

# MONTANA

## BOARD OF INVESTMENTS

### GOVERNING LAWS AND CONSTITUTION

**This document summarizes the most frequently referenced and utilized statutes and administrative rules pertinent to the Board of Investments. Other statutes can be found here.**

MCA's:

<https://leg.mt.gov/bills/mca/index.html>

ARM's:

<http://mtrules.org/>

AS OF FEBRUARY 2020

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## BOARD:

### **MBOI Board Defined/Membership 2-15-1808**

#### **2-15-1808. Board of investments -- allocation -- composition -- quasi-judicial.**

(1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in [2-15-121](#). The board may employ a chief investment officer and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The board shall prescribe the duties and annual salaries of the chief investment officer, executive director, and six professional staff positions. The chief investment officer, executive director, and six professional staff serve at the pleasure of the board.

(3) The board is composed of nine members appointed by the governor, as prescribed in [2-15-124](#), and two ex officio, nonvoting members. The members are:

(a) one member from the public employees' retirement board, provided for in [2-15-1009](#), and one member from the teachers' retirement board provided for in [2-15-1010](#). If either member of the respective retirement boards ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with [2-15-124](#).

(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representatives of:

(i) the financial community;

(ii) small business;

(iii) agriculture; and

(iv) labor; and

(c) two ex officio, nonvoting legislative liaisons to the board, of which one must be a senator appointed by the president of the senate and one must be a representative appointed by the speaker of the house. The liaisons may not be from the same political party. Preference in appointments is to be given to legislators who have a background in investments or finance. The legislative liaisons shall serve from appointment through each even-numbered calendar year and may attend all board meetings. Legislative liaisons appointed pursuant to this subsection (3)(c) are entitled to compensation and expenses, as provided in [5-2-302](#), to be paid by the legislative council.

(4) The board is designated as a quasi-judicial board for the purposes of [2-15-124](#).

History: En. Sec. 1, Ch. 581, L. 1987; amd. Sec. 1, Ch. 330, L. 1999; amd. Sec. 1, Ch. 190, L. 2007.

#### [8.97.2101](#) Adoption of MEPA Rules

(1) The board of investments adopts the Montana Environmental Policy Act rules of the department of commerce as set forth in ARM [8.2.302](#), [8.2.303](#) and [8.2.305](#) through [8.2.327](#), except that the terms "the agency," "the department," and "the board" mean the Montana board of investments as created pursuant to [2-15-1808](#), MCA.

History: Sec. [2-3-103](#), [2-4-201](#), MCA; IMP, Sec. [75-1-201](#), MCA; NEW, 1990 MAR p. 1782, Eff. 9/14/90.

#### [8.97.2102](#) General Requirements of the Environmental Review Process

(1) Section [75-1-201](#), MCA, requires state agencies to integrate use of the natural and social sciences and the environmental design arts in planning and in decision-making, and to prepare an environmental



impact statement (EIS) on each proposal for projects, programs, legislation, and other major actions of state government specifically affecting the quality of the human environment. In order to determine the level of environmental review for each proposed action that is necessary to comply with [75-1-201](#), MCA, the agency shall apply the following criteria:

(a) The agency shall prepare an EIS as follows:

(i) whenever an EA indicates that an EIS is necessary; or

(ii) whenever, based on the criteria in ARM [8.2.305](#), the proposed action is a major action of state government significantly affecting the quality of the human environment.

(b) An EA may serve any of the following purposes:

(i) to ensure that the agency uses the natural and social sciences and the environmental design arts in planning and decision-making. An EA may be used independently or in conjunction with other agency planning and decision-making procedures;

(ii) to assist in the evaluation of reasonable alternatives and the development of conditions, stipulations or modifications to be made a part of a proposed action;

(iii) to determine the need to prepare the EIS through an initial evaluation and determination of the significance of impacts associated with a proposed action;

(iv) to ensure the fullest appropriate opportunity for public review and comment on proposed actions, including alternatives and planned mitigation, where the residual impacts do not warrant the preparation of an EIS; and

(v) to examine and document the effects of a proposed action on the quality of the human environment, and to provide the basis for public review and comment, whenever statutory requirements do not allow sufficient time for an agency to prepare an EIS. The agency shall determine whether sufficient time is available to prepare an EIS by comparing statutory requirements that establish when the agency must make its decision on the proposed action with the time required by ARM [8.2.313](#) to obtain public review of an EIS plus a reasonable period to prepare a draft EIS and, if required, a final EIS.

(c) The agency shall prepare an EA whenever:

(i) the action is not excluded under (e) or (f) and it is not clear without preparation of an EA whether the proposed action is a major one significantly affecting the quality of the human environment;

(ii) the action is not excluded under (e) or (f) and although an EIS is not warranted, the agency has not otherwise implemented the interdisciplinary analysis and public review purposes listed in (b) (i) and (iv) through a similar planning and decision-making process; or

(iii) statutory requirements do not allow sufficient time for the agency to prepare an EIS.

(d) The agency may, as an alternative to preparing an EIS, prepare an EA whenever the action is one that might normally require an EIS, but effects which might otherwise be deemed significant appear to be mitigable below the level of significance through design, or enforceable controls or stipulations or both imposed by the agency or other government agencies. For an EA to suffice in this instance, the agency must determine that all of the impacts of the proposed action have been accurately identified, that they will be mitigated below the level of significance, and that no significant impact is likely to occur. The agency may not consider compensation for purposes of determining that impacts have been mitigated below the level of significance.

(e) The agency is not required to prepare an EA or an EIS for the following categories of action:

(i) actions that qualify for a categorical exclusion as defined by rule or justified by a programmatic review. In the rule or programmatic review, the agency shall identify an extraordinary circumstance in which a normal excluded action requires an EA or EIS;

(ii) administrative actions: routine, clerical or similar functions of a department, including but not limited to administrative procurement, contracts for consulting services and personnel actions;

(iii) minor repairs, operations or maintenance of existing equipment or facilities;

- (iv) investigation and enforcement; data collection, inspection of facilities or enforcement of environmental standards;
  - (v) ministerial actions: actions in which the agency exercises no discretion, but rather acts upon a given state of facts in a prescribed manner; and
  - (vi) actions that are primarily social or economic in nature and that do not otherwise affect the human environment.
  - (f) In addition to the categories of actions listed under (e) , the board has determined that the following programs and/or actions do not have a significant impact on the human environment, are primarily economic in nature, and therefore do not require the preparation of an EA or an EIS;
    - (i) the purchase of all stocks publicly traded on any national or international stock exchange;
    - (ii) the purchase of all bonds issued by governmental entities or by corporations whose stock is listed on any national or international stock exchange. This exemption does not apply to bonds purchased by the board by private placement where the board is the sole provider of funds;
    - (iii) the issuance of bonds under the Municipal Consolidation Finance Act through the Montana cash anticipation finance program (Title 17, chapter 5, part 16, MCA) when the proceeds are used to fund loans to local governments to cover temporary cash deficits;
    - (iv) the issuance of bonds under the Montana Consolidation Finance Act through the Montana cash anticipation finance program (Title 17, chapter 5, part 16, MCA) when the proceeds are used to prepay debt to the federal bureau of reclamation where original loan money from the federal government was used to improve existing irrigation structures;
    - (v) the issuance of bonds under the Municipal Consolidation Finance Act through the intermediate term finance program when proceeds are used to finance loans to local governments to acquire vehicles and equipment, or to make modest repairs or improvements to real property. All other uses made under this program are reviewed under these rules;
    - (vi) the purchase of all residential loans made with pension funds;
    - (vii) the purchase of all federally guaranteed loans;
    - (viii) the purchase of all residential multi-family loans;
    - (ix) all deposits made under the linked deposit program pursuant to ARM Title 8, chapter 97, subchapter 14; and
    - (x) limited partnerships where the board is not involved in the investment decision.
  - (g) If an extraordinary circumstance pertaining to one of the programs and/or actions excepted in (f) is brought to the attention of the board or board staff, the board shall determine whether such circumstance may create a significant impact on the human environment. If the board determines that such circumstance may create a significant impact on the human environment, then the program and/or action is no longer exempt under (f) and ARM [8.2.302](#) through [8.2.327](#) applies.
- History: Sec. [2-3-103](#), [2-4-201](#), MCA; IMP, Sec. [2-3-104](#), [75-1-201](#), MCA; NEW, 1990 MAR p. 1782, Eff. 9/14/90; AMD, 2000 MAR p. 1043, Eff. 2/11/00.

## Quasi-Judicial Boards

Quasi-Judicial Boards defined 2-15-124

If an agency is designated by law as a quasi-judicial board for the purposes of this section, the following requirements apply:

- (1) The number of and qualifications of its members are as prescribed by law. In addition to those qualifications, unless otherwise provided by law, at least one member must be an attorney licensed to practice law in this state.
- (2) The governor shall appoint the members. A majority of the members must be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The

remaining members must be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of the governor's term and the remaining members in the middle of the governor's term. As used in this subsection, "majority" means the next whole number greater than half.

(3) The appointment of each member is subject to the confirmation of the senate then meeting in regular session or next meeting in regular session following the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy must be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which the member is appointed.

(5) The governor shall designate the presiding officer. The presiding officer may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless otherwise provided by law, each member is entitled to be paid \$50 for each day in which the member is actually and necessarily engaged in the performance of board duties and is also entitled to be reimbursed for travel expenses, as provided for in [2-18-501](#) through [2-18-503](#), incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members except when they perform their board duties outside their regular working hours or during time charged against their leave, but those members are entitled to be reimbursed for travel expenses as provided for in [2-18-501](#) through [2-18-503](#). Ex officio board members may not receive compensation but must receive travel expenses.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law.

History: En. 82A-112 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 12, Ch. 358, L. 1973; amd. Sec. 57, Ch. 439, L. 1975; amd. Sec. 1, Ch. 186, L. 1977; R.C.M. 1947, 82A-112(1), (2)(a), (3) thru (8); amd. Sec. 1, Ch. 83, L. 1983; amd. Sec. 1, Ch. 672, L. 1983; amd. Sec. 1, Ch. 650, L. 1985; amd. Sec. 73, Ch. 61, L. 2007.

#### 8.01.101 ORGANIZATIONAL RULE

Organization of the department:

(1) History. The Department of Commerce was implemented under [2-15-104](#), MCA, on July 1, 1981.

(2) Director. The director of Commerce, appointed by the Governor, heads the department. The director is responsible for the administration of the department and its programs. The Director's Office directly administers five programs:

- (a) Office of Public Information
- (b) Office of Legal Affairs
- (c) Office of Human Resources
- (d) Office of Accounting and Budget
- (e) Office of Information Technology

(3) Housing Division. The division consists of several programs designed to increase the affordability and availability of safe and decent housing for Montana citizens.

(4) Community Development Division. The division provides technical assistance and administers community development grant programs to help build resilient communities and empower local leaders with planning and financial resources; provide awareness and training on planning best practices; make

the cost of facilities more affordable and within easier reach of Montana communities; support Montana communities in all stages of planning, implementation, and long-term maintenance of resources; facilitate a comprehensive sense of place for communities and help them adopt a process to accomplish those goals; and promote local self-sufficiency in the distribution of grants.

(5) Montana Office of Tourism and Business Development Division. The division consists of the tourism and business development programs that promote Montana as a vacation and filming destination through constituent support and marketing, and encourage business development through technical assistance, research, and finance. The division facilitates economic development opportunities and job creation for the state of Montana.

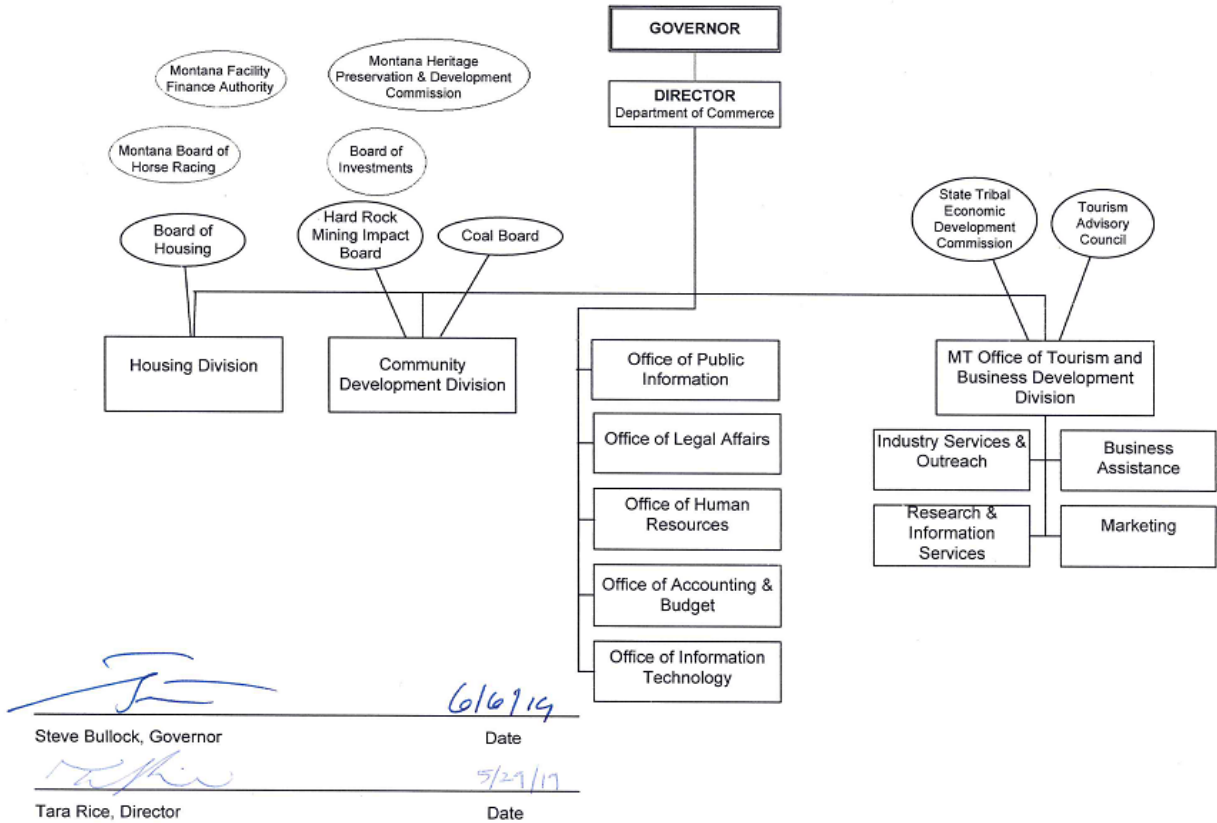
(6) Administratively Attached Entities. The following entities are administratively attached to the Department of Commerce:

- (a) Board of Horse Racing, [2-15-1809](#), MCA;
- (b) Board of Housing, [2-15-1814](#), MCA;
- (c) Board of Investments, [2-15-1808](#), MCA;
- (d) Board of Research and Commercialization Technology, [2-15-1819](#), MCA;
- (e) Montana Coal Board, [2-15-1821](#), MCA;
- (f) Hard-Rock Mining Impact Board, [2-15-1822](#), MCA;
- (g) Montana Council on Developmental Disabilities, [2-15-1869](#), MCA;
- (h) Montana Facility Finance Authority, [2-15-1815](#), MCA;
- (i) Montana Heritage Preservation and Development Commission, 22-3-1002, MCA;
- (j) State-Tribal Economic Development Commission, [90-1-131](#), MCA; and
- (k) Tourism Advisory Council, [2-15-1816](#), MCA.

(7) Information or Submissions. General inquiries regarding the department may be addressed to the director. Specific inquiries regarding the functions of each division may be addressed to the administrator of that division or the bureau chiefs under the division. All requests for hearings, declaratory rulings, and for participation in rulemaking may be addressed to the director unless the notice in the Montana Administrative Register makes specific provisions for submissions.

(8) Chart of Agency Organization. A descriptive chart of the Department of Commerce follows and is incorporated in this rule.

## Department of Commerce



History: [2-15-112](#), MCA; [IMP, 2-4-201](#), MCA; Eff. 12/31/72; [AMD](#), Eff. 7/1/73; [AMD](#), Eff. 7/5/76; [AMD](#), Eff. 5/5/77; [AMD](#), Eff. 8/17/79; [AMD](#), 1982 MAR p. 2140, Eff. 12/17/82; [AMD](#), Eff. 12/31/83; [AMD](#), Eff. 9/30/84; [AMD](#), Eff. 6/30/86; [AMD](#), Eff. 6/30/87; [AMD](#), Eff. 9/30/87; [AMD](#), Eff. 9/30/89; [AMD](#), Eff. 9/30/90; [AMD](#), Eff. 9/30/91; [AMD](#), Eff. 9/30/95; [AMD](#), Eff. 9/30/98; [AMD](#), Eff. 12/31/01; [AMD](#), Eff. 12/31/03; [AMD](#), Eff. 12/31/05; [AMD](#), Eff. 9/30/11; [AMD](#), Eff. 12/31/13; [AMD](#), Eff. 3/12/14; [AMD](#), Eff. 9/30/15; [AMD](#), Eff. 6/30/19.

### Meetings

#### Legislative intent 2-3-201

2-3-201. Legislative intent -- liberal construction. The legislature finds and declares that public boards, commissions, councils, and other public agencies in this state exist to aid in the conduct of the peoples' business. It is the intent of this part that actions and deliberations of all public agencies shall be conducted openly. The people of the state do not wish to abdicate their sovereignty to the agencies which serve them. Toward these ends, the provisions of the part shall be liberally construed.

History: En. Sec. 1, Ch. 159, L. 1963; R.C.M. 1947, 82-3401.

#### Meeting Defined 2-3-202

2-3-202. Meeting defined. As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in [2-3-203](#), whether corporal or by

means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

History: En. 82-3404 by Sec. 2, Ch. 567, L. 1977; R.C.M. 1947, 82-3404; amd. Sec. 2, Ch. 183, L. 1987.

### Meetings of public agencies to be open to public 2-3-203

2-3-203. Meetings of public agencies and certain associations of public agencies to be open to public -- exceptions. (1) All meetings of public or governmental bodies, boards, bureaus, commissions, agencies of the state, or any political subdivision of the state or organizations or agencies supported in whole or in part by public funds or expending public funds, including the supreme court, must be open to the public.

