

SENATE BILL NO. 34
INTRODUCED BY R. JOHNSON
BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT CHANGING THE NAME OF THE MONTANA HEALTH FACILITY AUTHORITY TO THE MONTANA FACILITY FINANCE AUTHORITY; ~~CLARIFYING MANAGEMENT OF THE AUTHORITY;~~ ALLOWING THE AUTHORITY TO MAKE GRANTS FROM ITS ENTERPRISE FUND TO INSTITUTIONS TO ASSIST IN DETERMINING ELIGIBILITY FOR OR COMPLIANCE WITH GOVERNMENT PROGRAMS; DELETING THE REQUIREMENT THAT AN APPRAISAL BE OBTAINED WHEN FINANCING AN ELIGIBLE FACILITY; REVISING THE REQUIREMENT FOR CERTAIN FINDINGS FOR THE ISSUANCE OF BONDS; AMENDING SECTIONS 2-15-1815, ~~2-18-103~~, 17-5-1302, 17-5-1312, 17-6-308, 90-7-101, 90-7-102, 90-7-103, 90-7-104, 90-7-202, ~~90-7-203~~, 90-7-211, 90-7-213, 90-7-214, 90-7-220, 90-7-301, 90-7-302, 90-7-303, AND 90-7-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-15-1815, MCA, is amended to read:

"2-15-1815. Montana health facility finance authority. (1) There is created a public body corporate designated as the Montana ~~health~~ facility finance authority. This authority is constituted a public instrumentality, and its exercise of the powers conferred by Title 90, chapter 7, ~~shall~~ must be considered and held to be the performance of an essential public function.

(2) The authority consists of seven members appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public accountability.

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

(4) The board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel; ~~as provided in 90-7-203, and its executive director and associate director are exempt from the provisions of Title 2, chapter 18, parts 1 through 3 and 10. The board shall hire and prescribe the duties and annual salaries of the executive director and associate director.~~

~~Section 2.~~ Section ~~2-18-103~~, MCA, is amended to read:

~~"2-18-103. Officers and employees excepted. Parts 1 through 3 and 10 of this chapter do not apply to the following officers and employees in state government:~~

- ~~(1) elected officials;~~
- ~~(2) county assessors and their chief deputies;~~
- ~~(3) employees of the office of consumer counsel;~~
- ~~(4) judges and employees of the judicial branch;~~
- ~~(5) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;~~
- ~~(6) officers or members of the militia;~~
- ~~(7) agency heads appointed by the governor;~~
- ~~(8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;~~
- ~~(9) academic and professional administrative personnel and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;~~
- ~~(10) investment officer, assistant investment officer, executive director, and five professional staff positions of the board of investments;~~
- ~~(11) four professional staff positions under the board of oil and gas conservation;~~
- ~~(12) assistant director for security of the Montana state lottery;~~
- ~~(13) executive director and employees of the state compensation insurance fund;~~
- ~~(14) state racing stewards employed by the executive secretary of the Montana board of horseracing;~~
- ~~(15) executive director of the Montana wheat and barley committee;~~
- ~~(16) commissioner of banking and financial institutions;~~
- ~~(17) training coordinator for county attorneys;~~
- ~~(18) employees of an entity of the legislative branch consolidated, as provided in 5-2-504;~~
- ~~(19) executive director and associate director of the Montana facility finance authority."~~

Section 2. Section 17-5-1302, MCA, is amended to read:

"17-5-1302. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

- (1) "Allocation" means an allocation of a part of the volume cap to an issuer pursuant to this part.

