

# MEMORANDUM

Montana Board of Investments

Department of Commerce  
2401 Colonial Drive, 3<sup>rd</sup> Floor  
(406) 444-0001

**To:** Members of the Board

**From:** Louise Welsh, Senior Bond Program Officer 

**Date:** February 12, 2013

**Subject:** INTERCAP Series 2013 Bonds – Final Bond Resolution No. 231

At the November 13, 2012 meeting, the Board approved a preliminary resolution authorizing staff to proceed with the issuance of up to \$12 million in additional INTERCAP bonds and to borrow up to \$10 million from the Board in the form of a bond anticipation note (BAN) as may be required to meet the needs of the program prior to issuing the new bond.

As a result of unscheduled prepayments and Borrowers' large drawdown projections not coming in as anticipated, INTERCAP has sufficient funds to provide loans without the issuance of the Series 2013 BAN. Accordingly, staff determined that the Series 2013 BAN shall not be issued.

The purpose of the attached Resolution No. 231 is

- ✓ to serve as the Board's authorization to bondholders that the INTERCAP Series 2013 Bonds have been approved and are on parity with all other outstanding INTERCAP bonds.
- ✓ to approve the Series 2013 Supplemental Indenture.
- ✓ to pledge the INTERCAP bond's reserve account enhanced with a promise for the Board to loan monies to restore any deficiency in the reserve account and to purchase tendered INTERCAP bonds that have not been redeemed by the trustee or remarketed by the remarketing agent.
- ✓ to authorize staff to approve and execute the necessary documents to accomplish the sale.

**Recommendation:**

Staff recommends that the Board:

1. Authorize staff to take steps as deemed necessary to issue \$12 million in INTERCAP bonds for a term of 25 years.
2. Adopt the final bond resolution.

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the Board of Investments of the State of Montana (the "Board"), hereby certify that the attached resolution is a true copy of Resolution No. 231 entitled: "RESOLUTION OF THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA RELATING TO ITS ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), SERIES 2013, AUTHORIZING ISSUANCE AND SALE OF THE SERIES 2013 BONDS, AUTHORIZING AND APPROVING THE LOAN TO RESERVE ACCOUNT H, AUTHORIZING AND APPROVING THE PURCHASE OF TENDERED SERIES 2013 BONDS, AUTHORIZING THE APPROVAL OF FORMS OF DOCUMENTATION, MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE SERIES 2013 BONDS AND PROJECTS TO BE FINANCED THEREBY AND AUTHORIZING THE SALE OF THE SERIES 2013 BONDS TO PIPER JAFFRAY & CO. AND D.A. DAVIDSON & CO." (the "Resolution"), on file in the original records of the Board in my legal custody; that the Resolution was duly adopted by the Board at a special meeting on February 12, 2013, and that the meeting was duly held by the Board and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following members voted in favor thereof: \_\_\_\_\_

\_\_\_\_\_ ; voted against the same: \_\_\_\_\_ ; abstained from voting thereon: \_\_\_\_\_ ; or were absent: \_\_\_\_\_ .

WITNESS my hand and seal officially this \_\_\_ day of February, 2013.

(SEAL)

\_\_\_\_\_  
David Ewer  
Executive Director

RESOLUTION NO. 231

RESOLUTION OF THE BOARD OF INVESTMENTS OF THE STATE OF MONTANA RELATING TO ITS ANNUAL ADJUSTABLE RATE TENDER OPTION MUNICIPAL FINANCE CONSOLIDATION ACT BONDS (INTERCAP REVOLVING PROGRAM), SERIES 2013, AUTHORIZING ISSUANCE AND SALE OF THE SERIES 2013 BONDS, AUTHORIZING AND APPROVING THE LOAN TO RESERVE ACCOUNT H, AUTHORIZING AND APPROVING THE PURCHASE OF TENDERED SERIES 2013 BONDS, AUTHORIZING THE APPROVAL OF FORMS OF DOCUMENTATION, MAKING CERTAIN FINDINGS AND DETERMINATIONS REGARDING THE SERIES 2013 BONDS AND PROJECTS TO BE FINANCED THEREBY AND AUTHORIZING THE SALE OF THE SERIES 2013 BONDS TO PIPER JAFFRAY & CO. AND D.A. DAVIDSON & CO.