(2) All meetings of associations that are composed of public or governmental bodies referred to in subsection (1) and that regulate the rights, duties, or privileges of any individual must be open to the public.

(3) The presiding officer of any meeting may close the meeting during the time the discussion relates to a matter of individual privacy and then if and only if the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting must be open.

(4) (a) Except as provided in subsection (4)(b), a meeting may be closed to discuss a strategy to be followed with respect to litigation when an open meeting would have a detrimental effect on the litigating position of the public agency.

(b) A meeting may not be closed to discuss strategy to be followed in litigation in which the only parties are public bodies or associations described in subsections (1) and (2).

(5) The supreme court may close a meeting that involves judicial deliberations in an adversarial proceeding.

(6) Any committee or subcommittee appointed by a public body or an association described in subsection (2) for the purpose of conducting business that is within the jurisdiction of that agency is subject to the requirements of this section.

History: En. Sec. 2, Ch. 159, L. 1963; amd. Sec. 1, Ch. 474, L. 1975; amd. Sec. 1, Ch. 567, L. 1977; R.C.M. 1947, 82-3402; amd. Sec. 1, Ch. 380, L. 1979; amd. Sec. 1, Ch. 183, L. 1987; amd. Sec. 1, Ch. 123, L. 1993; amd. Sec. 1, Ch. 218, L. 2005.

### Recording of meeting 2-3-211

2-3-211. Recording. A person may not be excluded from any open meeting under this part and may not be prohibited from photographing, televising, transmitting images or audio by electronic or digital means, or recording open meetings. The presiding officer may ensure that these activities do not interfere with the conduct of the meeting.

History: En. 82-3405 by Sec. 4, Ch. 567, L. 1977; R.C.M. 1947, 82-3405; amd. Sec. 1, Ch. 138, L. 2017.

### Minutes of Meetings 2-3-212

2-3-212. Minutes of meetings -- public inspection. (1) Appropriate minutes of all meetings required by [2-3-203](#) to be open must be kept and must be available for inspection by the public. If an audio recording of a meeting is made and designated as official, the recording constitutes the official record of the meeting. If an official recording is made, a written record of the meeting must also be made and must include the information specified in subsection (2).

(2) Minutes must include without limitation:

(a) the date, time, and place of the meeting;

- (b) a list of the individual members of the public body, agency, or organization who were in attendance;
  - (c) the substance of all matters proposed, discussed, or decided; and
  - (d) at the request of any member, a record of votes by individual members for any votes taken.
- (3) If the minutes are recorded and designated as the official record, a log or time stamp for each main agenda item is required for the purpose of providing assistance to the public in accessing that portion of the meeting.
- (4) Any time a presiding officer closes a public meeting pursuant to [2-3-203](#), the presiding officer shall ensure that minutes taken in compliance with subsection (2) are kept of the closed portion of the meeting. The minutes from the closed portion of the meeting may not be made available for inspection except pursuant to a court order.
- History: En. Sec. 3, Ch. 159, L. 1963; amd. Sec. 3, Ch. 567, L. 1977; R.C.M. 1947, 82-3403; amd. Sec. 1, Ch. 65, L. 2011; amd. Sec. 29, Ch. 348, L. 2015.

#### Video Recording of Meetings [2-3-214](#)

[2-3-214](#). Recording of meetings for certain boards.

- (1) Except as provided in [2-3-203](#), the following boards shall record their public meetings in a video or audio format:
- (a) the board of investments provided for in [2-15-1808](#);
  - (b) the public employees' retirement board provided for in [2-15-1009](#);
  - (c) the teachers' retirement board provided for in [2-15-1010](#);
  - (d) the board of public education provided for in Article X, section 9, of the Montana constitution; and
  - (e) the board of regents of higher education provided for in Article X, section 9, of the Montana constitution.
- (2) All good faith efforts to record meetings in a video format must be made, but if a board is unable to record a meeting in a video format, it must record the meeting in an audio format.
- (3) (a) The boards listed in subsection (1) must make the video or audio recordings of meetings under subsection (1) publicly available within 1 business day after the meeting through broadcast on the state government broadcasting service as provided in [5-11-1111](#) or through publication of streaming video or audio content on the respective board's website.
- (b) The department of administration may develop a memorandum of understanding with the legislative services division for broadcasting executive branch content on the state government broadcasting service or live-streaming audio or video executive branch content over the internet.
- History: En. Sec. 1, Ch. 133, L. 2015.

#### Right to know costs [2-3-221](#)

[2-3-221](#). Costs to prevailing party in certain actions to enforce constitutional right to know. A person alleging a deprivation of rights who prevails in an action brought in district court to enforce the person's rights under Article II, section 9, of the Montana constitution may be awarded costs and reasonable attorney fees.

History: En. 93-8632 by Sec. 1, Ch. 493, L. 1975; R.C.M. 1947, 93-8632; amd. Sec. 39, Ch. 61, L. 2007; amd. Sec. 30, Ch. 348, L. 2015.

#### [8.97.310](#) Citizen Participation Rules

(1) The board hereby adopts and incorporates by reference the citizen participation rules of the department of commerce as set forth in ARM [8.2.201](#) through [8.2.207](#). A copy of these rules may be obtained from the Montana Board of Investments, PO Box 200126, Helena, Montana 59620-0126.

History: [2-4-201](#), [17-6-324](#), MCA; [IMP](#), [2-4-201](#), [17-6-324](#), MCA; [NEW](#), 1988 MAR p. 2214, Eff. 10/14/88; [AMD](#), 2000 MAR p. 470, Eff. 2/11/00; [TRANS](#), from [8.97.1201](#), 2021 MAR p. 466, Eff. 5/1/21.

#### [8.97.311](#) False or Misleading Statements

(1) Any person who purposely or knowingly makes a false or deceptive statement in an application or purposely or knowingly omits information necessary to prevent the statements in an application from being misleading may be prosecuted under [45-6-317](#) and [45-7-203](#), MCA, or other applicable provisions of law.

(2) The submission of false, misleading, or deceptive information in an application shall be grounds for rejection of the application and denial of further consideration.

History: The portion of this rule implementing [17-6-201](#), MCA, is advisory only but may be a correct interpretation of this section, [17-5-1504](#), [17-5-1521](#), MCA; [IMP](#), [17-5-1504](#), [17-5-1521](#), [17-6-201](#), [17-6-324](#), MCA; [NEW](#), 1989 MAR p. 659, Eff. 5/26/89; [TRANS](#), from [8.97.1705](#), 2021 MAR p. 466, Eff. 5/1/21.

#### [8.97.312](#) Procedural Rules

(1) The board adopts and incorporates by reference ARM Title 1, chapter 3, subchapter 2, the Attorney General's Model Procedural Rules and ARM Title 1 chapter 3, subchapter 3, the Secretary of State's Organizational and Procedural Rules. A copy of these rules may be obtained from the Montana Board of Investments, PO Box 200126, Helena, Montana 59620-0126. Hearings on applications shall not be considered contested cases.

History: [2-4-201](#), [17-6-324](#), MCA; [IMP](#), [2-4-201](#), [17-6-324](#), MCA; [NEW](#), 1988 MAR p. 2214, Eff. 10/14/88; [AMD](#), 2000 MAR p. 470, Eff. 2/11/00; [AMD & TRANS](#), from [8.97.1202](#), 2021 MAR p. 466, Eff. 5/1/21.

#### [8.97.313](#) Confidentiality of Information

(1) Except as provided in (2), information submitted to the board will be treated as public information.

(2) Pursuant to Montana law, information provided by a financial institution and a borrower will be treated as confidential, except the following:

(a) name and address of financial institution;

(b) name and address of borrower;

(c) short description of proposed project, including location of project;

(d) amount of proposed loan;

(e) the program(s) under which the financial institution or borrower is applying;

(f) any other information in which the demand of individual privacy does not clearly exceed the merits of public disclosure; and

(g) any information in which the demand of individual privacy clearly exceeds the merits of public disclosure when the borrower has expressly waived his right to privacy.

(3) The board shall maintain public files on each completed application received containing the following information:

(a) items (2)(a) through (g) of this rule;

(b) all written documents received or prepared concerning items (2)(a) through (g) of this rule;

(c) the investment officer's or their designee's recommendation to the board regarding items (2)(a) through (g) and their recommendation for approval or denial of the application; and

(d) a summary of board action regarding the application including the board's approval or disapproval of the application, the terms and interest rate of the financing, and the loan repayment record.



History: [17-5-1504](#), [17-5-1521](#), MCA; IMP, [17-5-1504](#), [17-5-1521](#), MCA; [NEW](#), 1989 MAR p. 659, Eff. 5/26/89; [AMD & TRANS](#), from [8.97.1703](#), 2021 MAR p. 466, Eff. 5/1/21.

#### [8.97.314](#) Allocation of Capacity

(1) If the bond capacity of the board is not sufficient to finance all eligible projects, the board, in determining which projects to fund, shall consider the following:

- (a) the order in which the applications are submitted;
- (b) the availability of financing through one of its other programs;
- (c) the availability of tax-exempt financing through another issuer; and
- (d) the degree to which the project meets the policies set forth in [17-5-1502](#), MCA, of the Act.

History: [17-5-1504](#), [17-5-1521](#), MCA; IMP, [17-5-1504](#), [17-5-1521](#), MCA; [NEW](#), 1989 MAR p. 659, Eff. 5/26/89; [TRANS](#), from [8.97.1704](#), 2021 MAR p. 466, Eff. 5/1/21.

## CONSERVATION RESERVE PAYMENT ENHANCEMENT PROGRAM:

#### [8.97.2001](#) Definitions

In addition to the definitions set forth in [17-5-1503](#), MCA, the following definitions shall apply for purposes of these rules:

- (1) "Access easement" means an access easement from a borrower to the board including any amendments thereto relating to land subject to the borrower's CRP contract;
- (2) "Act" means Title 17, chapter 5, part 15, Montana Code Annotated;
- (3) "Agricultural enterprise project" means a project located in Montana whereby CRP loan proceeds are used for restructuring or refinancing existing agricultural indebtedness; agricultural working capital; purchase of livestock, agricultural land or equipment; or other agriculturally related enterprises;
- (4) "Annual payments" means payments referred to as "annual rental payments" in a CRP contract which can be in the form of cash or payment in kind certificates;
- (5) "ASCS" means the Agricultural Stabilization and Conservation Service of the U.S. Department of Agriculture, and any successor of its functions;
- (6) "Borrower" or "loan recipient" means a person who has received a CRP loan from the board pursuant to the requirements of these rules;
- (7) "CCC" means the Commodity Credit Corporation of the USDA, its successors and assigns;
- (8) "Closing" means the finalizing of a CRP loan, at which time the trustee disburses funds for a loan to a borrower;
- (9) "Commitment agreement" means the agreement so designated and amendments or supplements thereto wherein the borrower agrees to take a CRP loan from the board by a date certain for the purposes of financing the borrower's agricultural enterprise project for a specific amount and at a fixed interest rate;
- (10) "Commitment fee" means the fee paid by the borrower upon submission of the commitment agreement to the loan originator;
- (11) "CRP" means U.S. Conservation Reserve Program of the USDA under Title XII of the Food Security Act of 1985, as amended;
- (12) "CRP contract" means a contract between the borrower and the CCC under the conservation reserve program;
- (13) "CRP loan" means a loan made by the board to the borrower pursuant to these rules;
- (14) "CRP payment" means the payment made by the CCC under a CRP contract, whether the payment is made in cash or by payment in kind certificates;

- (15) "CRP Enhancement Program" or "CRP Program" means the board's conservation reserve payment enhancement program pursuant to which the board makes loans for agricultural enterprise projects;
- (16) "Loan fund" means the fund from which disbursements to borrowers shall be made to finance agricultural enterprise projects;
- (17) "Mortgage" means a mortgage and security agreement entered into between a borrower and the board;
- (18) "Note" means a promissory note executed and delivered by a borrower to the board to evidence a loan;
- (19) "Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated association or government or agency, or political subdivision;
- (20) "Program documents" collectively means the application and its exhibits, commitment agreement, note, CRP contract, successor in interest agreement, mortgages, origination agreement and access easement;
- (21) "SCS" means the U.S. Soil Conservation Service of the U.S. Department of Agriculture;
- (22) "State" means the state of Montana;
- (23) "Trustee" means the person responsible for administering the bond funds;
- (24) "USDA" means the U.S. Department of Agriculture;
- (25) "Working capital" means money used in a for-profit activity either to increase current assets or to decrease current liabilities.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2002](#) Description and Goals of the State CRP Enhancement Program

- (1) The state CRP program is an economic development loan program administered by the board.
- (2) The board will issue its economic development bonds pursuant to the Act, for the purpose of funding a program pursuant to which a person participating in the federal CRP program can borrow money against his contract and use the loan proceeds for an agricultural enterprise project.
- (3) The goals of the program are to:
  - (a) provide loans for agricultural enterprise projects at favorable interest rates in order to strengthen the state's agricultural industry;
  - (b) provide loans to persons participating in the U.S. conservation reserve payment program for agricultural enterprise projects in amounts which will assist those persons while simultaneously protecting the board and other investors.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2003](#) General State CRP Program Requirements

- (1) The borrower receiving CRP loan funds must enter into a successor in interest agreement with the board and CCC prior to receiving a CRP loan. All contracts assigned must be subject to recourse, which in turn the board may assign to the trustee for the bondholders.
- (2) While the board becomes responsible for CRP contract compliance under the terms of the successor in interest agreement, the borrower still must agree, in consideration of receiving a CRP loan, to retain responsibility for CRP contract compliance.
- (3) The borrower must also agree as follows:
  - (a) to provide an annual certification of compliance to the board whereby the borrower certifies that he is in compliance with all federal CRP program requirements and that he agrees to provide the ASCS with all information necessary to determine compliance;

- (b) to provide the board a first mortgage on his Montana CRP acres or other interest that the board determines equally protects the board;
  - (c) to grant the board an access easement for the CRP acres in order to allow the board of promptly correct instances of noncompliance; and
  - (d) to reimburse the board for all noncompliance penalties assessed by the ASCS and for all other costs associated with corrective measures taken by the board or its agents.
- History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2004](#) Eligibility Criteria for State CRP Program

(1) Any person participating in the U.S. conservation reserve payment program may apply and be eligible for a loan under the state CRP program except that the board may exclude participation for any of the following reasons:

- (a) a person is
  - (i) a debtor in any case under Title 11 of the United States Code; or
  - (ii) a debtor liquidating or operating under a plan of confirmed pursuant to chapter 11, 12 or 13 of Title 11 of the United States Code;
- (b) a person is in default under the CRP contract;
- (c) a person has taxes, special assessments or other governmental charges now due and unpaid upon the CRP acres;
- (d) a person has assigned, or agreed to assign, to any person any interest in the CRP contract;
- (e) a person's CRP acres or other assets are subject to any lien on which proceedings for foreclosure or other enforcement action has been initiated; and
- (f) a person is aware of any delinquency or other fact or circumstance which might cause the lienholder to initiate a foreclosure or other enforcement action on any lien.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2005](#) Holdback for Establishment of Cover-Emergency Use of Cover

(1) If an applicant has not established cover in accordance with his CRP plan, the board may still allow the applicant to participate in the CRP program. In order, however, to limit board exposure to the potential reseeding costs, the board may hold back a portion of the borrower's loan proceeds pending the establishment of cover. A holdback of \$20 per acre for introduced grasses and \$30 per acre for native grasses will be held back for all CRP contracts which have not received certification by the SCS as having an established cover. The board may periodically adjust the holdback amount per acre required to reflect changes in reseeding costs. Amounts held back, and earnings thereon, will be disbursed to borrowers as soon as an SCS certification is issued and received by the board.

(2) If an emergency occurs, such a drought or other naturally occurring event, the board, at its sole discretion, may authorize the use of the cover. The borrower prior to such use occurring shall be obligated to compensate the board for that portion of the CRP payment deducted by the USDA for such use.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2006](#) Permissible Uses of Loan Funds

(1) A state CRP loan recipient may use loan proceeds for an agricultural enterprise project, including, but not limited to:

- (a) refinancing of existing indebtedness incurred in the acquisition of a farm or ranch or for the improvements thereto;
- (b) acquisition of agricultural equipment or agricultural machinery, or for the refinancing of existing indebtedness incurred for such acquisition;
- (c) acquisition of real property used for agricultural purposes only;
- (d) working capital for operation of a farm or ranch; or
- (e) for any combination of (a) through (d) above.

(2) A CRP loan recipient may not use loan proceeds for any project which does not qualify as an agricultural enterprise project.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2007](#) Application Procedures for State CRP Program – Loan Requirements for the Applicant/Borrower

(1) An applicant for a CRP loan shall request an application form from the individual designated by the board to assist applicants.

(2) An applicant must submit a satisfactorily completed application form with all requested exhibits. If deemed complete, it will be processed. If deemed incomplete, it will be returned to the applicant to be completed as directed.

(3) An applicant must also submit a non-refundable application fee in the amount of \$500. This fee may be used toward application processing, title reports, title insurance and other applicable costs.

(4) If the board determines that the application and other documents comply with the rules, the board will approve the loan.

(5) A commitment agreement will be entered into between the board and the applicant by a date certain. The applicant will be required to pay a commitment fee when he returns the executed commitment agreement. In the commitment agreement the applicant must agree to borrow funds if the board is able to provide a specified minimum loan amount and the board agrees to use its best efforts to sell bonds and fund the loan to the applicant.

(a) The commitment fee shall be a commitment amount equal to one percent (1%) of the minimum loan amount set forth in the commitment agreement.

(6) An applicant with an outstanding mortgage or encumbrance on his CRP acres must also arrange to have that lien or encumbrance subordinated to the board's mortgage and security interest, unless the board deems otherwise.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2008](#) Application Procedures for CRP Program – Loan Agreement, Closing, Funding

(1) Each CRP loan must be evidenced by a note and approved by the board.

(2) All CRP loans must be closed within 90 days of the sale of the bonds unless otherwise authorized by the board.

(3) The borrower must submit the following documents prior to the disbursement of loan funds: a fully executed mortgage, access easement, note, fully executed subordination agreement (where applicable), an executed successor in interest agreement signed by both the borrower and the local ASCS committee, and a mortgagee's title insurance policy, 1970 form ALTA, issued by a title company, approved by the board and accepted by the board as to form, exceptions and endorsement, in an amount not less than the CRP loan, insuring the mortgage as a valid first lien on the land described therein, subject only to encumbrances acceptable to the board.