- (2) "Board" means the board of examiners.
- (3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.
- (4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.
- (5) "Department" means the department of administration.
- (6) "Governmental bonds" means bonds other than private activity bonds.
- (7) "Issuer" means a state issuer or local issuer.
- (8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.
- (9) "Local portion" means that portion of the volume cap reserved for local issuers.
- (10) "Montana board of housing" (MBH) means the board created in 2-15-1814.
- (11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.
- (12) "Montana ~~health~~ facility finance authority" (~~MHFA~~) (MFFA) means the authority provided for in 2-15-1815.
- (13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established under Title 20, chapter 26, part 11.
- (14) "Private activity bonds" (PABs) has the meaning prescribed under section 1301 of the tax act.
- (15) "State issuer" means the state and any agency ~~thereof~~ of the state authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation is considered an agency of the state.
- (16) "State portion" means that portion of the volume cap reserved for state issuers.
- (17) "Tax act" means the Tax Reform Act of 1986 enacted by the United States congress.
- (18) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act."

Section 3. Section 17-5-1312, MCA, is amended to read:

"17-5-1312. Allocation to state issuers. (1) Except as provided in subsection (5), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer, upon issuance of the bonds, shall pay 30 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit.

(3) The following set-asides must be made in each calendar year for the following state issuers:

State Issuer	Percentage	Allocation Amount
Board	4	\$4,200,000
MBH	41	43,050,000
MBI	25	26,250,000
MHESAC	26	27,300,000
MHFA <u>MFFA</u>	4	4,200,000
Total	100%	\$105,000,000

(4) Each set-aside expires on the first Monday in September.

(5) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and no state issuer is entitled to an allocation except from its set-aside unless otherwise provided by the governor.

(6) After the expiration date, the amount of the set-aside remaining unallocated is available for allocation by the department to issuers pursuant to 17-5-1316 without preference or priority."

Section 4. Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (4) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions determined by the board and must be repaid from revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal

tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. Until the department makes a loan pursuant to the provisions of part 5 of this chapter, the \$915,000 in funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans made pursuant to part 5 of this chapter are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana ~~health~~ facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

(5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations.

(6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance tax trust fund must be deposited in the coal severance tax permanent fund."

Section 5. Section 90-7-101, MCA, is amended to read:

"90-7-101. Short title. This chapter may be cited as the "Montana ~~Health~~ Facility Finance Authority Act"."

Section 6. 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 finance 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) "~~Facility~~" "Eligible facility" means any ~~health-care eligible facility or prerelease center provided for as defined~~ in 90-7-104.
- (5) (a) "Institution" means any public or private:

(i) nonprofit hospital, corporation, or other organization authorized to provide or operate ~~a health~~ an eligible facility in this state; or

(ii) nonprofit prerelease center, corporation, or other organization authorized to operate a prerelease center in this state.

(b) The term also includes the following, provided that the entity is a nonprofit entity or is controlled by one or more nonprofit entities:

(i) a network of health care providers, regardless of how it is organized;

(ii) an integrated health care delivery system;

(iii) a joint venture or partnership between or among health care providers;

(iv) a purchasing alliance composed of health care providers;

(v) any health insurers and third-party administrators that are participants in a system, network, joint venture, or partnership that provides health services through one or more health facilities.

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

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

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

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

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

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

- (3) reserves for principal and interest and for extensions, enlargements, additions, and improvements, including without limitation the cost of studies and surveys;
- (4) the costs for land title and mortgage guaranty policies;
- (5) the costs of plans, specifications, and architectural and engineering services;
- (6) the costs of legal, organization, marketing, or other special services;
- (7) the costs of financing, acquisition, demolition, construction, equipment, and site development of new and rehabilitated buildings;
- (8) the costs of rehabilitation, reconstruction, repair, or remodeling of existing buildings; and
- (9) all other expenses necessary and incidental to the construction and acquisition of the eligible facility, the financing of construction, and the acquisition and placing of the eligible facility into operation."