Be It Resolved by the Board of Investments of the State of Montana (the "Board"), As Follows:

Section 1. Recitals.

1.01. General Authority. The Board is authorized by the Municipal Finance Consolidation Act, Title 17, Chapter 5, Part 16, Montana Code Annotated (the "Act"), to issue notes and bonds to finance loans or refinance its loans to Montana governmental units and its purchases of their bonds and notes, to establish or replenish revenue securing the payments of its bonds and notes, and to finance all other expenditures of the Board incident to and necessary or convenient to carry out the provisions of the Act. Bonds so issued may be secured by a trust indenture and by a reserve fund to which the Board may agree to advance monies to restore reserve fund deficiencies. The Board is further authorized to issue temporary notes in anticipation of the sale of its securities. The Board is also authorized by Section 17-6-201, M.C.A., to invest funds in its control in bonds issued by the Board. Any bonds so issued shall not constitute a liability or obligation of or a pledge of the full faith and credit of the State of Montana (the "State") but are payable solely from the revenues or funds of the Board generated or received by purposes of the Act. Montana Local Government Units are authorized by various provisions of the Montana Code Annotated (the "Borrowers Acts") to issue bonds, notes or other obligations for the purpose of financing or refinancing the acquisition and installation of equipment, personal and real property improvements or provide temporary financing of projects or for other authorized corporate purposes and State Entities are authorized to borrow funds through State legislation or the appropriation process.

1.02. Proposed Financing. The following financing has been proposed to be undertaken by the Board pursuant to the Act: (a) the Board would issue its Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) Series 2013 (the "Series 2013 Bonds") in an aggregate principal amount not to exceed \$12,000,000, pursuant to the Indenture of Trust dated as of March 1, 1991, as amended and supplemented (the "Indenture"), and a Series Supplemental Indenture to be dated as of March 1,

2013 (the "Supplemental Indenture"), both between the Board and U.S. Bank National Association (successor by merger to First Trust Company of Montana National Association), as Trustee (the "Trustee"), and on a parity with the Board's Annual Adjustable Rate Tender Option Municipal Finance Consolidation Act Bonds (INTERCAP Revolving Program) Series 1997, Series 1998, Series 2000, Series 2003, Series 2004, Series 2007, and Series 2010 (collectively, the "Outstanding Bonds"); (b) the Series 2013 Bonds will be sold to Piper Jaffray & Co., of Minneapolis, Minnesota, and D.A. Davidson & Co., of Great Falls, Montana (the "Underwriters"), pursuant to the terms of a Bond Purchase Agreement (the "Bond Purchase Agreement"); (c) pursuant to the Program, the Board makes Loans to eligible Montana Governmental Units (the "Borrowers") and which Loans are evidenced by the execution and delivery of a loan agreement, an installment purchase contract, if, or as may be required (the "Contract"), and a note or bond (the "Note") for the purpose of financing or refinancing the cost of acquiring and installing equipment, personal and real property improvements or to provide temporary financing of projects or for other authorized purposes; (d) the proceeds realized from the sale of the Series 2013 Bonds would be applied by the Board to make loans (the "Loans") to Borrowers, to pay costs of issuance, to provide funds to pay interest on the Series 2013 Bonds, if necessary, and to fund a deposit to Reserve Account H; (e) proceeds of the Series 2013 Bonds not immediately loaned to Borrowers shall be invested at the maximum rate of interest permissible under the Internal Revenue Code of 1986, as amended (the "Code") to the extent available for permitted investments; (f) each of the Contracts and Notes would be issued pursuant to and secured by a resolution of the Borrower or an act of the Montana Legislature (the "Contract Resolution") and would constitute a valid and binding obligation of the Borrower; (g) Loan repayments not required to pay principal of and interest on Outstanding Bonds as specified in the Indenture will be used to make additional Loans to Borrowers; (h) pursuant to Resolution Number 68 of the Board (the "Reserve Fund Resolution") the Board has established the municipal finance consolidation act reserve fund (the "Reserve Fund") and authorized the creation of accounts therein to secure bonds and notes issued by the Board, including the Series 2013 Bonds; (i) pursuant to the Indenture various funds and accounts have been established, including Reserve Account H as an account within the Reserve Fund, and a Reserve Account H Reserve Requirement has been established at seven and one-half percent (7.5%) of the aggregate original principal amount of all series of Bonds of which any Bonds are outstanding; (j) upon issuance of the Series 2013 Bonds proceeds thereof will be deposited in Reserve Account H to satisfy the Reserve Requirement; (k) pursuant to the Indenture the Board would agree to loan amounts sufficient to restore deficiencies in the Reserve Account H as provided and defined in the Indenture, which loan would be repaid from revenues in the Bond Fund under the Indenture; (l) pursuant to the Indenture and Supplemental Indenture, the Board would agree to purchase the Series 2013 Bonds tendered by Bondholders or Beneficial Owners in accordance with the provisions of the Indenture and Supplemental Indenture; (m) pursuant to the Indenture and Supplemental Indenture, the Series 2013 Bonds would be limited obligations of the Board payable on a parity with other Outstanding Bonds, solely from and secured by the Revenues (as therein defined), including repayments of principal and interest on the Loans, investment income, monies in the various funds and accounts under the Indenture and proceeds of the loan from the Board, if necessary; (n) the Series 2013 Bonds will be offered and sold by the Underwriters pursuant to an Official Statement (the "Official Statement"); and (o) the Series 2013 Bonds tendered for purchase in accordance with the Indenture and Supplemental Indenture shall be remarketed by Piper Jaffray & Co. and D.A. Davidson & Co., as Remarketing Agent

