aid, BASE aid, and state reimbursement for school facilities.

NEW SECTION. **Section 3. State assistance to guarantee timely payment of school district obligations.** (1) The paying agent for an issue of district bonds described in a certificate of eligibility shall notify the superintendent and the district if the agent has not received funds sufficient for the payment of principal and interest on the bonds on the business day immediately prior to the date on which the payment is due. The notice must include the amount of funds received and the amount required for payment of the principal and interest. The notice may be made by telephone, fax, or similar communication, followed by written verification of the fact.

(2) The superintendent shall contact the district in order to determine if the district will be able to

make the payment by the date on which it is due.

(3) Unless the superintendent receives satisfactory assurance that the district will be able to make the payment by the date on which it is due, the superintendent shall forward to the paying agent the amount necessary to make the payment of the principal and interest on the bonds of the district. The general fund is statutorily appropriated, as provided in 17-7-502, to the superintendent for the payments. The superintendent shall withhold the amount paid on behalf of the district from the district's next payment of state guaranteed tax base aid, BASE aid, or state reimbursement for school facilities. If the amount of the next payment is insufficient to reimburse the amount paid under this subsection, the superintendent shall withhold amounts from each succeeding payment until the total amount paid on behalf of the district has been withheld.

(4) The amounts forwarded to the paying agent by the superintendent must be applied by the paying agent solely to the payment of the principal of and interest on the bonds of the district. The superintendent shall notify the county treasurer of the county in which the district is located and the chief financial officer of the district of the date and amount of the payment. If the amount received by a paying agent from the superintendent, together with amounts received by a paying agent from the district, exceeds the amount required to pay the principal and interest due, the paying agent shall promptly remit the excess to the superintendent for deposit in the general fund.

(5) This section may not be construed to require the state to continue the payment of state assistance to any district or to limit or prohibit the state from repealing or amending any law relating to the amount of guaranteed tax base aid, BASE aid, or state reimbursement for school facilities or the manner or timing of payment.

(6) Once a certificate of eligibility has been issued, the state pledges that it will not impair its obligation to the holders of any bond issued under [sections 1 through 3] as long as the bonds remain outstanding. This section may not be construed to create a debt of the state with respect to the bonds within the meaning of any state constitutional provision or to create any liability except to the extent provided in this section.

(7) If the superintendent is required to make a payment of principal or interest on bonds on behalf of a district, the superintendent shall request the district to prepare a corrective action plan, in a form prescribed by the superintendent, to ensure that future payments will be made when due.

(8) If a bond payment is made pursuant to this section because of the failure to collect property

taxes, the district may transfer the amount of any later collected delinquent property taxes levied for the bonds from the district's bond fund to the district's general fund.

Section 4. Section 17-7-502, MCA, is amended to read:

"**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706; 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; [section 3]; 20-26-1503; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150; 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123; 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for

supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates July 1, 2001.)"

Section 5. Section 20-9-440, MCA, is amended to read:

"**20-9-440. Payment of debt service obligations -- termination of interest.** (1) The county treasurer shall:

(a) maintain a separate debt service fund for each school district; ~~and shall~~

(b) credit all tax ~~moneys~~ money collected for debt service to ~~such~~ the fund; and

(c) use the ~~moneys~~ money credited to ~~such~~ the fund for the payment of debt service obligations in accordance with the school financial administration provisions of this title.

(2) The county treasurer shall pay from the debt service fund all amounts of interest and principal on school district bonds as ~~such~~ the interest or principal becomes due when the coupons or bonds are presented and surrendered for payment and shall pay all special improvement district assessments as the ~~same~~ assessments become due. If the bonds are held by the state of Montana, then all payments ~~shall~~ must be remitted to the state treasurer who shall cancel the coupons or bonds and return ~~such~~ the coupons or bonds to the county treasurer with ~~his~~ the state treasurer's receipt. If the bonds are not held by the state of Montana and the interest or principal is made payable at ~~some~~ a designated bank or financial institution, the county treasurer shall remit the amount due for interest or principal to ~~such~~ the bank or financial institution for payment against the surrender of the canceled coupons or bonds. If the state has made a payment of principal and interest on a school district's bonds under [section 3] from amounts withheld by the superintendent from the district's payment of guaranteed tax base aid or BASE aid, and tax money levied for the payments are in the debt service fund, the county treasurer shall transfer from the debt service fund to the district's general fund the amount of the payment made.

(3) Whenever any school district bond or installment on school district bonds ~~shall become~~ is due and payable, interest ~~shall cease~~ ceases on ~~such~~ that date unless there are not sufficient funds ~~are~~ available to pay ~~such~~ the bond when it is presented for payment or when payment of an installment is demanded. ~~In either case, interest~~ Interest on ~~such~~ the bond or installment ~~shall continue~~ continues until payment is made.

(4) Any installment on interest and principal on bonds held by the state that is not promptly paid when due ~~shall draw~~ draws interest at an annual rate of 6% from the date due until actual payment,

irrespective of the rate of interest on the bonds."

<u>NEW SECTION.</u> **Section 6. Codification instruction.** [Sections 1 through 3] are intended to be codified as an integral part of Title 20, chapter 9, part 4, and the provisions of Title 20, chapter 9, part 4, apply to [sections 1 through 3].

<u>NEW SECTION.</u> **Section 7. Applicability.** [This act] applies to general obligation bonds issued by a school district pursuant to 20-9-401 through 20-9-465 on or after July 1, 1997.

<u>NEW SECTION.</u> **Section 8. Effective date.** [This act] is effective July 1,1997.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0397, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act providing for contingent state payments on certain school general obligation bonds; providing eligibility criteria and payment procedures; statutorily appropriating the general fund for the payments.

ASSUMPTIONS:

1. Each year, ten school districts will request that the State Superintendent issue a certificate evidencing the district's eligibility for state assistance.

2. The State Superintendent will charge each district that applies for a certificate a fee of $500 to pay for the cost of processing the district's application.

3. All general obligation bonds issued by school districts on or after July 1, 1997 will be issued with semiannual interest and principal payments due on dates subsequent to the receipt of semiannual property tax collections.

4. The paying agent for a district's bonds will receive sufficient funds in time to pay principal and interest due on the district's bonds whenever there is sufficient money available in all funds of the district to make the payment. That is, the provisions in section 20-2-212(8), MCA, will prevail.

5. During FY98 and FY99, the State will not be required to forward funds to any paying agent for school district bonds.

FISCAL IMPACT:

Expenditures:	FY98 Difference	FY99 Difference
OPI-certification reviews	5,000	5,000
Funding:		
General Fund (01)	5,000	5,000
Revenue:		
General Fund - certificate fees	5,000	5,000
Net impact on fund balance (revenue minus expenditure)		
General Fund	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
The guarantee of timely payment on general obligation bonds of school districts will improve the marketability of these bonds, possibly resulting in reduced interest rates or bond issuance costs.

TECHNICAL NOTES:
1.To be eligible for a certificate, Section 2(5) requires the total of a district's BASE aid, guaranteed tax base aid and school facility payments to equal or exceed the district's annual debt service obligation. This comparison can only be made for the first year of a bond issue, since a district's BASE aid, guaranteed tax base aid and school facility payments will vary between years. It's possible that, at some point during the life of the bond issue, a district's total annual BASE aid, guaranteed tax base aid and school facility payments will fall below the district's annual debt service obligation

2.OPI will need a general fund appropriation to pay costs associated with processing district applications from fees charged for this purpose.

Dave Lewis 2-5-97

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

ROYAL JOHNSON, PRIMARY SPONSOR DATE

HB 397