Section 8. Section 90-7-104, MCA, is amended to read:

"90-7-104. Eligible facility. (1) The term "eligible facility" means any structure or building suitable for use as:

- (a) a hospital, clinic, nursing home, or other health care facility as defined in 50-5-101;
- (b) a public health center, as defined in 7-34-2102;
- (c) a facility for persons with disabilities;
- (d) a chemical dependency treatment facility;
- (e) a nursing school;
- (f) a medical teaching facility;
- (g) a laboratory;
- (h) a dental care facility;
- (i) a prerelease center;
- (j) a diagnostic, treatment, or surgical center; or
- (k) a facility providing services for the elderly; or

~~(k)(l)~~ a structure or facility related to any of the uses enumerated in subsections (1)(a) through ~~(1)(j)~~ (1)(k) or required or useful for the operation of ~~a health~~ an eligible facility. These related facilities include supporting service structures and all necessary, useful, and related equipment, furnishings, and appurtenances and include without limitation the acquisition, preparation, and development of all lands and real and personal property necessary or convenient as a site for any of the uses enumerated in subsections (1)(a) through ~~(1)(j)~~ (1)(k).

- (2) An eligible facility does not include:

(a) items such as food, fuel, supplies, or other items that are customarily considered as current operating expenses; and

(b) a structure used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship."

Section 9. Section 90-7-202, MCA, is amended to read:

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

(1) sue and be sued;

(2) have a seal;

(3) adopt all procedural and substantive rules necessary for the administration of this chapter;

(4) issue bonds or incur other debt as described in this chapter, including the issuance of notes or refunding bonds;

(5) except as provided in 17-6-308, invest any funds that are not required for immediate use, subject to any agreements with its bondholders and noteholders, as provided in Title 17, chapter 6, except that all investment income from funds invested by the authority, less the cost for investment, must be deposited in an enterprise fund to the credit of the authority to be used to carry out the purposes of this chapter;

(6) contract in its own name for the investment of funds, borrowing of funds, or any other purposes it considers appropriate to carry out the purposes of this chapter;

(7) participate with any financial institution in the purchase or guarantee of any loan or obligation;

(8) issue bond anticipation notes or any other anticipatory financial obligations to secure funding of eligible facilities;

(9) enter into agreements or make advance commitments to ~~insure~~ ensure repayments required by loan agreements made by a lender. These agreements are subject to terms and conditions established by the authority.

(10) establish programs to make, sell, purchase, or insure loans to finance the costs of eligible facilities from any funds;

(11) accept gifts, grants, or loans from a federal agency, an agency or instrumentality of the state, a municipality, or any other source;

(12) enter into contracts or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity consistent with the exercise of any power under this chapter;

(13) with regard to property:

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

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

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

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

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

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

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

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

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

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

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

(17) collect reasonable interest, fees, and charges from participating institutions in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Except as provided in 17-6-308, the interest, fees, and charges must be deposited to an enterprise fund to the credit of the authority. Interest, fees, and charges are limited to the amounts required to pay the costs of the authority, including operating and administrative expenses, reasonable allowances for losses that may be incurred, and bond financing costs, and to provide funds to make loans to finance the costs of eligible facilities or to make grants for the purposes described in 90-7-211(2)(e).

(18) make loans pursuant to 17-6-308;

(19) establish program parameters for loan or grant approval by authority staff; and

~~(19)~~(20) perform any other acts necessary and convenient to carry out the purposes of this chapter."

~~Section 11. Section 90-7-203, MCA, is amended to read:~~

~~"90-7-203. Staff of authority. The authority may employ or contract for any professional staff or consultants necessary. Such employment and contracting must be done in consultation with the department of commerce."~~

Section 10. Section 90-7-211, MCA, is amended to read:

"90-7-211. Necessary expenses -- fees. (1) All expenses of the authority incurred in carrying out the provisions of this chapter are payable solely from funds provided under the authority of this chapter. Liability may not be incurred by the authority beyond the extent to which money has been provided under this chapter, except for the purposes of meeting the necessary expenses of initial organization and operation and until the date that the authority derives money from funds provided under this chapter. The authority may borrow money for necessary expenses of organization and operation. The borrowed money must be repaid within a reasonable time after the authority receives funds provided for under this chapter.