under a Remarketing Agreement to be entered into between the Board and the Remarketing Agent (the "Remarketing Agreement").

1.03. Other Documents. The Executive Director or Deputy Director and Senior Bond Program Officer are authorized to approve the following documents in consultation with and upon recommendation of the Board's general counsel and bond counsel:

- (A) the Supplemental Indenture;
- (B) the Bond Purchase Agreement;
- (C) the Remarketing Agreement;
- (D) a Preliminary Official Statement (the "Preliminary Official Statement");  
and
- (E) the Agreement Concerning Continuing Disclosure between the Board and the Trustee (the "Continuing Disclosure Agreement").

Section 2. Findings and Determinations. The Board hereby finds, determines and declares, as follows:

(A) The Board is authorized by the Act to issue and sell the Series 2013 Bonds to finance Loans to Borrowers from the proceeds thereof, to repay the Advances and to enter into, execute and perform its obligations under the Indenture, the Supplemental Indenture, the Bond Purchase Agreement, the Contracts, the Remarketing Agreement and the Continuing Disclosure Agreement.

(B) The issuance and sale of the Series 2013 Bonds and the purchase of Notes from the proceeds thereof will further the purpose and policies of the Act by obtaining economies of scale and providing additional security for indebtedness of the Borrowers, thereby reducing their marketing, financing and interest costs.

Section 3. Loan to Reserve Account H and Purchase of Tendered Series 2013 Bonds.

3.01. Reserve Account H. To further secure the Series 2013 Bonds and assure their marketability on terms most favorable to the Board, thereby reducing the costs to be paid on the Loans by Borrowers, the Board has determined to exercise its authority under the Act and agree to loan funds to the Reserve Account H created pursuant to Resolution No. 68 and the Indenture in an amount equal to the deficiency, if any, therein, all as set forth in Section 6.09 of the Indenture.

3.02. Tendered Series 2013 Bonds. To further reduce the interest costs to be paid on the Loans by Borrowers, the Board has determined to issue the Series 2013 Bonds as variable rate obligations, the interest rate of which will be annually adjusted in accordance with the terms of the Indenture. To provide the liquidity necessary for the variable rate financing, the Board has agreed to purchase any Series 2013 Bonds that are tendered for purchase and that cannot be remarketed at the adjusted interest rate, at a rate not to exceed 15% per annum for a fee equal to 0.25% of the principal amount of the Series 2013 Bonds so purchased, all as provided and set forth in Section 6.10 of the Indenture.