(4) A borrower must agree to repay the CRP loan with interest in annual installments, the last of which shall be due not later than the final stated maturity of the bonds whose proceeds are used to fund such loan.

(5) If all program documents have been submitted, and are fully and accurately completed and recorded, the board shall authorize disbursement of loan funds to the borrower.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

#### [8.97.2009](#) Determination of Loan Amount

(1) Loans made under the CRP program will bear the interest rate necessary to pay interest on the board's bonds to fully amortize up front financing and loan origination costs, net of the borrower's application and commitment fees, and to pay annual CRP program-related costs.

(2) The dollar amount that a borrower will receive under the program will be the discounted value (present value) of the annual payments remaining on his CRP contract at the interest rate borne by the loan. The actual dollar amount received by a borrower will be the loan amount (plus the application and commitment fees previously received) less application processing fees, loan origination fees, charges for title reports and insurance, recording and filing fees, cover escrow (if applicable) , and any other costs and expenses incurred in connection with processing and closing the borrower's loan.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1505](#), [17-5-1521](#), MCA; NEW, 1989 MAR p. 2204, Eff. 12/22/89.

## DEPOSITS:

### **Deposit of Funds in Hands of State Treasurer 17-6-101**

17-6-101. Deposit of funds in hands of state treasurer. (1) Under the direction of the board of investments, the state treasurer shall deposit public money in the treasurer's possession and under the treasurer's control in solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, except as otherwise provided by law, subject to national supervision or state examination.

(2) If needed financial services are not available through solvent banks, building and loan associations, savings and loan associations, and credit unions located in the state, the state treasurer may deposit public money in out-of-state financial institutions subject to national supervision.

(3) The state treasurer shall deposit funds in banks, building and loan associations, savings and loan associations, and credit unions in amounts that may be designated by the board of investments and shall withdraw deposits when instructed to by the board of investments.

(4) When money has been deposited under the board of investments and in accordance with the law, the state treasurer is not liable for loss on account of any deposit occurring from any cause other than the treasurer's own neglect or fraud.

(5) The state treasurer shall withdraw all deposits or any part of the deposits from time to time to pay and discharge the legal obligations of the state presented to the treasurer in accordance with the law.

(6) The state treasurer may contract with a financial institution to provide general depository banking services. The cost of contracting for banking services is statutorily appropriated, as provided in [17-7-502](#), from the general fund.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch.

14, L. 1974; R.C.M. 1947, 79-301(part); amd. Sec. 10, Ch. 421, L. 1985; amd. Sec. 2, Ch. 107, L. 1993; amd. Sec. 1, Ch. 131, L. 1993.

### **Collateral on Deposits / Approval of MBOI on Trustee 17-6-102**

17-6-102. Insurance on deposits. (1) Deposits in excess of the amount insured by the federal deposit insurance corporation or the national credit union administration may not be made unless the bank, building and loan association, savings and loan association, or credit union first delivers to the state treasurer or deposits in trust with some solvent bank, as security therefor, bonds or other obligations of the kinds listed in [17-6-103](#), having a market value equal to at least 50% of the amount of the deposits in excess of the amount insured. The board of investments may require security of a greater value. When negotiable securities are placed in trust, the trustee's receipt may be accepted instead of the actual securities if the receipt is in favor of the state treasurer, successors in office, and the state of Montana and the form of receipt and the trustee have been approved by the board of investments.

(2) Any bank, building and loan association, savings and loan association, or credit union pledging securities as provided in this section may at any time substitute securities for any part of the securities pledged. The substituted collateral must conform to [17-6-103](#) and have a market value at least sufficient for compliance with subsection (1). If the substituted securities are held in trust, the trustee shall, on the same day the substitution is made, forward by registered or certified mail to the state treasurer and to the depository financial institution a receipt specifically describing and identifying both the securities substituted and those released and returned to the depository financial institution.

History: En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; R.C.M. 1947, 79-301(2), (4); amd. Sec. 2, Ch. 158, L. 1979; amd. Sec. 11, Ch. 421, L. 1985;

### **Allowable collateral on Deposits 17-6-103**

17-6-103. Security for deposits of public funds. The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

- (1) direct obligations of the United States;
- (2) securities as to which the payment of principal and interest is guaranteed by the United States;
- (3) securities issued or fully guaranteed by the following agencies of the United States or their successors, whether or not guaranteed by the United States:
  - (a) commodity credit corporation;
  - (b) federal intermediate credit banks;
  - (c) federal land bank;
  - (d) bank for cooperatives;
  - (e) federal home loan banks, including a letter of credit from a federal home loan bank;
  - (f) federal national mortgage association;
  - (g) government national mortgage association;
  - (h) small business administration;
  - (i) federal housing administration; and
  - (j) federal home loan mortgage corporation;
- (4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

- (a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and
  - (b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;
  - (5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;
  - (6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of the subdivision or when the revenue pledged to the payment of the bonds is derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenue equal to at least 125% of the average annual principal and interest due on all bonds payable from the revenue during the outstanding term of the bonds;
  - (7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount that, with all other claims on the same fund, does not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;
  - (8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency of the United States providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. The bonds and other obligations made eligible for investment in [7-15-4505](#) and [32-1-424\(1\)\(a\)](#) may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.
  - (9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;
  - (10) undertaking or guarantees issued by a surety company authorized to do business in the state;
  - (11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.
  - (12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;
  - (13) bonds issued pursuant to Title 90, chapter 6, part 1;
  - (14) revenue bonds issued by any unit of the university system of the state of Montana;
  - (15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and
  - (16) bank-owned certificates of deposit fully insured by the federal deposit insurance corporation.
- History: Ap. p. Sec. 4, Ch. 298, L. 1973; amd. Sec. 2, Ch. 160, L. 1975; amd. Sec. 1, Ch. 92, L. 1977; Sec. 79-307, R.C.M. 1947; Ap. p. Sec. 2, Ch. 5, Ex. L. 1933; amd. Sec. 2, Ch. 37, L. 1935; re-en. Sec. 5309.36, R.C.M. 1935; amd. Sec. 109, Ch. 431, L. 1975; Sec. 35-145, R.C.M. 1947; R.C.M. 1947, 35-145, 79-307; amd. Sec. 3, Ch. 158, L. 1979; amd. Sec. 1, Ch. 185, L. 1979; amd. Sec. 1, Ch. 437, L. 1979; amd. Sec. 5, Ch. 540, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; amd. Sec. 1, Ch. 62, L. 1985; amd. Sec. 4, Ch. 57, L. 1987; amd. Sec. 56, Ch. 370, L. 1987; amd. Sec. 1, Ch. 137, L. 1989; amd. Sec. 2, Ch. 201, L. 1989; amd. Sec. 10, Ch. 179, L. 1995; amd. Sec. 96, Ch. 42, L. 1997; amd. Sec. 1, Ch. 158, L. 1999; amd. Sec. 1, Ch. 45, L. 2019.

### **MBOI may require interest on daily depository bank balances 17-6-104**

17-6-104. Interest on deposits -- conformity with federal law. (1) The board of investments may require the payment of quarterly annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks, building and loan associations, savings and loan associations, credit unions, and the board of investments. The rate must be fixed semiannually during the months of July and January of each year.

(2) The interest requirements on deposits of public funds made under the laws of the state of Montana or otherwise by county or city treasurers or town clerks may not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system, federal home loan bank system, or the federal deposit insurance corporation, national credit union administration, or any other fiscal agency of the United States of which the banks, building and loan associations, savings and loan associations, or credit unions of this state may be members or debtors. History: (1)En. Sec. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R.C.M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 80, L. 1929; amd. Sec. 1, Ch. 62, L. 1935; re-en. Sec. 182, R.C.M. 1935; amd. Sec. 1, Ch. 35, L. 1963; amd. Sec. 1, Ch. 259, L. 1969; amd. Sec. 1, Ch. 298, L. 1973; amd. Sec. 1, Ch. 14, L. 1974; Sec. 79-301, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1937; amd. Sec. 2, Ch. 14, L. 1974; Sec. 79-302, R.C.M. 1947; R.C.M. 1947, 79-301(part), 79-302; amd. Sec. 6, Ch. 540, L. 1979; amd. Sec. 12, Ch. 421, L. 1985; amd. Sec. 30, Ch. 10, L. 1993.

### **MBOI to approve agency modified deposit schedules 17-6-105**

17-6-105. State treasurer as treasurer of state agencies -- deposits of money. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies shall deposit all money, credits, evidences of indebtedness, and securities either:

(a) in banks, building and loan associations, savings and loan associations, or credit unions located in the city or town in which the agencies are situated, if there is a qualified bank, building and loan association, savings and loan association, or credit union in the city or town as designated by the state treasurer with the approval of the board of investments; or

(b) with the state treasurer.

(3) Each bank, building and loan association, savings and loan association, or credit union shall pledge securities sufficient to cover 50% of the deposits at all times.

(4) The deposits must be made in the name of the state treasurer, must be subject to withdrawal at the treasurer's option, and must draw interest as other state money, in accordance with the provisions of this part.

(5) This chapter does not impair or otherwise affect any covenant entered into pursuant to law by any agency respecting the segregation, deposit, and investment of any revenue or funds pledged for the payment and security of bonds or other obligations authorized to be issued by the agency, and all the funds must be deposited and invested in accordance with the covenants notwithstanding any provision of this chapter.

(6) Except as otherwise provided by law and subject to subsection (8), all money, credits, evidences of indebtedness, and securities received by a state agency must be deposited with the state treasurer or in a depository approved by the state treasurer each day when the accumulated amount of coin and currency requiring deposit exceeds \$200 or total collections exceed \$750. All money, credits, evidences of indebtedness, and securities collected must be deposited at least weekly.

(7) Whenever the department determines that it is in the best financial interest of the state, the department may require any money received or collected by any agency to be immediately deposited to the credit of the state treasurer.



- (8) (a) An agency may propose a modified deposit schedule, including proposed internal controls, to the department that is different from the deposit schedule requirements of subsection (6). Upon receiving a proposal, the department shall transmit a copy of the proposal to the board of investments. The department shall review the proposal to ensure that deposits are made at least weekly unless the requesting agency shows hardship due to peak processing times.
- (b) (i) The department shall review the proposal to ensure adequate internal controls over amounts to be deposited.
- (ii) The board of investments shall review the proposal to ensure that state assets and earnings on the assets are maximized.
- (c) (i) If the department and the board of investments each approves of the proposal, the department shall notify the agency that the proposal is approved and the department and the agency may proceed to implement the proposal.
- (ii) If the department or the board of investments disapproves the proposal, the department shall notify the agency that the proposal is disapproved.
- (9) On or before September 15 immediately preceding a regular legislative session, the department shall submit to the legislative fiscal analyst and the legislative auditor a report detailing all active accounts for which a modified deposit schedule has been approved under subsection (8).
- (10) For the purposes of this section, "agency" has the meaning provided in [17-1-104](#) and includes a contractor of an agency if the contractor collects at least \$50,000 annually on behalf of the state from all sources.

History: (1) thru (6)En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R.C.M. 1921; amd. Sec. 1, Ch. 157, L. 1931; re-en. Sec. 192, R.C.M. 1935; amd. Sec. 9, Ch. 147, L. 1963; amd. Sec. 2, Ch. 298, L. 1973; amd. Sec. 3, Ch. 14, L. 1974; amd. Sec. 4, Ch. 286, L. 1977; Sec. 79-306, R.C.M. 1947; (7)En. Sec. 6, Ch. 194, L. 1951; amd. Sec. 9, Ch. 158, L. 1959; amd. Sec. 18, Ch. 249, L. 1967; amd. Sec. 4, Ch. 268, L. 1971, amd. Sec. 50, Ch. 326, L. 1974; Sec. 82-110, R.C.M. 1947; R.C.M. 1947, 79-306, 82-110(5); amd. Sec. 4, Ch. 158, L. 1979; amd. Sec. 13, Ch. 421, L. 1985; amd. Sec. 1, Ch. 339, L. 1991; amd. Sec. 2, Ch. 420, L. 2007.

### **Securities Lending Program 17-1-113**

17-1-113. Securities lending program. The state treasurer may, subject to the approval of the state board of investments, establish a securities lending program for all securities held in custody under [17-1-111](#). All loaned securities must be secured by equivalent securities of the same class in an amount equal to at least 100% of the market value of the loaned securities as determined by the board. All fees and proceeds earned by the securities lending program must be deposited pro rata in the funds that loaned the securities.

History: En. Sec. 1, Ch. 272, L. 1981.

### **MBOI to provide consent on designation of depositories 17-2-202**

17-2-202. Retention of agency money. The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, money that would otherwise be deposited in the custodial fund as defined in [17-2-102](#). The department of administration may cancel this permission and require the deposit of the money with the state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate depositories for the money and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories.

History: En. Sec. 5, Ch. 112, L. 1921; re-en. Sec. 196, R.C.M. 1921; amd. Sec. 2, Ch. 157, L. 1931; re-en. Sec. 196, R.C.M. 1935; amd. Sec. 12, Ch. 147, L. 1963; amd. Sec. 3, Ch. 268, L. 1971; amd. Sec. 28, Ch. 326, L. 1974; amd. Sec. 7, Ch. 61, L. 1977; R.C.M. 1947, 79-603; amd. Sec. 5, Ch. 185, L. 2019.

## ECONOMIC DEVELOPMENT BONDS:

### **Statement of Intent (Ch. 68 and Ch. 701, L. 1983)**

The statements of intent attached to Ch.68 and Ch 701, L. 1983, were substantially identical and provided: "A statement of intent is required for House Bill 700 [Ch.701, L. 1983] because it provides rulemaking authority for the Montana economic development board [now the Board of Investments] in Section 21 of the bill.

It is the intention of the legislature that in implementing the rulemaking provisions of the bill, the board will examine the procedures used in other states to take advantage of proven methods of soliciting and reviewing applications for loans. It is further the intention of the legislature that the board will maintain close contact and solicit the opinions of the investment businesses in Montana and the financial institutions of the state. It is further the intention of the legislature that in the examination of the rules provided for assessment of a collection of fees in connection with its programs, the board shall make a concerted effort to consider not only the needs of the board, but Montana. Where possible, the board shall use proven methods of operation which have been provided through the experience of other boards in the state and the experience of other states. The rules should also provide for a local hearing to be held to determine whether a proposed project is in the public interest."

### **Montana Economic Development Bond Act 17-5-1501**

17-5-1501. Short title. This part shall be known and may be cited as the "Montana Economic Development Bond Act of 1983".

History: En. Sec. 1, Ch. 701, L. 1983.

### **Legislative declaration 17-5-1502**

17-5-1502. Legislative declaration. (1) It is the policy of the state of Montana, in the interest of promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and to retain existing jobs by making available, through the board of investments, funds for industrial, commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care development.

(2) The legislature finds that:

- (a) a vigorous, diversified, and growing economy is the basic source of job opportunities;
- (b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and
- (c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business.

History: En. Sec. 2, Ch. 701, L. 1983; amd. Sec. 7, Ch. 581, L. 1987.

## Definitions 17-5-1503

17-5-1503. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

- (1) "Board" means the board of investments created in [2-15-1808](#).
- (2) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the board pursuant to this part.
- (3) "Department" means the department of commerce provided for in [2-15-1801](#).
- (4) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project and project costs.
- (5) "Financial institution" means any bank, savings and loan association, credit union, development credit corporation, insurance company, investment company, trust company, savings institution, or other financial institution approved by the board.
- (6) "Local government" means the city in which the project is located, if the project is located within an incorporated municipality, or the county if the project is located within the county but outside the boundaries of an incorporated municipality.
- (7) "Major project" means a project whose cost or appraised value exceeds \$800,000.
- (8) "Project" means a project as defined in [90-5-101](#).
- (9) "Project costs" means the costs of acquiring or improving any project, including the following:
  - (a) the actual cost of acquiring or improving real estate for any project;
  - (b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;
  - (c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;
  - (d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds;
  - (e) the interest on such bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction; and
  - (f) working capital for agricultural enterprise projects for a period not to exceed 1 year.

History: En. Sec. 1, Ch. 686, and Sec. 3, Ch. 701, L. 1983; amd. Sec. 1, Ch. 94, L. 1987; amd. Sec. 8, Ch. 581, L. 1987; amd. Sec. 1, Ch. 684, L. 1989.

## Powers of the board 17-5-1504

17-5-1504. Powers of the board. The board may:

- (1) sue and be sued;
- (2) have a seal;
- (3) adopt all procedural and substantive rules necessary for the administration of this part;
- (4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;
- (5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;
- (6) arrange for lines of credit from and enter into participation agreements with any financial institution;
- (7) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects and securing the payment of the bonds as provided in this part;
- (8) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this part;

- (9) sell, purchase, or insure loans to finance the costs of projects;
- (10) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;
- (11) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;
- (12) with regard to property:
  - (a) acquire real or personal property or any right, interest, or easement therein by gift, purchase, transfer, foreclosure, lease, or otherwise;
  - (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of such property;
  - (c) hold, sell, assign, or otherwise dispose of any lease, 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;
  - (h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided such action is consistent with any agreement with such holders;
- (13) service, contract, and pay for the servicing of loans;
- (14) provide financial analysis and technical assistance where considered appropriate;
- (15) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, 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;
- (16) collect reasonable interest, fees, and charges in connection with making and servicing its lease agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the board, including operating and administrative expenses and reasonable allowances for losses that may be incurred.
- (17) procure insurance or guaranties in amounts and in the form the board considers desirable or necessary, from any party, including a governmental agency, against any loss in connection with its lease agreements, loan agreements, mortgage loans, and other assets or property; and
- (18) perform any other acts necessary and convenient to carry out the purposes of the board and this part.

History: En. Sec. 2, Ch. 686, and Sec. 4, Ch. 701, L. 1983.

### **Financing program of the board 17-5-1505**

17-5-1505. Financing programs of the board. (1) The board may:

- (a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction, reconstruction, or improvement of projects located in the state, under terms and conditions determined by the board;

- (b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial institutions, projects located in the state and lease such projects to others for such rentals and upon such terms and conditions as determined by the board;
  - (c) make loans to financial institutions, under terms and conditions determined by the board, requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition, construction, reconstruction, or improvement of projects located in the state; or
  - (d) finance projects located in the state upon such terms and conditions as determined by the board.
- (2) The board may not operate any project as a business or in any other manner except as the lessor thereof or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement.