(2) When an application is made to the authority by any participating institution for financial assistance to provide for its eligible facilities, the application may be accompanied by an initial planning service fee in an amount determined by the authority. The initial planning service fee may be included in the cost of the eligible facilities to be financed. In addition to the initial fee, an annual planning service fee may be paid to the authority by each participating institution in an amount determined by the authority. The annual planning service fee may be paid on the dates or in installments that are satisfactory to the authority. The fees must be used for:

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

(b) necessary administrative, operating, and financing expenses;

(c) reserves for anticipated future expenses or loan losses; ~~and~~

(d) loans to finance the costs of eligible facilities; and

(e) grants to institutions to assist in determining eligibility for or compliance with government programs.

(3) The authority may, for a negotiated fee, retain the services of any other public or private person, firm,

partnership, association, or corporation for the furnishing of services and data for use by the authority in determining the need for and location of any eligible facility for which application is being made or for other services or surveys that the authority considers necessary to carry out the purposes of this chapter."

Section 11. Section 90-7-213, MCA, is amended to read:

"90-7-213. Loan limitation. A loan made by the authority may not exceed the total cost ~~or appraised value~~ of the eligible facility being financed as the cost ~~or appraised value~~ is determined by the participating institution and approved by the authority."

Section 12. Section 90-7-214, MCA, is amended to read:

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

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

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

Section 13. Section 90-7-220, MCA, is amended to read:

"90-7-220. Montana developmental center loan. (1) The department of public health and human services may enter into a loan agreement with the Montana ~~health~~ facility finance authority for the purpose of financing the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of the financing. The maximum principal amount of the loan may not exceed \$10.5 million for construction and related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and the loan must be payable over a term ~~of~~ not to exceed 30 years and must bear interest and contain other terms and provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used

to pay the principal and interest on the loan as provided in the loan agreement.

(2) The loan may be secured by a mortgage on the Montana developmental center facility, including the land on which it is located. The loan constitutes a special limited obligation of the department, and the principal and interest payments required by that agreement are payable solely from the facility ~~revenues~~ revenue obtained by the department from the ownership and operation of and the provision of services at the Montana developmental center, including payments or reimbursements from private users, insurers, and the federal government. All facility ~~revenues~~ revenue obtained from services provided by the Montana developmental center must be deposited in a special revenue fund and must be applied to the payment of the principal and interest payments as due under the loan agreement. Whenever ~~the foregoing facility revenues exceed~~ revenue exceeds the amount and terms specified and required to repay the loan and maintain required reserves, the excess must be deposited to the general fund. As long as the loan remains outstanding and the department provides services for persons with developmental disabilities, the department shall use the Montana developmental center for those purposes or for other purposes as permitted by the loan agreement and state law, except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land appraiser. The loan agreement may contain other provisions or agreements that the department determines are necessary and that are not inconsistent with the provisions of ~~Title 90, this~~ chapter 7.

(3) The obligations of the department under the agreement are special limited obligations payable solely from the facility ~~revenues~~ revenue and do not constitute a debt of the state or obligate the state to appropriate or apply any funds or ~~revenues~~ revenue of the state, except the facility ~~revenues~~ revenue as provided in this section."

Section 14. Section 90-7-301, MCA, is amended to read:

"90-7-301. Notes. The authority is authorized from time to time to issue its negotiable notes for any corporate purpose, including the payment of all or any part of the cost of any eligible facility, and to renew from time to time any notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes partly to renew notes or to discharge other obligations then outstanding and partly for any other purpose. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. Any resolution authorizing notes of the authority or any issue ~~thereof~~ of notes may contain any provisions ~~which~~

that the authority is authorized to include in any resolution authorizing bonds of the authority. The authority may include in its notes any terms, covenants, or conditions that it is authorized to include in any bonds. All notes must be payable from the proceeds of bonds, renewal notes, the ~~revenues~~ revenue of the authority, or other available money ~~available therefor~~ and not otherwise pledged, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding."

