



Montana Legislative Services Division
Legal Services Office

March 22, 2005

Representative Tom Facey
418 Plymouth Street
Missoula, Montana 59801

Dear Representative Facey:

I am writing in response to your request for an analysis of whether the loan and line of credit provided for in section 9 of House Bill No. 124 require a two-thirds vote of each house of the Legislature because of the creation of a state debt. The loan and line of credit are to be issued pursuant to the Municipal Finance Consolidation Act of 1983 authorized in Title 17, chapter 5, part 16, MCA.

As you are aware, a great deal of concern has been expressed concerning the use of loans made pursuant to Title 17, chapter 5, part 16, MCA. It is my opinion that the distinctions made in Senate Bill No. 288 properly characterize whether a loan made pursuant to Title 17, chapter 5, part 16, MCA, constitutes a state debt. Senate Bill No. 288 provides that a loan for which the security is an enterprise or internal service fund source may be approved by a simple majority vote of the Legislature. A loan for which the security is a general fund appropriation, a general fund revenue source, or any type of tax or fee imposed by the Legislature must be approved by a two-thirds vote of the members of each house of the Legislature and must include language authorizing the creation of a state debt under Article VIII, section 8, of the Montana constitution.

There are multiple funding sources contained in House Bill No. 124. House Bill No. 124 does not specify the type of account into which premiums paid are deposited nor the type of account into which the general fund incentive credits are deposited. It would be possible to create an enterprise account into which premium payments are deposited. Section 17-2-102, MCA, provides that the proprietary fund category in the state treasury, includes:

- (1) the enterprise fund type, which accounts for operations:
 - (a) that are financed and operated in a manner similar to private business enterprises whenever the intent of the Legislature is that costs of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or
 - (b) whenever the Legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes; and
- (2) the internal service fund type, which accounts for the financing of goods or services provided by one department or agency to other departments or agencies of state government or to other governmental entities on a cost-reimbursed basis.

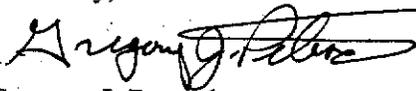
If premium payments are deposited in an enterprise fund account or an internal service account, the premiums could be pledged to the repayment of the loan or line of credit by majority vote of the Legislature. Whether the Board of Investments would consider the loan or line of credit to be

a prudent investment with only that source of revenue for repayment is beyond my ability to forecast.

As introduced, House Bill No. 124 allowed as the source of repayment for the loan or line of credit the premiums charged for the insurance and the state-funded incentive credits not used as a credit against premiums. The use of the credits funded by the state general fund would require a two-thirds vote. However, that provision has been removed from the bill. As indicated, if the source of repayment is from premiums deposited in an enterprise account or an internal service account, a majority vote is all that is required for the approval of House Bill No. 124.

I hope that I have adequately answered your question.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Petesch", written over a horizontal line.

Gregory J. Petesch
Director of Legal Services