History: En. Sec. 3, Ch. 686, and Sec. 5, Ch. 701, L. 1983; amd. Sec. 1, Ch. 640, L. 1985.

### **Bonds and notes for projects and major projects 17-5-1506**

17-5-1506. Bonds and notes for projects and major projects. (1) The board may by resolution issue negotiable notes and bonds in a principal amount that the board determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board, establishment of reserves to secure the notes and bonds, including the reserve funds created under [17-5-1515](#), and all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time, issue notes to renew notes and bonds or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

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

(4) The notes and bonds must be authorized by resolutions of the board, bear a date, and mature at the times the resolutions provide. A note may not mature more than 5 years from the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be issued as serial bonds payable in annual installments, as term bonds, or as a combination of serial and term bonds. The notes and bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations, be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided in resolutions. The notes and bonds of the board may be sold at public or private sale, at prices above or below par, as determined by the board, and in a manner that interest on the bonds is either exempt from or subject to federal income tax. If applicable, the board shall specify whether the bonds are tax credit bonds as provided in [17-5-117](#).

(5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all prospectus and disclosure documents must be deposited with the state securities commissioner for public inspection.

(6) The total amount of bonds secured under [17-5-1515](#) outstanding at any one time, except bonds as to which the board's obligations have been satisfied and discharged by refunding or bonds for which reserves for payment or other means of payment have been provided, may not exceed \$100 million.

History: En. Sec. 4, Ch. 686, and Sec. 6, Ch. 701, L. 1983; amd. Sec. 2, Ch. 640, L. 1985; amd. Sec. 1, Ch. 589, L. 1991; amd. Sec. 2, Ch. 609, L. 2003; amd. Sec. 17, Ch. 489, L. 2009.

### **Bond anticipation notes – issuance 17-5-1507**

17-5-1507. Bond anticipation notes -- issuance -- payment of principal and interest. (1) The board may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be derived from the sale of the bonds. The notes shall be designated as "bond anticipation notes". The proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. No renewal of any note may be issued after the sale of bonds in anticipation of which the original notes were issued.

(2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3 years after the date of issue may be issued from time to time as the proceeds thereof are needed. The notes must be authorized by the board and must have such terms and details as may be provided by resolution of the board. However, each resolution of the board authorizing notes must:

(a) describe the need for the proceeds of the notes to be issued; and  
(b) specify the principal amount of the notes or maximum principal amount of the notes which may be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula (to be determined in the manner specified in the resolution authorizing the notes to be incurred through the issuance of such notes), and the maturity date or maximum maturity date of the notes.

(3) Subject to the limitations contained in this section and the standards and limitations prescribed in the authorizing resolution, the board in its discretion may provide for the notes described in subsection (2) to be issued and sold, in whole or in part, from time to time. The board may delegate to the administrator of the board the power to determine the time or times of sale, the manner of sale, the amounts, the maturities, the rate or rates of interest, and such other terms and details of the notes as considered appropriate by the board or the administrator in the event of such delegation. The board in its discretion but subject to the limitations contained in this section may also provide in the resolution authorizing the issuance of notes for:

(a) the employment of one or more persons or firms to assist the board in the sale of the notes;  
(b) the appointment of one or more banks or trust companies, either inside or outside the state of Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;  
(c) the refunding of the notes from time to time, without further action by the board, unless and until the board revokes such authority to refund; and  
(d) such other terms and conditions as the board considers appropriate.

(4) In connection with the issuance and sale of notes as provided in this section, the board may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source of repayment for notes issued pursuant to this section. Amounts drawn on such lines of credit may be evidenced by negotiable or nonnegotiable notes or other evidences of indebtedness, containing such terms and conditions as the board may authorize in the resolution approving the same.

History: En. Sec. 5, Ch. 686, and Sec. 7, Ch. 701, L. 1983.

### **Provisions of bond resolutions 17-5-1508**

17-5-1508. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions, which must be a part of the contract or contracts with the holders thereof, as to:

(1) pledging all or any part of the revenue or property of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;  
(2) pledging all or any part of the assets of the board, including lease agreements, loan agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;

- (3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages owned by the board, and the payment of the principal of mortgages owned by the board;
- (4) the setting aside of reserves for debt service funds in the hands of trustees, paying agents, and other depositories and the regulation and disposition thereof;
- (5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue thereof;
- (6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;
- (7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent thereto, and the manner in which such consent may be given;
- (8) a commitment to employ adequate and competent personnel at reasonable compensation; to set salaries, fees, and charges as may be determined by the board in conjunction with the department; and to maintain suitable facilities and services for the purpose of carrying out its programs;
- (9) vesting in a trustee such property, rights, powers, and duties in trust as the authority determines to be necessary;
- (10) defining the acts or omissions that shall constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver; and
- (11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds.

History: En. Sec. 6, Ch. 686, and Sec. 8, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

### **Personal liability 17-5-1509**

17-5-1509. Personal liability. The board and employees of the department are not personally liable or accountable by reason of the issuance of or on any bond or note issued by the board.

History: En. Sec. 7, Ch. 686, and Sec. 9, Ch. 701, L. 1983.

### **Purchase of notes and bonds 17-5-1510**

17-5-1510. Purchase of notes and bonds -- cancellation. The board may, subject to existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase notes or bonds of the board, which shall then be canceled, at a price not exceeding:

- (1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds are then redeemable; or
- (2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable.

History: En. Sec. 8, Ch. 686, and Sec. 10, Ch. 701, L. 1983.

### **Trust indenture 17-5-1511**

17-5-1511. Trust indenture. (1) In the discretion of the board, the bonds may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain

provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the authority in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The authority may provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

(2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating expenses of the board.

History: En. Sec. 9, Ch. 686, and Sec. 11, Ch. 701, L. 1983.

### **Negotiability of bonds 17-5-1512**

17-5-1512. Negotiability of bonds. Notes and bonds issued by the board are negotiable instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and bonds.

History: En. Sec. 10, Ch. 686, and Sec. 12, Ch. 701, L. 1983.

### **Signatures of board members 17-5-1513**

17-5-1513. Signatures of board members. If board members whose signatures appear on notes, bonds, or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes the same as if the members had remained in office until delivery.

History: En. Sec. 11, Ch. 686, and Sec. 13, Ch. 701, L. 1983.

### **Accounts 17-5-1514**

17-5-1514. Accounts. The board may create funds and accounts necessary to implement this part. The funds and accounts may include:

- (1) a fund into which bond proceeds are deposited;
- (2) a common bond fund consisting of:
  - (a) a common debt service account;
  - (b) a capital reserve account as provided in [17-5-1515](#); and
  - (c) an operating account for defraying the operational costs of the board; and
- (3) other funds or accounts.

History: En. Sec. 12, Ch. 686, and Sec. 14, Ch. 701, L. 1983; and Sec. 48, Ch. 281, L. 1983.

### **Reserve funds and appropriations 17-5-1515**

17-5-1515. Reserve funds and appropriations. (1) The board may establish a capital reserve account and pay into it any:

- (a) funds appropriated and made available by the state for the purpose of the account;
- (b) proceeds of the sale of notes or bonds to the extent provided in the resolutions or indentures of the board authorizing their issuance; and
- (c) other funds which may be available to the board from any other source for the purpose of the account.

(2) All funds held in the capital reserve account must be used solely for the payment of the principal of or interest on the bonds secured in whole or in part by the account or the debt service fund payments



with respect to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum of minimum capital reserve requirements established in the resolutions or indentures of the board for the account except, with respect to bonds secured in whole or in part by the account, for the purpose of making payment, when due, of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available. Any income or interest earned by or incremental to the capital reserve account due to its investment may be transferred to other accounts of the board to an extent that does not reduce the amount of the capital reserve account below the sum of minimum capital reserve requirements for the account.

History: En. Sec. 13, Ch. 686, and Sec. 15, Ch. 701, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

### **Maintenance of capital reserve account 17-5-1516**

17-5-1516. Maintenance of capital reserve account. (1) In order to ensure the maintenance of the capital reserve account, the presiding officer of the board shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature must be deposited in the capital reserve account.

(2) All amounts appropriated to the board under this section constitute advances to the board and, subject to the rights of the holders of any bonds or notes of the board, must be repaid to the state general fund without interest from available operating revenue of the board in excess of amounts required for the payment of bonds, notes, or other obligations of the board, for maintenance of the capital reserve account, and for operating expenses.

History: En. Sec. 14, Ch. 686, and Sec. 16, Ch. 701, L. 1983; amd. Sec. 216, Ch. 56, L. 2009.

### **Refunding obligations 17-5-1517**

17-5-1517. Refunding obligations. The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the authority are governed by the appropriate provisions of this part that relate to the issuance of obligations. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in such securities as the board considers appropriate.

History: En. Sec. 15, Ch. 686, and Sec. 17, Ch. 701, L. 1983.

### **Tax exemption of bonds 17-5-1518**

17-5-1518. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part and their transfer and income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 16, Ch. 686, and Sec. 18, Ch. 701, L. 1983; amd. Sec. 11, Ch. 9, Sp. L. May 2000.

### **Adoption of rules 17-5-1521**

17-5-1521. Adoption of rules. (1) The board shall adopt rules to establish:

- (a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with [17-5-1526](#) and [17-5-1527](#); and
- (b) a system for evaluating applications, considering the following criteria:
  - (i) the applicant's net worth;
  - (ii) the applicant's training and experience in the industry involved in the proposed project;
  - (iii) the applicant's prospects for succeeding in the proposed project;
  - (iv) the degree to which the new or increased business resulting from the loan will meet the objectives of [17-5-1502](#); and
  - (v) any other factors the board may prescribe.
- (2) The board shall adopt rules for the:
  - (a) organization, approval, standards, and regulation of project applicants;
  - (b) approval, standards, and regulation of financial institutions under this part;
  - (c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and
  - (d) such other matters as the board considers necessary or desirable.

History: En. Sec. 19, Ch. 686, and Sec. 21, Ch. 701, L. 1983.

### **Pledge of the state 17-5-1522**

17-5-1522. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 20, Ch. 686, and Sec. 22, Ch. 701, L. 1983.

### **Credit of state not pledged 17-5-1523**

17-5-1523. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the board. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation.

History: En. Sec. 21, Ch. 686, and Sec. 23, Ch. 701, L. 1983.

### **Taxation of projects 17-5-1524**

17-5-1524. Taxation of projects. (1) Notwithstanding the fact that title to a project may be in the board, such projects are subject to taxation to the same extent, in the same manner, and under the same procedures as privately owned property in similar circumstances if such projects are leased to or held by private interests on both the assessment date and the date the levy is made in that year. Such projects are not subject to taxation in any year if they are not leased to or held by private interests on both the assessment date and the date the levy is made in that year.

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

History: En. Sec. 22, Ch. 686, and Sec. 24, Ch. 701, L. 1983.

### **Bonds as legal investment 17-5-1525**

17-5-1525. Bonds as legal investment. (1) Bonds issued by the board under the provisions of this part are securities in which all funds may be legally and properly invested, including capital in the control of or belonging to:

- (a) public officers and public bodies of the state and its political subdivisions;
- (b) insurance companies;
- (c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;
- (d) executors, administrators, trustees, and other fiduciaries; and
- (e) pension, profit-sharing, and retirement funds.

(2) Bonds issued under [17-5-1505](#) through [17-5-1518](#) and [17-5-1521](#) through [17-5-1529](#) are securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may hereafter be authorized by law.

History: En. Sec. 23, Ch. 686, and Sec. 25, Ch. 701, L. 1983; amd. Sec. 2, Ch. 589, L. 1991.

### **Procedure prior to financing projects 17-5-1526**

17-5-1526. Procedure prior to financing projects. (1) The board may finance projects, other than major projects, under this part only when it finds that:

- (a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in [17-5-1502](#);
- (b) the financing to be provided by the board for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;
- (c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board;
- (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;
- (e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in [18-2-401](#), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a 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 that requires 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.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified; and the city and county shall, within 14 days after receipt of the notice, notify the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by [17-5-1515](#).

(6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds the interest on which is subject to federal income taxes.

History: En. Sec. 26, Ch. 701, L. 1983; amd. Sec. 1, Ch. 296, L. 1985; amd. Sec. 1, Ch. 653, L. 1985; amd. Sec. 1, Ch. 273, L. 1987; amd. Sec. 5, Ch. 561, L. 1987; amd. Sec. 3, Ch. 589, L. 1991; amd. Sec. 1, Ch. 464, L. 1993.

### **Procedure prior to financing major projects 17-5-1527**

17-5-1527. Procedure prior to financing major projects. (1) The board may finance major projects under this part only when it finds that:

(a) the financing is in the public interest and is consistent with legislative purposes and findings;

(b) the financing to be provided by the board for a project does not exceed either \$50 million or 90% of the cost or appraised value of the project, whichever is less;

(c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the board, provided, however, that participation by a financial institution in projects of over \$1 million is at the discretion of the board;

(d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;

(e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in [18-2-401](#), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal

qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

(f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the board issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and

(g) an applicant has submitted a statement that indicates that any contract let for a 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 that requires 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.

(2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the following manner:

(a) the city or county in which the project will be located must be notified, and within 14 days shall advise the board if it elects to conduct the hearing; or

(b) if a request for a local hearing is not received, the board may hold the hearing at a time and place it prescribes.

(3) If the hearing required by subsection (2) is conducted by a local government, the governing body of the local government shall notify the board of its determination of whether the project is in the public interest within 14 days of the completion of the public hearing.

(4) When a hearing is required either locally or at the state level, notice must be given, at least once a week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the city or county where the hearing will be held. The notice must include the time and place of the hearing; the general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost of the project.

(5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by the capital reserve account authorized by [17-5-1515](#).

(6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with bonds the interest on which is subject to federal income taxes.

(7) The board is encouraged to consider applications for project financing related to infrastructure and facilities necessary for the development of the state-owned coal assets.

History: En. Sec. 24, Ch. 686, L. 1983; amd. Sec. 2, Ch. 296, L. 1985; amd. Sec. 2, Ch. 653, L. 1985; amd. Sec. 2, Ch. 273, L. 1987; amd. Sec. 6, Ch. 561, L. 1987; amd. Sec. 4, Ch. 589, L. 1991; amd. Sec. 2, Ch. 464, L. 1993; amd. Sec. 3, Ch. 609, L. 2003.

### **Validity of pledge 17-5-1528**

17-5-1528. Validity of pledge. Any pledge made by the board is valid and binding from the time the pledge is made. Revenue, money, or property pledged and received by the board is immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created is required to be recorded.

History: En. Sec. 25, Ch. 686, and Sec. 27, Ch. 701, L. 1983.

### **Economic Development Bond program requires annual audits 17-5-1529**

17-5-1529. Annual audits. The board's books and records related to economic development bonds must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit must be paid from the board's funds.

History: En. Sec. 26, Ch. 686, and Sec. 28, Ch. 701, L. 1983; amd. Sec. 1, Ch. 308, L. 1985; amd. Sec. 43, Ch. 483, L. 2001; amd. Sec. 1, Ch. 487, L. 2001.

### **8.97.1707 Application Procedures and Public Hearing Requirements**

(1) A business enterprise may apply for financing under the economic development bond programs by submitting a loan application to the board which will review project eligibility and the proposed use of the money.

(2) For moral obligation bonds, the financial institution shall submit a complete loan application on a form provided by the board. The application shall be properly signed and certified by the borrower and the financial institution. An application signed by the financial institution shall constitute a commitment by the financial institution to originate the loan or participate in the financing (if such participation is required) , in the manner set forth in the application. The board shall review the complete application with bond counsel to determine whether the project meets the requirements of these rules and the regulations of the Internal Revenue Code.

(3) If the applicant has applied for bond financing which is subject to federal tax exemption and the project appears eligible, the board shall notify the governing body of the local government in which the project is located of the pending application for financing and of the local government's right to conduct a public hearing on the project for the purpose of determining whether the project is in the public interest. The local government shall notify the board within fourteen days after receipt of notification of the pending application of whether the local government intends to conduct the public hearing.

(4) If the local government elects to conduct the public hearing, the board and local government shall determine the date for the public hearing and the board shall publish notice of the public hearing pursuant to the requirements of [17-5-1526\(4\)](#) and [17-5-1527\(4\)](#) , MCA. If the local government, after the public hearing, determines that the project is in the public interest, it shall adopt a resolution which makes appropriate findings of public interest with respect thereto. The local government must notify the board within fourteen days of the public hearing of its findings and provide the board with a copy of the resolution. The board, upon notification that the local government has determined that the project is in the public interest, may issue an inducement resolution.

(5) If the local government declines to conduct the public hearing or fails to notify the board of its intention to conduct the hearing within fourteen days, the board shall hold a public hearing on the project for the purpose of determining whether the project is in the public interest. If the local government fails to notify the board of its determination of public interest within fourteen days of the hearing, the board may hold a public hearing on the project for the purpose of determining whether the project is in the public interest. At the conclusion of the public hearing, the board may issue its inducement resolution for the project.

(6) If the board determines that time is of the essence to an applicant applying for financing from federally tax-exempt bonds, the board may adopt a preliminary inducement resolution after an application has been submitted in accordance with ARM [8.97.1706](#) and upon such other terms and conditions deemed necessary.

(7) Upon receipt of the local government's determination or upon its own determination that the project is in the public interest, the board may adopt an inducement resolution. This inducement resolution shall only constitute an expression of present intention of the board with respect to the project and shall not constitute a binding commitment on the part of the board that its bonds or notes will be issued for the project. This resolution expires one year from its date of adoption.

(8) After the board has approved an application for financing with federally tax-exempt bonds, but before the board issues such bonds, a project description shall be submitted to the governor. The governor shall, in writing, approve the project and certify that the required public hearing was conducted in compliance with the Internal Revenue Code.

(9) After an application has been approved by the board, the board may issue a conditional commitment.

History: Sec. [17-5-1504](#), [17-5-1521](#), MCA; IMP, Sec. [17-5-1504](#), [17-5-1521](#), [17-5-1526](#), [17-5-1527](#), MCA; NEW, 1989 MAR p. 659, Eff. 5/26/89.