Section 15. Section 90-7-302, MCA, is amended to read:

"90-7-302. Bonds and notes of the authority. (1) The authority may in each biennium borrow money and issue bonds and notes in an aggregate principal amount not to exceed \$250 million, exclusive of bonds or notes issued to refund outstanding bonds or notes.

(2) Bonds must be authorized. The authority may specify that the bonds must be dated and must mature, except that a bond may not mature more than 40 years from the date of its issue. Bonds must:

- (a) bear interest at a rate or rates;
- (b) be in denominations;
- (c) be in the proper registered or bearer form;
- (d) be executed in a manner;
- (e) be payable in a medium of payment and at a place or places; and
- (f) be subject to terms of redemption that the authority may provide.

(3) All bonds, regardless of form or character, are negotiable instruments for all purposes of the Uniform Commercial Code, subject to requirements as to registration.

(4) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times that the authority may determine.

(5) Before the issuance of any bonds, the authority shall make provisions, by lease or other agreement, regarding the eligible facility or facilities being financed by the issue of the bonds, for rentals or other considerations sufficient, in the judgment of the authority, to:

- (a) pay the principal of and interest on the bonds as they become due;
- (b) create and maintain the reserves for payment of the principal and interest;
- (c) meet all obligations in connection with the lease or other agreement; and
- (d) meet all costs necessary to service the bonds unless the lease or agreement provides that the obligations are to be met or costs are to be paid by a party other than the authority.

(6) The authority, before issuing any bonds, shall certify that an applicant has submitted a statement that

indicates that any contract let for a public project costing more than \$25,000 and financed from the proceeds of bonds issued under this part ~~on or after July 1, 1993~~, will contain a provision requiring the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

(7) The authority may combine, for the purposes of a single offering, bonds financing more than one eligible facility under this chapter."

Section 16. Section 90-7-303, MCA, is amended to read:

"90-7-303. Procedure for issuance of bonds. (1) The authority may not ~~undertake to~~ finance any eligible facility unless, prior to the issuance of any bonds or notes, the members find that the facility is an eligible facility and will be operated by a health an institution for the purpose of fulfilling its obligation to provide health care facilities or by a prerelease center for the purpose of preparing persons to reenter society providing services contemplated by this chapter.

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

(3) The authority may not allow the proceeds of any bonds or notes to be expended for any eligible facility ~~until it has been shown~~ unless the institution provides evidence that the eligible facility is financially feasible and that the institution reasonably expects that it will generate there will be sufficient revenues revenue to ensure that pay principal and interest payments ~~are made~~ when they become due.

~~(4) The authority may not allow the proceeds of any bonds or notes to be expended for any facility until it has considered the ability of the institution to operate the facility based on the institution's experience and expertise.~~

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

Section 17. Section 90-7-304, MCA, is amended to read:

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

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

- (a) a mortgage covering all or any part of the property of the participating institution;
- (b) a pledge of the lease or loan agreement relating to the eligible facility; or
- (c) another security device that is considered most advantageous by the authority.

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

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

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

(c) maintenance and insurance of the eligible facility;

(d) creation and maintenance of special funds from the ~~revenues~~ revenue of the eligible facility; and

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

(4) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage, including a mortgage given by the lessee or borrower, securing bonds may provide that in the event of a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or mortgage, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the ~~revenues~~ revenue from the project in accordance with the proceedings or the provisions of the mortgage.

(5) Any mortgage made by the authority, lessee, or borrower to secure these bonds may provide that, in the event of a default in the payment of the bonds or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the project sold under proceedings in equity or in any other manner permitted by law. The mortgage may also provide that any trustee under the mortgage or the holder of any of the bonds secured by the mortgage may become the purchaser at any foreclosure sale if the trustee is the highest bidder. A breach of an agreement may not impose any pecuniary liability upon the authority."

NEW SECTION. Section 18. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 19. Effective date.** [This act] is effective July 1, 2001.

- END -