3.03. Ratification of Obligations and Source for Satisfaction of Obligations. The Board agrees to make loans to the Reserve Account H as described in Section 3.01 of this Resolution and agrees to purchase the Series 2013 Bonds as described in Section 3.02 hereof, all as described more particularly in the Indenture. Counsel to and staff of the Board have reviewed the Indenture and the form of the Supplemental Indenture and have assessed the risks to the Board in executing the Supplemental Indenture and have informed the Board of such risks. The Board recognizes that pursuant to the Indenture it may be obligated to make a loan to Reserve Account H in the event that: (a) a Borrower defaults on the payment of principal and interest on its Loan, (b) the Board does not make loans in the amounts anticipated, or (c) the investments of the funds under the Indenture do not generate anticipated revenues. The Board further recognizes that in the event the interest rate on tax exempt bonds exceeds 15% per annum, it may be required to purchase the Series 2013 Bonds. The Board further represents that in the event it is required to purchase the Series 2013 Bonds or make a loan to Reserve Account H as described in this section, it would utilize money on hand in the Treasurer's Fund and the Coal Severance Tax Trust Fund and, to the extent necessary, other legally available funds, to honor its obligations.

Section 4. Document Approval and Authorization. The final approval of the Supplemental Indenture, Bond Purchase Agreement, Continuing Disclosure Agreement, Remarketing Agreement and Preliminary Official Statement, referenced in Section 1.04 by the Executive Director or Deputy Director and the Senior Bond Program Officer shall constitute approval by this Board, which approval shall be conclusively evidenced by the execution of the documents by the Executive Director or his designee. The Chairman, Executive Director, Deputy Director or Senior Bond Program Officer are hereby authorized to execute the Supplemental Indenture, Bond Purchase Agreement, Continuing Disclosure Agreement, Remarketing Agreement and Official Statement, and to deem the Preliminary Official Statement final under applicable federal securities laws, on behalf of the Board.

Section 5. The Series 2013 Bonds.

5.01. Bonds. The Series 2013 Bonds, in the aggregate principal amount not to exceed \$12,000,000, are hereby authorized to be issued, sold and secured pursuant to and as provided for in the Indenture, the Supplemental Indenture, the Reserve Fund Resolution and this resolution. The Series 2013 Bonds shall be dated, as originally issued, as of March 1, 2013 and shall mature on March 1, 2038, all as provided in the Supplemental Indenture. The Series 2013 Bonds shall bear interest at the initial rate of interest and yield to be agreed upon by the Executive Director, Deputy Director, Senior Bond Program Officer and the Underwriters as of the day of sale, which rate and yield shall not exceed 3.50% per annum and which rate shall be adjusted annually as provided in the Indenture and shall be in the form and contain such other terms and provisions as provided for in the Indenture and Supplemental Indenture. The purchase price of the Series 2013 Bonds shall not be less than 99.00% of the principal amount thereof.

5.02. Execution and Delivery. The Chairman and Executive Director, Deputy Director, or Senior Bond Program Officer shall execute the Series 2013 Bonds pursuant to the Indenture and cause them to be delivered by the Trustee to the original purchasers designated herein in exchange for the purchase price thereof. The Chairman and Executive Director, or Deputy Director, are also authorized to execute such other agreements, instruments, and

certificates as are necessary or appropriate to the issuance and delivery of the Series 2013 Bonds and the other documents described herein.

5.03. Bond Anticipation Notes. Pursuant to a preliminary resolution adopted by the Board on November 13, 2012 (the "Preliminary Resolution"), the Board approved the form of a Series Supplemental and Amending Indenture of Trust relating to Board of Investments of the State of Montana Taxable Bond Anticipation Notes (the "BAN Supplemental Indenture") and authorized the issuance of a Board of Investments of the State of Montana Bond Anticipation Notes (INTERCAP Revolving Program) (the "Series 2013 Bond Anticipation Note") in the principal amount of up to \$10,000,000 and the advance of principal amounts thereof as may be required to make Loans to Borrowers pending the issuance of the Series 2013 Bonds. The Series 2013 Bond Anticipation Note was to be sold to the Board of Investments as an investment. The Program is expected to have sufficient funds to provide Loans without the issuance of the Series 2013 Bond Anticipation Note. Accordingly, the Board has determined that it is in the best interest of the Program and the Borrowers not to issue the Series 2013 Bond Anticipation Note. The Series 2013 Bond Anticipation Note shall not be issued and will never be Outstanding, and it and the BAN Supplemental Indenture fixing its terms and conditions will be disregarded.

PASSED AND APPROVED by the Board of Investments of the State of Montana this 12th day of February, 2013.

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Chairman

Attest:

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Executive Director