## IN-STATE LOANS:

### **Statement of Intent (attached to Ch 677, L. 1983)**

The statement of intent attached to Ch. 677, L. 1983, provided: "(1) A statement of intent is required for this bill because it grants rulemaking authority to the Montana economic development board [now the Board of Investments] in section 16. These rules will include definitions of small- and medium-sized businesses, a method of commitment of funds to financial institutions, setting service fees for loans, defining types of permissible investment, and procedural rules to govern the board's proceedings.

(2) It is the intent of the legislature that:

(a) the definitions of small- and medium-sized business be based on either the number of employees of the business, the level of capitalization of the business, or a combination of these factors;

(b) the method of committing funds to financial institutions be similar to the method utilized by the board of housing for committing funds for housing developments to financial institutions;

(c) the level of service fees be set to cover the costs associated with processing the investment and be similar to those charged by financial institutions;

(d) the permissible investments adopted by rules be based on the long-term benefit to the Montana economy and adhere to the prudent-man rule. The investments should be aimed at diversifying, strengthening, and stabilizing the Montana economy and increasing employment opportunities while maintaining and improving a clean and healthful environment; and

(e) the procedural rules be based on the Attorney General's model rules."

### **Short Title 17-6-301**

17-6-301. Short title. This part may be cited as the "Montana In-State Investment Act of 1983".

History: En. Sec. 1, Ch. 677, L. 1983.

### **Definitions of In-State Investment Program 17-6-302**

17-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of investments created in [2-15-1808](#).

(2) "Clean and healthful environment" means an environment that is relatively free from pollution that threatens human health, including as a minimum, compliance with federal and state environmental and health standards.

(3) "Coal-fired generating unit" means an individual unit of a coal-fired electrical generating facility located in Montana that has a generating capacity greater than or equal to 100 megawatts.

(4) "Department" means the department of commerce provided for in [2-15-1801](#).

- (5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana each of whose principal occupation is as an employee, officer, or partner of the enterprise.
- (6) "Existing infrastructure" means public improvements, including but not limited to:
- (a) drinking water systems;
  - (b) wastewater treatment;
  - (c) sanitary sewer or storm sewer systems;
  - (d) solid waste disposal and separation systems;
  - (e) roads;
  - (f) bridges; or
  - (g) any public improvements authorized by Title 7, chapter 11, part 10; Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47.
- (7) "Financial institution" includes but is not limited to a state-chartered or federally chartered bank or a savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter 4.
- (8) "Intermediary loan" means a loan provided to a local economic development organization with a revolving loan fund to be used to provide matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.
- (9) "Loan participation" means loans or portions of loans bought from a financial institution.
- (10) "Local economic development organization" means:
- (a) (i) a private, nonprofit corporation, as provided in Title 35, chapter 2, that is exempt from taxation under section 501(c)(3) or 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(3) or 501(c)(6);
  - (ii) an entity certified by the department under [90-1-116](#); or
  - (iii) an entity established by a local government; and
  - (b) an entity actively engaged in economic development and business assistance work in the area.
- (11) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests, or other ownership interests is owned and controlled by residents of Montana.
- (12) "Long-term benefit to the Montana economy" means an activity that strengthens the Montana economy and that has the potential to maintain and create jobs, increase per capita income, or increase Montana tax revenue in the future to the people of Montana, either directly or indirectly.
- (13) "Montana economy" means any business activities in the state of Montana, including those that continue existing jobs or create new jobs in Montana.
- (14) "Owner" means an entity certified as an exempt wholesale generator pursuant to 42 U.S.C. 16451 or a public utility regulated by the public service commission in accordance with Title 69 that owns a coal-fired generating unit.
- (15) "Service fees" means the fees normally charged by a financial institution for servicing a loan, including amounts charged for collecting payments and remitting amounts to the fund.
- History: En. Sec. 2, Ch. 677, L. 1983; amd. Sec. 1, Ch. 408, L. 1985; amd. Sec. 1, Ch. 124, L. 1987; amd. Sec. 57, Ch. 370, L. 1987; amd. Sec. 13, Ch. 581, L. 1987; amd. Sec. 5, Ch. 589, L. 1991; amd. Sec. 4, Ch. 549, L. 1997; amd. Sec. 4, Ch. 183, L. 2003; amd. Sec. 1, Ch. 9, L. 2011; amd. Sec. 2, Ch. 373, L. 2017; amd. Sec. 1, Ch. 419, L. 2017; amd. Sec. 1, Ch. 245, L. 2019.

## **Purpose of The Coal Tax Trust Fund within In-State Investment Program 17-6-303**



17-6-303. Purpose of the coal tax trust fund. The people of Montana establish that the intent of the permanent coal tax trust fund, as created by Article IX, section 5, of the Montana constitution, is:

- (1) to compensate future generations for the loss of a valuable and depletable resource and to meet any economic, social, and environmental impacts caused by coal development not otherwise provided for by other coal tax sources; and
- (2) to develop a stable, strong, and diversified economy which meets the needs of Montana residents both now and in the future while maintaining and improving a clean and healthful environment as required by Article IX, section 1, of the Montana constitution.

History: En. Sec. 1, I.M. No. 95, approved Nov. 2, 1982.

### **Use of Coal Tax Trust Fund for Economic Development 17-6-304**

17-6-304. Use of the coal tax trust fund for economic development. Objectives for investment of the permanent coal tax trust fund are to diversify, strengthen, and stabilize the Montana economy and to increase Montana employment and business opportunities while maintaining and improving a clean and healthful environment.

History: En. Sec. 2, I.M. No. 95, approved Nov. 2, 1982.

### **Montana In-State Investment Report by MBOI -- Report by Board 17-6-305**

17-6-305. Investment of coal tax trust fund in Montana economy -- report by board. (1) Subject to the provisions of [17-6-201](#)(1), the board shall endeavor to invest 25% of the permanent coal tax trust fund established in [17-6-203](#)(6) in the Montana economy, with special emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to this section do not include investments made pursuant to [17-6-309](#)(2). For purposes of calculating the 25% of the permanent coal tax trust fund, the board shall include all funds listed in [17-5-703](#)(1). The portion of the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of science and technology development is included in the 25% of the trust fund allocated to the board for in-state investment under this section. This subsection does not prohibit the board from investing more than 25% of the permanent coal tax trust fund in the Montana economy if it is prudent to do so and the investments will benefit the Montana economy.

(2) In determining the probable income to be derived from investment of this revenue, the long-term benefit to the Montana economy must be considered.

(3) The legislature may provide additional procedures to implement this section.

(4) The board shall include a report on the investments made under this section as a part of the information required by [17-7-111](#).

History: En. Sec. 3, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 1, Ch. 338, L. 1985; amd. Sec. 6, Ch. 418, L. 1985; amd. Sec. 14, Ch. 16, L. 1991; amd. Sec. 6, Ch. 589, L. 1991; amd. Sec. 16, Ch. 787, L. 1991; amd. Sec. 21, Ch. 349, L. 1993; amd. Sec. 1, Ch. 34, L. 1995; amd. Sec. 1, Ch. 477, L. 1995; amd. Sec. 5, Ch. 549, L. 1997; amd. Sec. 8, Ch. 307, L. 2001; amd. Sec. 1, Ch. 444, L. 2007.

### **Authorized Investments 17-6-308**

17-6-308. Authorized investments. (1) Except as provided in subsections (2) through (8) of this section 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. As loans made by the former Montana board of science and technology development 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 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 allow the board of housing to administer \$50 million of the permanent coal tax trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.
- (6) The board shall allow the board of housing to administer \$15 million of the permanent coal tax trust fund for the purpose of providing loans for the development and preservation of homes and apartments to assist low-income and moderate-income persons with meeting their basic housing needs pursuant to [90-6-137](#).
- (7) (a) Subject to subsections (7)(b) and (7)(c), the board may make working capital loans from the permanent coal tax trust fund to an owner of a coal-fired generating unit.
- (b) Loans may be provided in accordance with subsection (7)(a) to an owner to finance:
- (i) the everyday operations and required maintenance of a coal-fired generating unit of which an owner has a shared interest;
  - (ii) the purchase of an additional interest in a coal-fired generating unit of which an owner has a shared interest;
  - (iii) the purchase of coal to use at a coal-fired generating unit or improvements necessary to utilize coal from a different source at a coal-fired generating unit. When considering loan requests made under this subsection (7)(b)(iii), the board shall give preference to requests that allow for utilization of coal resources located in Montana or allow for improvements to utilize coal resources located in Montana that are determined to be economically feasible.
  - (iv) the purchase of electric transmission lines and associated facilities of a design capacity of 500 kilovolts or more primarily used to transmit electricity generated by a coal-fired resource; or
  - (v) any combination of subsections (7)(b)(i) through (7)(b)(iv).
- (c) The board may charge a working capital loan application fee of up to \$500.

(8) The board may make loans from the permanent coal tax trust fund to a city, town, county, or consolidated city-county government impacted by the closure of a coal-fired generating unit to secure and maintain existing infrastructure.

(9) 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.

(10) 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.

History: En. Sec. 5, Ch. 677, L. 1983; amd. Sec. 7, Ch. 418, L. 1985; amd. Sec. 3, Ch. 640, L. 1985; amd. Sec. 22, Ch. 316, L. 1989; amd. Sec. 1, Ch. 251, L. 1991; amd. Sec. 7, Ch. 589, L. 1991; amd. Secs. 2, 12, Ch. 594, L. 1991; amd. Sec. 2, Ch. 331, L. 1993; amd. Sec. 10, Ch. 559, L. 1995; amd. Secs. 6, 7, Ch. 549, L. 1997; amd. Sec. 1, Ch. 66, L. 1999; amd. Sec. 1, Ch. 160, L. 1999; amd. Sec. 4, Ch. 137, L. 2001; amd. Sec. 9, Ch. 307, L. 2001; amd. Sec. 7, Ch. 349, L. 2011; amd. Sec. 1, Ch. 213, L. 2013; amd. Sec. 1, Ch. 396, L. 2015; amd. Sec. 3, Ch. 373, L. 2017; amd. Sec. 2, Ch. 419, L. 2017; amd. Sec. 1, Ch. 190, L. 2019; amd. Sec. 2, Ch. 245, L. 2019; amd. Sec. 2, Ch. 460, L. 2019.

### **Investment Preferences 17-6-309**

17-6-309. Investment preferences. (1) Subject to the provisions of subsection (2), in deciding which of several investments of equal or comparable security and return are to be made when sufficient funds are not available to fund all possible investments, the board shall give preference to the business investments that:

- (a) assist employee-owned enterprises in providing new jobs or in preserving existing jobs for Montana residents or in otherwise contributing to the long-term benefit of the Montana economy, including raising the per capita income of Montana jobholders;
- (b) are for locally owned enterprises that are either expanding or establishing new operations;
- (c) provide jobs that will be substantially filled by current Montana residents as opposed to providing jobs that will be filled by nonresidents coming into the state to fill the jobs;
- (d) maintain and improve a clean and healthful environment, with emphasis on energy efficiency;
- (e) encourage or benefit the processing, refining, marketing, and innovative use and promotion of Montana's agricultural products; or
- (f) benefit small- and medium-sized businesses as defined in rules adopted by the board.

(2) The board may make a loan to enhance economic development and create jobs in the basic sector of the economy, as defined by the board by rule, if the loan will result in the creation of a business estimated to employ at least 15 people in Montana on a permanent, full-time basis or result in the expansion of a business estimated to employ at least an additional 15 people in Montana on a permanent, full-time basis or raise salaries, wages, and business incomes of existing employees and employers.

(3) The board may make a working capital loan to an owner of a coal-fired generating unit if the loan will prevent the elimination of jobs and provide stability in a community impacted by the operation of a coal-fired generating unit.

History: En. Sec. 6, Ch. 677, L. 1983; amd. Sec. 2, Ch. 408, L. 1985; amd. Sec. 2, Ch. 477, L. 1995; amd. Sec. 1, Ch. 64, L. 1999; amd. Sec. 4, Ch. 373, L. 2017.

### **Limitation on size of investments 17-6-311**

17-6-311. Limitation on size of investments. (1) Except as provided in subsection (2) and this subsection, an investment may not be made that will result in any one business enterprise or person

receiving a benefit from or incurring a debt to the permanent coal tax trust fund the total current accumulated amount of which exceeds 10% of the permanent coal tax trust fund. If an investment results in any one business enterprise or person incurring a debt in excess of 6% of the permanent coal tax trust fund, at least 30% of the debt incurred for the project or enterprise for the coal tax investment that was made to the business enterprise or person must be held by a commercial lender. This subsection does not:

- (a) apply to a loan made pursuant to [17-6-317](#); or
  - (b) limit the board's authority to make loans to the capital reserve account as provided in [17-6-308](#)(2).
- (2) The total amount of loans made pursuant to [17-6-309](#)(2) may not exceed \$80 million, the total amount of loans made pursuant to [17-6-317](#) may not exceed \$70 million, and a single loan may not be less than \$250,000. Except for a loan made pursuant to [17-6-317](#), a loan may not exceed \$16,666 for each job that is estimated to be created. In determining the size of a loan made pursuant to [17-6-309](#)(2), the board shall consider:
- (a) the estimated number of jobs to be created by the project within a 4-year period from the time that the loan is made and the impact of the jobs on the state and the community where the project will be located;
  - (b) the long-term effect of corporate and personal income taxes estimated to be paid by the business and its employees;
  - (c) the current and projected ability of the community to provide necessary infrastructure for economic and community development purposes;
  - (d) the amount of increased salaries, wages, and business incomes of existing jobholders and businesses; and
  - (e) other matters that the board considers necessary.
- (3) The total amount of loans made annually pursuant to [17-6-309](#)(3) may not exceed \$50 million. In determining the size of a loan, the board shall consider:
- (a) the direct and indirect tax implications to the state if a coal-fired generating unit is retired prematurely;
  - (b) the current and projected ability of an owner to operate and maintain a coal-fired generating unit; and
  - (c) other matters that the board considers necessary.

History: En. Sec. 8, Ch. 677, L. 1983; amd. Sec. 4, Ch. 640, L. 1985; amd. Sec. 3, Ch. 124, L. 1987; amd. Sec. 9, Ch. 589, L. 1991; amd. Sec. 3, Ch. 2, L. 1995; amd. Sec. 3, Ch. 477, L. 1995; amd. Sec. 1, Ch. 98, L. 1997; amd. Sec. 2, Ch. 64, L. 1999; amd. Sec. 2, Ch. 4, Sp. L. May 2000; amd. Sec. 2, Ch. 487, L. 2001; amd. Sec. 2, Ch. 444, L. 2007; amd. Sec. 2, Ch. 9, L. 2011; amd. Sec. 5, Ch. 373, L. 2017; amd. Sec. 3, Ch. 245, L. 2019.

## **State participation in loans 17-6-312**

- 17-6-312. State participation in loans. (1) Subject to [17-6-311](#), state participation in any loan to a business enterprise, except for a loan made pursuant to [17-6-317](#) or guaranteed by a federal agency, must be limited to 80% of the outstanding loan. The state shall participate in the security for a loan in the same proportion as the loan participation amount.
- (2) State participation in loans to nonprofit corporations may qualify for the job credit interest rate reductions under [17-6-318](#) if the interest rate reduction passes through to a for-profit business creating the jobs.

History: En. Sec. 9, Ch. 677, L. 1983; amd. Sec. 4, Ch. 124, L. 1987; amd. Sec. 4, Ch. 2, L. 1995; amd. Sec. 4, Ch. 477, L. 1995; amd. Sec. 3, Ch. 4, Sp. L. May 2000; amd. Sec. 3, Ch. 487, L. 2001; amd. Sec. 3, Ch. 9, L. 2011.

### **Prior commitment of funds 17-6-313**

17-6-313. Prior commitment of funds. The board may authorize the commitment of funds to financial institutions pursuant to rules adopted by the board, but the determination as to credit with respect to individual investments must be made by the financial institution and the board.

History: En. Sec. 10, Ch. 677, L. 1983; amd. Sec. 5, Ch. 124, L. 1987; amd. Sec. 4, Ch. 9, L. 2011.

17-6-314. Rate of return. Except as provided in [17-6-317](#), in calculating the rate of return for any Montana investment to be made from the permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in [17-6-319](#).

History: En. Sec. 11, Ch. 677, L. 1983; amd. Sec. 10, Ch. 589, L. 1991; amd. Sec. 4, Ch. 4, Sp. L. May 2000.

### **Rate of return 17-6-314**

17-6-314. Rate of return. Except as provided in [17-6-317](#), in calculating the rate of return for any Montana investment to be made from the permanent coal tax trust fund, the board shall consider the long-term benefit to the Montana economy and the additional service fee discount provided for in [17-6-319](#).

History: En. Sec. 11, Ch. 677, L. 1983; amd. Sec. 10, Ch. 589, L. 1991; amd. Sec. 4, Ch. 4, Sp. L. May 2000.

### **Economic development loan – infrastructure tax credit 17-6-316**

17-6-316. Economic development loan -- infrastructure tax credit. (1) A loan made pursuant to [17-6-309](#)(2) must be used to build infrastructure, as provided for in [7-15-4288](#)(4), such as water systems, sewer systems, water treatment facilities, sewage treatment facilities, and roads, that allows the location or creation of a business in Montana. The loan must be made to a local government or an Indian tribal government that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local government or Indian tribal government receiving the loan may charge fees to the users of the infrastructure. A loan repayment agreement must provide for repayment of the loan from the entity authorized to charge fees for the use of the services of the infrastructure. Loans made pursuant to [17-6-309](#)(2) qualify for the job credit interest rate reductions under [17-6-318](#) if the interest rate reduction passes through to the business creating the jobs.

(2) A loan pursuant to [17-6-309](#)(2) and this section may not be made until the board is satisfied that the condition in [17-6-309](#)(2) will be met. If the condition contained in [17-6-309](#)(2) is not met, any credits received pursuant to subsection (3) of this section must be returned to the state.

(3) A business that is created or expanded as the result of a loan made pursuant to [17-6-309](#)(2) and subsection (1) of this section is entitled to a credit against taxes due under Title 15, chapter 30 or 31, for the portion of the fees attributable to the use of the infrastructure. The total amount of tax credit claimed may not exceed the amount of the loan. The credit may be carried forward for 7 tax years or carried back for 3 tax years.

History: En. Sec. 5, Ch. 2, L. 1995; En. Sec. 5, Ch. 477, L. 1995; amd. Sec. 7, Ch. 477, L. 1995; amd. Sec. 4, Ch. 359, L. 2019.

### **Participation Loans Allowed 17-6-317**

17-6-317. Participation by private financial institutions -- rulemaking. (1) (a) The board may jointly participate with private financial institutions in making loans to a business enterprise if the loan will:

- (i) result in the creation of a business estimated to employ at least 10 people in Montana on a permanent, full-time basis;
- (ii) result in the expansion of a business estimated to employ at least an additional 10 people in Montana on a permanent, full-time basis; or
- (iii) prevent the elimination of the jobs of at least 10 Montana residents who are permanent, full-time employees of the business.

(b) Loans under this section may be made only to:

- (i) business enterprises that are producing or will produce value-added products or commodities; or
- (ii) owners of coal-fired generating units for the purposes established in [17-6-308\(7\)](#).

(c) A loan made pursuant to this section does not qualify for a job credit interest rate reduction under [17-6-318](#).

(2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent fund and must comply with each of the following requirements:

(a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least 25% of the total loan amount.

(ii) A participating private financial institution may not require the business to have an equity position greater than 50% of the total loan amount.

(iii) If additional security or guarantees, exclusive of federal guarantees, are required to cover a participating private financial institution, then the additional security or guarantees must be proportional to the amount loaned by all participants, including the board of investments.

(b) The board shall provide 75% of the total loan amount.

(c) The term of the loan may not exceed 15 years.

(d) The board shall charge interest at the following annual rate:

(i) 2% for the first 5 years if 15 or more jobs are created or retained;

(ii) 4% for the first 5 years if 10 to 14 jobs are created or retained;

(iii) 6% for the second 5 years; and

(iv) the board's posted interest rate for the third 5 years, but not to exceed 10% a year.

(e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board receives certification that the required number of jobs has been created or as provided in subsection (2)(e)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear interest at the board's posted rate.

(ii) In establishing interest rates under subsections (2)(d)(i) and (2)(d)(ii) for preventing the elimination of jobs, the board shall require the submission of financial data that allows the board to determine if the loan and interest rate will in fact prevent the elimination of jobs.

(f) If a business entitled to the interest rate in subsection (2)(d)(i) or (2)(d)(ii) reduces the number of required jobs, the board may apply a graduated scale to increase the interest rate, not to exceed the board's posted rate.

(g) For purposes of calculating job creation or retention requirements, the board shall use the state's average weekly wage, as defined in [39-71-116](#), multiplied by the number of jobs required. This calculated number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate. If individual jobs created pay less than the state's average weekly wage, the

borrower shall create more jobs to meet the minimum aggregate salary threshold. If fewer jobs are created or retained than required in subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for in [39-3-409](#), may not be included in the required number of jobs.

(h) (i) A participating private financial institution may charge interest in an amount equal to the national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than 6% or greater than 12%.

(ii) At the borrower's discretion, the borrower may request the lead lender to change this prime rate to an adjustable or fixed rate on terms acceptable to the borrower and lender.

(iii) A participating private financial institution, or lead private financial institution if more than one is participating, may charge a 0.5% annual service fee.

(i) The business enterprise may not be charged a loan prepayment penalty.

(j) The loan agreement must contain provisions providing for pro rata lien priority and pro rata liquidation provisions based on the loan percentage of the board and each participating private lender.

(3) If a portion of a loan made pursuant to this section is for construction, disbursement of that portion of the loan must be made based on the percentage of completion to ensure that the construction portion of the loan is advanced prior to completion of the project.

(4) A private financial institution shall participate in a loan made pursuant to this section to the extent of 85% of its lending limit or 25% of the loan, whichever is less. However, the board's participation in the loan must be 75% of the loan amount.

(5) (a) Except as provided in subsections (5)(b) and (5)(c), a business enterprise receiving a loan under the provisions of this section may not pay bonuses or dividends to investors until the loan has been paid off, except that incentives may be paid to employees for achieving performance standards or goals.

(b) A business enterprise for the production of ethanol to be used as provided in Title 15, chapter 70, part 5, may pay dividends to investors and bonuses to employees if the business enterprise is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(c) A public utility may pay dividends to investors and bonuses to employees if the public utility is current on its loan payments and has available funds equal to at least 15% of the outstanding principal balance of the loan.

(6) The board may adopt rules that it considers necessary to implement this section.

History: En. Sec. 1, Ch. 4, Sp. L. May 2000; amd. Sec. 1, Ch. 289, L. 2001; amd. Sec. 1, Ch. 26, L. 2005; amd. Sec. 7, Ch. 452, L. 2005; amd. Sec. 18, Ch. 100, L. 2007; amd. Sec. 6, Ch. 373, L. 2017; amd. Sec. 4, Ch. 245, L. 2019.

## **Job credit rate reduction for business loan participation 17-6-318**

17-6-318. Job credit interest rate reduction for business loan participation. (1) A borrower who uses the proceeds of a business loan participation funded under the provisions of this part to create jobs employing Montana residents is entitled to a job credit interest rate reduction for each job created to employ a Montana resident. A borrower who uses the proceeds of a loan made pursuant to [17-6-309](#)(2) to create jobs is entitled to a job credit interest rate reduction for each job created. The job credit interest rate reduction is equal to 0.05% for each job created to employ a Montana resident, up to a maximum interest rate reduction of 2.5%.

(2) If the salary or wage of the job created:

- (a) exceeds the state's average weekly wage, as defined in [39-71-116](#), the amount of the job credit interest rate reduction may be increased proportionately for each increment of 25% above the state's average weekly wage to a maximum of two times the state's average weekly wage; or
- (b) is less than the state's average weekly wage, as defined in [39-71-116](#), the job credit interest rate reduction is reduced proportionately for each 25% increment below the state's average weekly wage.
- (3) A job credit interest rate reduction may not be allowed for a job created by the borrower using the proceeds of the loan for which the salary or wage is less than the minimum wage provided for in [39-3-409](#).
- (4) A job credit may not be given unless one whole job is created.
- (5) To qualify for the job credit interest rate reduction, the borrower shall provide satisfactory evidence of the creation of jobs and shall make a written application to the board through its financial institution or, in the case of a loan made pursuant to [17-6-309\(2\)](#), shall make a written application directly to the board.
- History: En. Sec. 17, Ch. 589, L. 1991; amd. Sec. 2, Ch. 98, L. 1997; amd. Sec. 3, Ch. 64, L. 1999; amd. Sec. 4, Ch. 487, L. 2001; amd. Sec. 2, Ch. 26, L. 2005.

### **Incentive to financial institution for small business loan participation 17-6-319**

17-6-319. Incentive to financial institution for small business loan participation. A financial institution that originates a small business loan no larger than 0.05% of the balance of the Montana permanent coal tax trust fund at the end of the last-completed fiscal year is entitled to an additional service fee in the form of a discount equal to 0.5% of the board's participation in the loan. The board shall consider the additional service fee discount to the financial institution as part of the rate of return provided in [17-6-314](#).

History: En. Sec. 18, Ch. 589, L. 1991.

### **Loan recipients – notice 17-6-320**

17-6-320. Loan recipients -- notice. (1) If an owner of a coal-fired generating unit receives a loan in accordance with this part, the owner shall provide the board of investments and the governor of Montana with a minimum of 90 days' notice prior to filing for bankruptcy, reorganization, or other insolvency proceeding or prior to a merger, sale, or transfer, by operation of law or otherwise.

(2) A successor to the owner, whether pursuant to a bankruptcy, reorganization, or other insolvency proceeding or pursuant to a merger, sale, or transfer, by operation of law or otherwise, shall perform and satisfy all obligations of the owner pursuant to this part in the same manner and to the same extent as the owner.

History: En. Sec. 1, Ch. 373, L. 2017.

### **In-State Investment Program Audit required 17-6-321**

17-6-321. Audits. The board's books and records related to in-state investments must be audited once each fiscal year by or at the direction of the legislative auditor. The actual cost of this audit must be paid from the board's funds.

History: En. Sec. 13, Ch. 677, L. 1983; amd. Sec. 3, Ch. 308, L. 1985; amd. Sec. 45, Ch. 483, L. 2001; amd. Sec. 5, Ch. 487, L. 2001.

### **In-State Investment Audit Report Requirements 17-6-322**



17-6-322. Report. The board shall include in its annual report a section on the results of the previous year's operations of the investment in the Montana economy from the permanent coal tax trust fund, as required in [17-6-305](#), including:

- (1) financial statements audited by independent auditors;
- (2) a summary report of loan activity; and
- (3) a comparison of the performance of the investments in the Montana economy in relation to the purposes contained in [17-6-303](#).

History: En. Sec. 14, Ch. 677, L. 1983; amd. Sec. 1, Ch. 264, L. 1987; amd. Sec. 1, Ch. 94, L. 1989; amd. Sec. 11, Ch. 589, L. 1991.

### **Rulemaking authority 17-6-324**

17-6-324. Rulemaking authority. (1) The board may adopt rules to implement the provisions of this part and [17-6-211](#)(2). Rules adopted by the board may include:

- (a) definitions of small- and medium-sized businesses;
- (b) a method of committing funds to financial institutions, including guidelines for lead private financial institutions if a consortium of private financial institutions is participating in a loan made pursuant to [17-6-317](#);
- (c) guidelines for graduation clauses for refinancing and early payment of loans made pursuant to [17-6-317](#);
- (d) types of service fees; and
- (e) types of investments to be made.

(2) The board may also adopt procedural rules to govern its proceedings.

History: En. Sec. 16, Ch. 677, L. 1983; amd. Sec. 8, Ch. 418, L. 1985; amd. Sec. 5, Ch. 4, Sp. L. May 2000.

### **Preference of Montana Labor 17-6-325**

17-6-325. Preference of Montana labor. Any contract to construct a project financed pursuant to this part must require all contractors to give preference to the employment of bona fide Montana residents, as defined in [18-2-401](#), in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents. "Substantially equal qualifications" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons.

History: En. Sec. 3, Ch. 653, L. 1985; amd. Sec. 7, Ch. 561, L. 1987.

### **Establishment of a Montana economic development fund 17-6-331**

17-6-331. Establishment of a Montana economic development fund. A Montana economic development fund is created. A portion of the interest income from the permanent coal tax trust fund created in [17-6-203](#)(6) shall be deposited in the fund as determined by the legislature. Monies, if any, appropriated by the legislature from the economic development fund shall be used only for programs consistent with the objectives in [17-6-304](#).

History: En. Sec. 4, I.M. No. 95, approved Nov. 2, 1982; amd. Sec. 8, Ch. 445, L. 1987.

### **Intermediary relending program 17-6-345**

17-6-345. Intermediary relending program. (1) The board may set aside an amount, not to exceed \$10 million, from the in-state investment percentage provided for in [17-6-305](#) for the purpose of creating an intermediary relending program.

(2) Intermediary loans may be made to board-approved local economic development organizations with revolving loan programs.

(3) Each intermediary loan made pursuant to subsection (2) may not exceed \$500,000.

(4) An intermediary loan made under this section may be offered only to an applicant that will pledge and use the loan funds as matching funds for the U.S. department of agriculture rural development loan program provided for in 42 U.S.C. 9812 and 9812a or other federal revolving loan programs, including but not limited to programs from the economic development administration of the U.S. department of commerce and the community development financial institution program from the U.S. department of the treasury.

History: En. Sec. 1, Ch. 183, L. 2003; amd. Sec. 1, Ch. 191, L. 2019.

### **Interest rates and repayment of intermediary loan – terms 17-6-346**

17-6-346. Interest rates and repayment of intermediary loan -- terms. (1) The interest rate on an intermediary loan made pursuant to [17-6-345](#) may not exceed 2% a year for a period of 30 years.

(2) For the first 3 years, repayment on the intermediary loan is of the interest only, and for the remainder of the term of the intermediary loan, the repayment is principal and interest.

History: En. Sec. 2, Ch. 183, L. 2003.

### **Purchase of seasoned or mature loans by board 17-6-347**

17-6-347. Purchase of seasoned or mature loans by board. The board may purchase a portion of a seasoned or mature loan from a local economic development organization's revolving loan program.

History: En. Sec. 3, Ch. 183, L. 2003.

### **Coal Severance tax trust funds amount of earnings 17-5-703**

17-5-703. (Temporary) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a treasure state endowment regional water system fund;

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

(f) a big sky economic development fund; and

(g) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) (a) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains

and losses, required to meet the obligations of the state that are payable from the account in accordance with [90-6-710](#). Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(b) The state treasurer shall monthly transfer from the treasure state endowment regional water system fund to the treasure state endowment regional water system special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account for regional water systems authorized under [90-6-715](#). Earnings not transferred to the treasure state endowment regional water system special revenue account must be retained in the treasure state endowment regional water system fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in [20-9-380\(1\)](#) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in [20-9-525](#) the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [20-9-525](#) must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in [90-1-205](#), the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with [90-1-204](#). Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund. (Terminates June 30, 2031--secs. 1 through 3, Ch. 305, L. 2015.)

17-5-703. (Effective July 1, 2031) Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution is composed of the following funds:

(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax must be deposited;

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

(e) a big sky economic development fund; and

(f) a school facilities fund.

(2) (a) The state treasurer shall determine, on July 1 of each year, the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund during the next 12 months and retain that amount in the coal severance tax bond fund.

(b) The amount in the coal severance tax bond fund in excess of the amount required in subsection (2)(a) must be transferred from that fund as provided in subsections (4) and (5).

(3) The state treasurer shall monthly transfer from the treasure state endowment fund to the treasure state endowment special revenue account the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with [90-6-710](#). Earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund.

(4) (a) Starting July 1, 2017, the state treasurer shall quarterly transfer to the school facilities fund provided for in [20-9-380](#)(1) 75% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund. The budget director shall certify to the state treasurer when the balance of the school facilities fund is \$200 million. Beginning with the quarter following this certification, the state treasurer shall instead transfer to the coal severance tax permanent fund 75% of the amount in the coal severance tax bond fund that exceeds the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the school facilities fund to the account established in [20-9-525](#) the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account. Earnings not transferred to the account established in [20-9-525](#) must be retained in the school facilities fund.

(5) (a) From July 1, 2005, through June 30, 2025, the state treasurer shall quarterly transfer to the big sky economic development fund 25% of the amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in [90-1-205](#), the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that are payable from the account in accordance with [90-1-204](#). Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

(6) Any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2)(a) to be retained in the fund and that is not otherwise allocated under this section must be deposited in the coal severance tax permanent fund.

History: En. Sec. 26, Ch. 505, L. 1981; amd. Sec. 18, Ch. 298, L. 1983; amd. Sec. 2, Ch. 512, L. 1985; amd. Sec. 3, Ch. 722, L. 1991; amd. Secs. 3, 7, Ch. 12, Sp. L. January 1992; amd. Sec. 4, Ch. 515, L. 1993; amd. Sec. 1, Ch. 8, Sp. L. November 1993; amd. Sec. 1, Ch. 33, Sp. L. November 1993; amd. Secs. 1, 4, Ch. 495, L. 1999; amd. Sec. 3, Ch. 61, L. 2001; amd. Sec. 1, Ch. 380, L. 2001; amd. Sec. 42, Ch. 114, L. 2003; amd. Sec. 1, Ch. 588, L. 2005; amd. Sec. 1, Ch. 14, L. 2007; amd. Sec. 12, Ch. 389, L. 2011; amd. Sec. 2, Ch. 390, L. 2013; amd. Sec. 3, Ch. 259, L. 2017; amd. Sec. 2, Ch. 377, L. 2017; amd. Sec. 8, Ch. 6, Sp. L. November 2017.

### **Costs That May Be Paid By Tax Increment Financing 7-15-4288**

**7-15-4288. Costs that may be paid by tax increment financing.** The tax increments may be used by the local government to pay the following costs of or incurred in connection with an urban renewal area or targeted economic development district as identified in the urban renewal plan or targeted economic development district comprehensive development plan:

- (1) land acquisition;
- (2) demolition and removal of structures;
- (3) relocation of occupants;
- (4) the acquisition, construction, and improvement of public improvements or infrastructure, including streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and offstreet parking facilities, sewers, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunications lines, rail lines, rail spurs,

- bridges, publicly owned buildings, and any public improvements authorized by Title 7, chapter 12, parts 41 through 45; Title 7, chapter 13, parts 42 and 43; and Title 7, chapter 14, part 47, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred;
- (5) costs incurred in connection with the redevelopment activities allowed under **7-15-4233**;
  - (6) acquisition of infrastructure-deficient areas or portions of areas;
  - (7) administrative costs associated with the management of the urban renewal area or targeted economic development district;
  - (8) assemblage of land for development or redevelopment by private enterprise or public agencies, including sale, initial leasing, or retention by the local government itself at its fair value;
  - (9) the compilation and analysis of pertinent information required to adequately determine the needs of the urban renewal area or targeted economic development district;
  - (10) the connection of the urban renewal area or targeted economic development district to existing infrastructure outside the area or district;
  - (11) the provision of direct assistance to secondary value-adding industries to assist in meeting their infrastructure and land needs within the area or district; and
  - (12) the acquisition, construction, or improvement of facilities or equipment for reducing, preventing, abating, or eliminating pollution.

History: En. 11-3921 by Sec. 1, Ch. 287, L. 1974; amd. Sec. 1, Ch. 452, L. 1975; amd. Sec. 2, Ch. 532, L. 1977; amd. Sec. 31, Ch. 566, L. 1977; R.C.M. 1947, 11-3921(part); amd. Sec. 1, Ch. 147, L. 1981; amd. Sec. 9, Ch. 712, L. 1989; amd. Sec. 1, Ch. 737, L. 1991; amd. Sec. 1, Ch. 500, L. 1993; amd. Sec. 2, Ch. 269, L. 1999; amd. Sec. 16, Ch. 114, L. 2003; amd. Sec. 7, Ch. 566, L. 2005; amd. Sec. 5, Ch. 394, L. 2009; amd. Sec. 11, Ch. 214, L. 2013.

### **Low/moderate income housing loans allowed 90-6-137**

90-6-137. Alternate funding source for housing loans -- use of coal tax trust fund money. (1) The board of investments shall allow the board of housing to administer \$15 million of the coal tax trust fund for the purpose of providing loans for the development and preservation of homes and apartments to assist eligible low-income and moderate-income applicants. Until the board uses money in the coal tax trust fund to loan to a qualified applicant pursuant to this part, the money under the administration of the board must remain invested by the board of investments.

(2) While a loan made from the coal tax trust fund pursuant to this section is repaid, the principal payments on the loan must be deposited in the coal tax trust fund until all of the principal of the loan is repaid. Interest received on a loan may be used by the board, in amounts determined by the board in accordance with [90-6-136](#), to pay for the servicing of a loan and for reasonable costs of the board for administering the program. After payment of associated expenses, interest received on the loan must be deposited into the coal tax trust fund.

(3) (a) Money from the coal tax trust fund must be used for the purposes identified in [90-6-134](#)(3) and (4).

(b) Loans made pursuant to this section must meet the following requirements:

(i) Projects funded with the loans must be multifamily rental housing projects that provide low-income and moderate-income housing.

(ii) The loan must be in the first lien position and may not exceed 95% of total development costs.

(iii) The minimum interest rate charged on a loan pursuant to this section is 0.5% less than the interest rate charged for a loan funded by the housing Montana fund provided for in [90-6-133](#).

(iv) The board and the loan recipient shall each pay half of loan servicing fees.

(v) Projects funded with the loans must be subject to property taxes.

(4) Money from the coal tax trust fund may not be used to replace existing or available sources of funding for eligible activities.

(5) Funds administered by the board from the coal tax trust fund may not be used to pay the expenses of any other program or service administered by the board.

History: En. Sec. 1, Ch. 460, L. 2019.

### **Veterans' Home Loan Mortgage Program 90-6-603**

90-6-603. Veterans' home loan mortgage program created -- use of coal tax trust fund money. (1) There is a Montana veterans' home loan mortgage program under the direction and management of the board for eligible veterans who are first-time home buyers.

(2) The board of investments shall allow the board to administer \$50 million of the permanent coal tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage loan from a participating financial institution pursuant to this part, the money under the administration of the board must remain invested by the board of investments. As a loan made pursuant to this part is repaid, the principal payments on the loan must be deposited in the trust fund until all of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial institution and the board, in amounts determined by the board in accordance with [90-6-605](#), to pay for the origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the board for the administration of the program. After payment of associated expenses, interest received on the loan must be deposited into the trust fund.

(3) Interest on a home mortgage loan made pursuant to this part must be charged at 1% less than the federal national mortgage association's delivery rate or 1% lower than the lowest interest rate charged by the board for the purposes of other home loan mortgage programs administered by the board, whichever is less. If the federal national mortgage association's rate becomes unavailable, the board shall use another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible veteran.

History: En. Sec. 3, Ch. 349, L. 2011; amd. Sec. 2, Ch. 213, L. 2013; amd. Sec. 2, Ch. 396, L. 2015; amd. Sec. 2, Ch. 190, L. 2019.

### **MBOI to define value-adding business as used by Dept of Labor 39-11-202**

39-11-202. Primary sector business workforce training grants -- eligibility. (1) Subject to appropriation by the legislature to the primary sector business training program, the department may award workforce training grants to primary sector businesses that provide education or skills-based training, through eligible training providers, for employees in new jobs.

(2) To be eligible for a grant, an applicant shall demonstrate that the applicant is a primary sector business and meets at least one of the following criteria:

- (a) is a value-adding business as defined by the Montana board of investments;
- (b) has a significant positive economic impact to the region and state beyond the job creation involved;
- (c) provides a service or function that is essential to the locality or the state; or
- (d) is a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the community or region.

(3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

- (a) must be from new, unexpended funds available at the time of application; and
- (b) may include new loans and investments and expenditures for direct project-related costs such as new equipment and buildings. The department may consider recent purchases of fixed assets directly related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the

proposed training activities that have been made within 90 days after submission of the application may be considered eligible by the department.

(4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed \$5,000 for each full-time position and \$2,500 for each part-time position for which an employee is being trained. A grant may be provided only for a new job that has an average weekly wage that meets or exceeds the lesser of 170% of Montana's current minimum wage or the current average weekly wage of the county in which the employees are to be principally employed, provided minimum wage requirements are met.

(b) The department may consider the value of employee benefits in calculating the expected annual wage.

(c) The department may, in exceptional circumstances, consider a higher grant ceiling for jobs that will pay high wages and benefits if the need for higher training costs is documented in the application.

(d) A grant provided under this section must be proportional to the number of jobs provided, the expected average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority of the jobs will be created.

(5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality of the primary sector business proposal, and whether training will be provided in Montana.

(6) The grant application, at a minimum, must contain:

(a) a business plan containing information that is sufficient for the department to obtain an adequate understanding of the business to be assisted, including the products or services offered, estimated market potential, management experience of principals, current financial position, and details of the proposed venture. In lieu of a business plan, the department may consider a copy of the current loan application to entities such as the Montana board of investments, the federal business and industry guarantee program, or the small business administration.

(b) financial statements and projections for the 2 most recent years of operation and projections for each of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash flow statements. A business operating for less than 2 years shall provide all available financial statements.

(c) a hiring and training plan, which must include:

(i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are full-time, part-time, skilled, semiskilled, or unskilled positions;

(ii) a timetable for creating the positions and the total number of employees to be hired;

(iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

(iv) procedures for outreach, recruitment, screening, training, and placement of employees;

(v) a description of the training curriculum and resources;

(vi) written commitments from any agency or organization participating in the implementation of the hiring plan; and

(vii) a description of the type and method of training to be provided to employees, the starting wage and wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to eligible training providers.

(7) If the department determines that an applicant meets the criteria established in this section and has complied with the applicable procedures and review processes established by the department, the department may award a primary sector business workforce development grant to the employer and authorize the disbursement of funds under contract to the primary sector business.

(8) The department shall provide employers assistance in accessing workforce and education services outside the scope of parts 1 and 2 of this chapter for which employees may be eligible. These additional services may not be used to replace a grant provided under this section once the contract has been finalized.

- (9) (a) A contract with a grant recipient must contain provisions:
- (i) certifying that the amount of the grant already expended will be reimbursed in the event that the primary sector business ceases operation in the state of Montana within the grant contract period, which may be up to 2 years;
  - (ii) specifying that the employer may receive grant funds over the contract period only upon documenting the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and
  - (iii) providing the department with annual reports and a final closeout report that documents the wages paid to an employee upon completion of the training.
- (b) The contract must be signed by the person in the primary sector business who is assigned the duties and responsibilities for training and the overall success of the program and by the primary sector business's chief executive.
- (10) The department may adopt rules to implement this section.
- History: En. Sec. 5, Ch. 567, L. 2003; amd. Sec. 4, Ch. 26, L. 2005; amd. Sec. 3, Ch. 169, L. 2005; amd. Sec. 1, Ch. 177, L. 2007; amd. Sec. 2, Ch. 348, L. 2011; amd. Sec. 2, Ch. 10, L. 2013; amd. Sec. 3, Ch. 85, L. 2015.

#### 8.97.1301 DEFINITIONS

- (1) "Board" or "board of investments" means the board of investments created in [2-15-1808](#), MCA.
- (2) "Loan program" means loans funded from the Montana permanent coal tax trust pursuant to [17-6-305](#) and [17-6-308](#), MCA.
- (3) "Basic sector of the economy" businesses as envisioned in [17-6-309](#), MCA, means:
- (a) business activity conducted in the state that produces goods and services for which 50% or more of the gross revenues are derived from out-of-state sources; or
  - (b) business activity conducted in-state that produces goods and services, 50% or more of which will be purchased by in-state residents in lieu of like or similar goods and services which would otherwise be purchased from out-of-state sources.
- (4) "Commitment" means a letter from the board agreeing to reserve a stated amount of its funds for a particular financing and setting forth the interest rates and other terms and conditions therefor.
- (5) "Financial institution" means an institution approved by the board that
- (a) is a state or federally-chartered bank, savings and loan association, credit union, mortgage company, mortgage servicing company, development credit corporation, investment company, trust company, savings institution, small business investment company, insurance companies, public and private pension funds, credit and finance companies, specialized financiers or sophisticated institutional investors.
- (6) "Infrastructure loan" means a loan for infrastructure projects which may include the acquisition, construction and improvement of infrastructure or industrial infrastructure, which includes streets, roads, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewer lines, sewage treatment facilities, storm sewers, waterlines, waterways, water treatment facilities, natural gas lines, electrical lines, telecommunication lines, rail lines, rail spurs, bridges, publicly owned buildings and any other public improvements authorized under [7-15-4288\(4\)](#), MCA.
- (7) "Job credit interest rate reduction" means the interest rate reduction allocated for the creation of any job which pays at least 100% of the average weekly wage as defined in [39-71-116](#), MCA.
- (8) "Permanent full-time employee," as cited in [17-6-309\(2\)](#), MCA, means an employee who is scheduled to work full-time (i.e. a minimum of 35-40 hours per week) for an indefinite period of time. Temporary or part-time employees, and employees on contract or supplied by personnel supply



companies, are not to be counted for purposes of qualification for the loan (i.e. the employer must provide a W-2 to its employee) .

(9) "Seller/servicer" means the same as financial institution for the purposes of these rules.

(10) "Service fees" means the fees charged by sellers/servicers as defined in [17-6-302](#)(11) , MCA, for servicing loans, including the collection of payments and remitting payments to the board.

(11) "Nonprofit corporation" means a corporation as per internal revenue service regulations.

(12) "Small-and medium-sized business," as used in [17-6-309](#)(1) (f) , MCA, means those businesses defined by the board in written loan policy based on business net worth, average net income, number of employees or other criteria established by the board.

History: The portion of this rule implementing [17-6-201](#), MCA, is advisory only but may be a correct interpretation of this section, Sec. [17-5-1503](#), [17-5-1521](#), [17-6-324](#), MCA; IMPLIED, Sec. [17-6-201](#), [17-6-324](#), MCA; IMP, Sec. [17-5-1503](#), [17-6-201](#), [17-6-211](#), [17-6-302](#), MCA; NEW, 1988 MAR p. 2214, Eff. 10/14/88; AMD, 1992 MAR p. 38, Eff. 1/17/92; AMD, 1993 MAR p. 2235, Eff. 10/1/93; AMD, 1995 MAR p. 621, Eff. 4/28/95; AMD, 1995 MAR p. 1796, Eff. 9/15/95; AMD, 1997 MAR p. 1361, Eff. 8/5/97; AMD, 2000 MAR p. 470, Eff. 2/11/00.

#### [8.97.1308](#) AUTHORIZED LOAN TYPES

(1) The loan program includes the following types of loans for the Montana coal tax trust fund:

(a) federally guaranteed loans up to 100% of the guaranteed interest of loans guaranteed by the United States or any agency or instrumentality of the United States, including, but not limited to, the small business administration, the U.S. department of agriculture and the federal aviation administration;

(b) participation loans up to 80% in loans to Montana businesses. The board's security in a participation loan must be in the same proportion as the loan participation amount;

(c) linked deposit loans with financial institutions that utilize the deposits to fund loans to businesses. The financial institution retains all risk on loans financed with the proceeds of a linked deposit and the deposits are subject to the collateral and pledging requirements provided in [17-6-101](#) through [17-6-105](#), MCA, or such other collateral and pledging requirements as may be necessary to secure the deposits; and

(d) infrastructure loans to local governments to finance infrastructure provided to businesses creating permanent, full-time jobs in the basic sector of the Montana economy. The local government borrower must demonstrate that the business for whom the infrastructure is provided has the ability to repay the loan upon the terms and conditions set by the board.

History: Sec. [17-6-324](#), MCA; IMP, Sec. [17-6-308](#), MCA; NEW, 2000 MAR p. 1043, Eff. 2/11/00.

#### [8.97.1309](#) AUTHORIZED APPLICANTS

(1) Except for infrastructure loans, the board is precluded from lending directly to borrowers by [17-6-201](#)(3) (d) , MCA. Financial institutions are authorized to apply for federally guaranteed, participation and linked deposit loans. Borrowers, including non-profit corporations, may only access these loans through a financial institution. Local governments may apply directly for infrastructure loans.

History: Sec. [17-6-324](#), [17-6-308](#), MCA; IMP, Sec. [17-6-308](#), [17-6-313](#), MCA; NEW, 2000 MAR p. 1043, Eff. 2/11/00.

#### [8.97.1310](#) LOAN PROGRAM POLICIES

(1) The board shall adopt underwriting policies, procedures and criteria for the various types of loans it authorizes in the loan program. All policies, procedures and criteria must be approved at regularly scheduled board meetings. Policies and procedures developed and approved by the board may include, but are not limited to:

(a) seller/servicer approval criteria and procedures, including the application form;

- (b) seller/servicer agreement forms, providing for loan servicing, loan monitoring, foreclosure procedures and suspension/revocation of seller/servicer approval;
  - (c) loan application forms and the type of information required on the application;
  - (d) how loan commitments are made and for what periods of time;
  - (e) the establishment of commitment fees, when those fees may be waived and what, if any, portion of the fee is retained if the loan application is rejected or withdrawn;
  - (f) the parameters and criteria for setting loan interest rates;
  - (g) the development and approval of loan underwriting policies for the various types of loans authorized by the board, including the level of authority granted staff to approve loans, and any appeals process available to loan applicants whose application is rejected;
  - (h) the setting of fees of interest rate buy-downs, loan assumptions and/or loan modifications;
  - (i) a definition of small and medium sized businesses, if required; and
  - (j) criteria for consideration of loans to non-profit corporations.
- History: Sec. [17-6-324](#), [17-6-308](#), MCA; IMP, Sec. [17-6-308](#), [17-6-309](#), MCA; NEW, 2000 MAR p. 1043, Eff. 2/11/00.

#### 36.25.915 MINIMUM LEASE CALCULATION (to be provided by MBOI)

(1) Pursuant to [77-1-905\(2\)](#), MCA, the department will set the minimum annual rent for any commercial lease to obtain the full market value of that lease. Such rental shall be at a rate not less than the product of the appraised value of the land multiplied by a rate that is two percentage points a year less than the current federally-guaranteed, annual, 20-year bond rate provided by the Montana Board of Investments commercial loan rate sheet. For the purpose of calculating the minimum annual rent, the department may round the 20-year rate to the nearest whole number.

History: [77-1-209](#), [77-1-301](#), MCA; IMP, [77-1-605](#), [77-1-903](#), [77-1-912](#), MCA; NEW, 2008 MAR p. 2645, Eff. 12/25/08.

## INTERCAP:

### **Short Title 17-5-1601**

17-5-1601. Short title. This part shall be known and may be cited as the "Municipal Finance Consolidation Act of 1983".

History: En. Sec. 1, Ch. 620, L. 1983.

### **Policy and purpose 17-5-1602**

17-5-1602. Policy and purpose. (1) It is the policy of the state of Montana to:

- (a) foster and promote, by all reasonable means, the provision of efficient capital markets and facilities for borrowing money by eligible government units to pay for capital improvements and other needs as otherwise authorized by law; and
- (b) reduce, to the extent possible, costs of public indebtedness to taxpayers and residents by affording public bodies an appropriate degree of flexibility and choice in the marketing of their debt securities so as to minimize marketing costs and interest rates.

(2) It is the purpose of this part to promote the policies stated in subsection (1) by:

- (a) creating a means for eligible government units to pool, in effect, the debt instruments they are otherwise authorized to offer for sale to the investment community in order to obtain economies of scale and reduce marketing and interest costs; and

(b) providing additional security for the payment of bonds and notes held by investors and thereby further reducing interest costs.

History: En. Sec. 2, Ch. 620, L. 1983; amd. Sec. 1, Ch. 208, L. 1995.

### **Liberal Construction 17-5-1603**

17-5-1603. Liberal construction. This part and the powers granted in this part must be liberally construed to effectuate the policies and purposes stated in this part.

History: En. Sec. 3, Ch. 620, L. 1983.

### **Definitions 17-5-1604**

17-5-1604. Definitions. As used in this part, the following definitions apply:

(1) "Board" means the board of investments created in [2-15-1808](#).

(2) "Department" means the department of commerce created in [2-15-1801](#).

(3) "Eligible government unit" means:

(a) any municipal corporation or political subdivision of the state, including without limitation any city, town, county, school district, authority as defined in [75-6-304](#), or other special taxing district or assessment or service district authorized by law to borrow money;

(b) the state, any board, agency, or department of the state, or the board of regents of the Montana university system when authorized by law to borrow money; or

(c) an Indian tribal government, in accordance with [17-1-702](#).

(4) "Reserve fund" means the municipal finance consolidation act reserve fund created in [17-5-1630](#).

History: En. Sec. 4, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 9, Ch. 581, L. 1987; amd. Sec. 1, Ch. 593, L. 1991; amd. Sec. 1, Ch. 380, L. 1993; amd. Sec. 2, Ch. 208, L. 1995; amd. Sec. 21, Ch. 498, L. 1999; amd. Sec. 19, Ch. 378, L. 2007; amd. Sec. 3, Ch. 359, L. 2019.

### **Board of investments to implement 17-5-1605**

17-5-1605. Board of investments to implement. The board of investments may make and enforce orders, rules, and bylaws that are necessary or desirable for the implementation of this part.

History: En. Sec. 5, Ch. 620, L. 1983; amd. Sec. 35, Ch. 620, L. 1983; amd. Sec. 10, Ch. 581, L. 1987.

### **Bonds, bond anticipation notes, and notes of the board 17-5-1606**

17-5-1606. Bonds, bond anticipation notes, and notes of the board. (1) The board may by resolution, from time to time, issue negotiable notes and bonds to finance loans or refinance its loans to eligible government units and its purchases of eligible government unit bonds, registered warrants, and tax or revenue anticipation notes and other notes, to establish or replenish reserves securing the payment of its bonds and notes, and to finance all other expenditures of the board incident to and necessary or convenient to carry out this part.

(2) The board may by resolution, from time to time:

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

(b) whenever it considers refunding expedient, refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured; and

(c) issue bonds partly to refund bonds outstanding and partly for any of its other purposes.

(3) The board may by resolution, from time to time, in anticipation of the sale of its securities under this part, issue temporary notes and renewal notes.

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

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

(i) bear interest at a rate or rates;

(ii) be in denominations;

(iii) be in a form, either coupon or registered;

(iv) carry registration privileges;

(v) be executed in a manner;

(vi) be payable in a medium of payment, at places inside or outside the state; and

(vii) be subject to terms of redemption as provided in resolutions of the board.

(b) The notes and bonds of the board may be sold at public or private sale at prices, which may be above or below par, that are determined by the board.

History: En. Sec. 6, Ch. 620, L. 1983; amd. Sec. 9, Ch. 481, L. 1985; amd. Sec. 3, Ch. 208, L. 1995.

### **Participation voluntary 17-5-1607**

17-5-1607. Participation voluntary. Use of the financing mechanism created by this part is entirely voluntary, and an eligible government unit is not required to sell its bonds, bond anticipation notes, or notes to the board.

History: En. Sec. 7, Ch. 620, L. 1983; amd. Sec. 4, Ch. 208, L. 1995.

### **Limitations on amounts 17-5-1608**

17-5-1608. Limitations on amounts. The board may not issue any bonds or notes that cause the total outstanding indebtedness of the board under this part, except for bonds or notes issued to fund or refund other outstanding bonds or notes or to purchase registered warrants or tax or revenue anticipation notes of a local government as defined in [7-6-1101](#), to exceed \$190 million.

History: En. Sec. 8, Ch. 620, L. 1983; amd. Sec. 10, Ch. 481, L. 1985; amd. Sec. 2, Ch. 94, L. 1987; amd. Sec. 1, Ch. 483, L. 1997; amd. Sec. 1, Ch. 394, L. 2001; amd. Sec. 1, Ch. 562, L. 2003; amd. Sec. 3, Ch. 597, L. 2003; amd. Sec. 1, Ch. 50, L. 2007; amd. Sec. 20, Ch. 378, L. 2007.

### **Purchase of anticipation notes 17-5-1609**

17-5-1609. Purchase of anticipation notes. Notwithstanding any other provision of law, an eligible government unit may issue and the board may purchase notes in anticipation of an otherwise authorized sale of eligible government unit securities. In connection with any purchase of anticipation notes, the board may by agreement with the eligible government unit impose terms, conditions, and limitations that in the board's opinion are proper under the circumstances and for the purposes and security of the board and the holders of its bonds or notes.

History: En. Sec. 9, Ch. 620, L. 1983; amd. Sec. 5, Ch. 208, L. 1995.

## **Refunding obligations 17-5-1610**

17-5-1610. Refunding obligations. (1) The board may provide for the issuance of refunding obligations for refunding any obligations then outstanding that have been issued under this part, including the payment of any redemption premium and any interest accrued to or to accrue to the date of redemption of the obligations. The issuance of obligations, the maturities and other details, the rights of the holders, and the rights, duties, and obligations of the board are governed by the appropriate provisions of this part that relate to the issuance of obligations.

(2) Refunding obligations issued as provided in subsection (1) may be sold or exchanged for outstanding obligations issued under this part. The proceeds of refunding obligations may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of the proceeds of refunding obligations, with other available funds, to the payment of principal, accrued interest, and any redemption premium on the obligations being refunded and, if permitted in the resolution authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of interest on refunding obligations and expenses in connection with refunding, the proceeds of refunding obligations may be invested as provided in Title 17, chapter 6.

History: En. Sec. 10, Ch. 620, L. 1983.

## **Additional powers of the board 17-5-1611**

17-5-1611. Additional powers of the board. In addition to all other powers conferred on the board by this part or any other law, the board has the power:

(1) to purchase or hold eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes at prices and in a manner that the board considers advisable;

(2) to sell eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes acquired or held by it at prices without relation to cost and in a manner that the board considers advisable;

(3) to invest funds or money acquired by the board as provided in [17-5-1641](#);

(4) with regard to an eligible local government unit, to:

(a) prescribe the form of application or procedure required for a loan or purchase of eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;

(b) fix the terms and conditions of the loan or purchase; and

(c) enter into agreements with eligible government units with respect to loans or purchases;

(5) to render services to eligible government units in connection with public or private sales of their bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes that are eligible for purchase by the board under this part, including advisory and other services, and charge the eligible government units for the services;

(6) to charge for its costs and services in reviewing or acting upon a proposed loan to an eligible government unit or a proposed purchase by the board of bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of the eligible government unit, whether or not the loan is made or the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes are purchased;

(7) to fix and establish terms, interest rates, and provisions with respect to a purchase of eligible government unit bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes by the board, including:

- (a) the date and maturities of the bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes;
  - (b) provisions as to redemption or payment before maturity; and
  - (c) any other matters judged by the board to be necessary, desirable, or advisable for the purchase or loan;
  - (8) in connection with any loan to an eligible government unit or purchase of bonds, bond anticipation notes, registered warrants, tax or revenue anticipation notes, or other notes of an eligible government unit, to consider:
    - (a) the lawfulness and validity of the purpose to be served by the loan or purchase;
    - (b) the ability of the eligible government unit to secure borrowed money from other sources and the costs of borrowing;
    - (c) the ability of the eligible government unit to repay the loan, notes, or bonds;
    - (d) the priority of need for the particular public improvement or purpose to be financed; and
    - (e) varying the terms and conditions of its loans or purchases as between various eligible government units in accordance with their respective priorities and credit worthiness;
  - (9) to conduct examinations and hearings and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter material to its information and necessary to carry out this part;
  - (10) to issue subpoenas requiring the attendance of witnesses and the production of books and papers pertinent to any hearing before the board;
  - (11) to appoint, employ, or contract for the services of officers, employees, agents, financial or professional advisers, and attorneys and to pay compensation for their services as the board determines;
  - (12) to procure insurance against any losses in connection with its property, operations, or assets in amounts and from insurers as it considers desirable;
  - (13) to the extent permitted under its contracts with the holders of bonds or notes of the board, to consent to modification of the rate of interest, the time for payment of any installment of principal or interest, or the security for any other term of a bond, bond anticipation note, note, contract, or agreement of any kind to which the board is a party; and
  - (14) to do all acts and things necessary, convenient, or desirable to carry out the powers expressly granted or necessarily implied in this part.
- History: En. Sec. 11, Ch. 620, L. 1983; amd. Sec. 11, Ch. 481, L. 1985; amd. Sec. 6, Ch. 208, L. 1995.

### **Specific loan authorization 17-5-1612**

17-5-1612. Specific loan authorization. The legislature intends that individual state agencies may borrow from the program established in this part, as specifically authorized by the legislature under the following conditions:

- (1) 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.
- (2) 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.

History: En. Sec. 1, Ch. 399, L. 2005.

### **Provisions of bond resolution 17-5-1621**

17-5-1621. Provisions of bond resolutions. A resolution authorizing notes or bonds or any issue thereof may contain provisions that must be a part of the contract or contracts with the holders thereof as to:

- (1) pledging all or any part of the revenue or funds of the board to secure the payment of the notes or bonds or of any issue thereof, subject to existing agreements with noteholders or bondholders;
- (2) the setting aside of reserves for debt service funds in the possession of trustees, paying agents, and other depositories and the regulation and disposition thereof;
- (3) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the notes or bonds or of any issue thereof;
- (4) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;
- (5) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which must consent thereto, and the manner in which such consent may be given;
- (6) a commitment to employ adequate and competent personnel at reasonable compensation, salaries, fees, and charges as may be determined by the board in conjunction with the department and to maintain suitable facilities and services for the purpose of carrying out its programs;
- (7) vesting in a trustee such property, rights, powers, and duties in trust as the board determines; and
- (8) defining the acts or omissions that constitute a default in the obligations and duties of the board to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of such default, including as a matter of right the appointment of a receiver. Rights and remedies may not be inconsistent with the laws of this state and the other provisions of this part.

History: En. Sec. 12, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

### **Validity of pledge 17-5-1622**

17-5-1622. Validity of pledge. A pledge by the board is valid and binding from the time the pledge is made. The revenues, money, or property pledged and thereafter received by the board is immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the board, irrespective of whether such parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

History: En. Sec. 13, Ch. 620, L. 1983.

### **Nonimpairment by state 17-5-1623**

17-5-1623. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the board and an eligible government unit or between the board and the holders of notes and bonds issued by the board, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose.

History: En. Sec. 14, Ch. 620, L. 1983; amd. Sec. 7, Ch. 208, L. 1995.

### **Trust indenture 17-5-1624**

17-5-1624. Trust indenture. (1) In the discretion of the board, the bonds or notes of the board may be secured by a trust indenture between the board and a corporate trustee, which may be a trust company or bank having the power of a trust company inside or outside the state. A trust indenture may contain

provisions for protecting and enforcing bondholders' rights and remedies that are reasonable and proper and not in violation of law, including covenants setting forth the duties of the board in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The board may provide by a trust indenture for the payment of the proceeds of the bonds or notes and the revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with safeguards and restrictions it considers necessary.

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

History: En. Sec. 15, Ch. 620, L. 1983.

### **Presumption of validity 17-5-1625**

17-5-1625. Presumption of validity. After issuance, all bonds or notes of the board are conclusively presumed to be fully authorized by and issued under all the laws of this state and any person or governmental unit is estopped from questioning their proper authorization, sale, issuance, execution, or delivery by the board.

History: En. Sec. 16, Ch. 620, L. 1983.

### **Signatures of board members 17-5-1626**

17-5-1626. Signatures of board members. If any of the board members whose signatures appear on notes or bonds or coupons cease to be members before the delivery of the notes or bonds, their signatures shall nevertheless be valid and sufficient for all purposes as if the members had remained in office until delivery.

History: En. Sec. 17, Ch. 620, L. 1983.

### **Negotiability of bonds or notes 17-5-1627**

17-5-1627. Negotiability of bonds or notes. Notwithstanding any other provisions of law, a bond or note issued under this part is fully negotiable for all purposes of the Uniform Commercial Code, Title 30, chapters 1 through 9A, and a holder or owner of a bond or note or of a coupon appurtenant to it, by accepting the bond, note, or coupon, is conclusively presumed to have agreed that the bond, note, or coupon is fully negotiable for all purposes of the Uniform Commercial Code.

History: En. Sec. 18, Ch. 620, L. 1983.

### **Bonds or notes as legal investments 17-5-1628**

17-5-1628. Bonds or notes as legal investments. Notwithstanding the restrictions of any other law, all banks, trust companies, savings banks and institutions, building and loan associations, savings and loan associations, investment companies, and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all executors, administrators, guardians, trustees, and other fiduciaries may legally invest debt service funds, money, or other funds belonging to them or within their control in bonds or notes issued under this part.

History: En. Sec. 19, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

### **Tax exemption of bonds 17-5-1629**



17-5-1629. Tax exemption of bonds. Bonds, notes, or other obligations issued by the board under this part, their transfer, and their income (including any profits made on their sale) are free from taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The board is not required to pay recording or transfer fees or taxes on instruments recorded by it.

History: En. Sec. 20, Ch. 620, L. 1983; amd. Sec. 12, Ch. 9, Sp. L. May 2000.

### **Reserve Fund 17-5-1630**

17-5-1630. Reserve fund. (1) The board shall establish and maintain a municipal finance consolidation act reserve fund, to which there shall be deposited or transferred:

(a) all money appropriated by the legislature for the purposes of the fund in accordance with the provisions of subsection (4);

(b) all proceeds of bonds required to be deposited in the fund by terms of a contract between the board and its bondholders or a resolution of the board with respect to the proceeds of bonds;

(c) the proceeds of any bond issue of the state that is authorized for such purpose;

(d) all other money appropriated by the legislature to the reserve fund; and

(e) any other money or funds of the board that it decides to deposit in the fund.

(2) All money held in the reserve fund shall be used solely for the payment of the principal of or interest on the bonds or notes secured in whole or in part by the fund or the debt service fund payments with respect to the bonds or notes, the purchase or redemption of the bonds or notes, the payment of interest on the bonds or notes, or the payment of any redemption premium required to be paid when the bonds or notes are redeemed prior to maturity. Money in the reserve fund may not be withdrawn at any time in an amount that reduces the fund to an amount less than the sum of minimum reserve requirements established in the resolutions or indentures of the board for the fund except, with respect to bonds or notes secured in whole or in part by the fund, for the purpose of making payment when due of principal, interest, redemption premiums, and debt service fund payments for the payment of which other money pledged is not available.

(3) Money in the reserve fund in excess of the required reserve may be withdrawn at any time by the board and transferred to another fund or account of the board established for purposes of this part, but not to any other fund or account.

(4) Nothing in this section creates a debt or liability of the state.

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

History: En. Sec. 21, Ch. 620, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 11, Ch. 581, L. 1987.

### **Additional funds and accounts 17-5-1631**

17-5-1631. Additional funds and accounts. The board may in its discretion establish additional reserves or other funds or accounts necessary, desirable, or convenient to further the accomplishment of the purposes of this part or to comply with the provisions of any of its agreements or resolutions.

History: En. Sec. 22, Ch. 620, L. 1983.

### **Investment 17-5-1641**

17-5-1641. Investment. (1) Unless otherwise required by a resolution or agreement of the board, the board may invest funds coming under its control pursuant to this part in the same manner as permitted for investment of funds belonging to the state or held by the state treasurer.

(2) Funds from several or all accounts may be combined for investment, and any interest earned shall be prorated and credited to the various contributing accounts on the basis of the amounts thereof invested, calculated according to an average periodic balance or other generally accepted accounting principle. Such proration must be calculated at least once a year or upon a specific request made to the board.

(3) All securities purchased by the board as an investment remain in the custody of the state treasurer until the same are sold, exchanged, retired, or mature and are paid.

History: En. Sec. 23, Ch. 620, L. 1983.

### **Credit of state not pledged 17-5-1642**

17-5-1642. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a liability or obligation or a pledge of the faith and credit of the state but are payable solely from revenues or funds of the board generated or received for purposes of this part. An obligation issued under this part must contain on the face thereof a statement to the effect that the state of Montana is not liable on the obligation and the obligation is not a debt of the state and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal of or the interest on the obligation.

History: En. Sec. 24, Ch. 620, L. 1983.

### **Sale or exchange of securities 17-5-1643**

17-5-1643. Sale or exchange of securities. (1) Notwithstanding any law applicable to or constituting any limitation on the maximum rate of interest per year payable on bonds or notes or to annual interest cost to maturity of money borrowed or received upon issuance of bonds or notes, an eligible government unit is authorized to contract to pay interest on or an interest cost per year for money borrowed from the board and evidenced by the eligible government unit securities purchased by the board without regard to any statutory limitations as to rate of interest per year payable or as to annual interest cost to maturity of money borrowed by the eligible government unit. An eligible government unit is authorized to contract with the board with respect to the loan or purchase, and the contract must contain the terms and conditions of the loan or purchase. An eligible government unit is authorized to pay fees and charges required to be paid to the board for its services.

(2) Notwithstanding any law applicable to or constituting any limitation on the sale of bonds or notes except the limitation on amount of bonded indebtedness, an eligible government unit may sell bonds or notes to the board by private negotiated sale, without limitation as to denomination. The bonds or notes may be fully registered or registerable as to principal only or in bearer form or may bear interest at the rate or rates, all in accordance with this section. The bonds or notes may be evidenced in the manner and may contain other provisions not inconsistent with this part and may be sold to the board without advertisement at the price or prices as may be determined, all as provided in the proceedings of the governing body of the eligible government unit pursuant to which the bonds or notes are authorized to be issued. The governing body of the eligible government unit may provide for the exchange of coupon bonds for fully registered bonds and of fully registered bonds for coupon bonds and for the exchange of any such bonds after issuance for bonds of larger or smaller denominations, all in the manner provided in the proceedings authorizing their issuance. The bonds in changed form or denominations must be exchanged for the surrendered bonds in the same aggregate principal amounts

and in a manner that no overlapping interest is paid and the bonds in changed form or denominations bear interest at the same rate or rates and mature on the same date or dates as the bonds for which they are exchanged. If any exchange is made under this subsection, the bonds surrendered by the holders at the time of the exchange must be canceled. The exchange may be made only at the request of the holders of the bonds to be surrendered. The eligible government unit may require all expenses incurred in connection with the exchange to be paid by the holders.

History: En. Sec. 25, Ch. 620, L. 1983; amd. Sec. 8, Ch. 208, L. 1995.

### **Care and custody of bonds purchased by the board 17-5-1644**

17-5-1644. Care and custody of bonds purchased by the board. The board may:

(1) enter into agreements or contracts with a bank, trust company, or financial institution, inside or outside the state, as may be necessary, desirable, or convenient, in the opinion of the board, for rendering services in connection with:

(a) the care, custody, or safekeeping of bonds or other investments held or owned by the board pursuant to this part;

(b) the payment or collection of amounts payable as to principal or interest; and

(c) the delivery to the board of bonds or other investments purchased by it or sold by it pursuant to this part;

(2) pay the cost of those services; and

(3) in connection with any of the services to be rendered by a bank, trust company, or financial institution as to the custody and safekeeping of its bonds or investments, require security in the form of collateral bonds, surety agreements, or security agreements in a form and amount as, in the opinion of the board, is necessary or desirable.

History: En. Sec. 26, Ch. 620, L. 1983; amd. Sec. 9, Ch. 208, L. 1995.

### **Insurance or guaranty 17-5-1645**

17-5-1645. Insurance or guaranty. The board may obtain, from a department or agency of the United States or a nongovernmental insurer, insurance or guaranty for the payment or repayment of interest or principal, or both, or any part of interest or principal on bonds or notes issued by the board or on bonds, bond anticipation notes, or notes of eligible government units purchased or held by the board.

History: En. Sec. 27, Ch. 620, L. 1983; amd. Sec. 10, Ch. 208, L. 1995.

### **Default in payment 17-5-1646**

17-5-1646. Default in payment. If the board or eligible government unit defaults in the payment of principal or interest on an issue of notes or bonds after they become due, whether at maturity or upon call for redemption, and the default continues for 30 days or if the board or eligible government unit fails or refuses to comply with this part or defaults in an agreement made with the holders of an issue of notes or bonds, the holders of 25% of the aggregate principal amount of the outstanding notes or bonds of that issue have the right, upon proper application to a court of competent jurisdiction, to have a trustee appointed to represent the holders of those notes or bonds for the purposes provided in this part.

History: En. Sec. 28, Ch. 620, L. 1983; amd. Sec. 11, Ch. 208, L. 1995.

### **Powers and duties of trustee on default 17-5-1647**

17-5-1647. Powers and duties of trustee on default. (1) A trustee appointed under [17-5-1646](#) may:

- (a) by civil action enforce all rights of the noteholders or bondholders, including the right to require the board or eligible government unit to collect rates, charges, and other fees and to collect interest and amortization payments on bonds and notes held by them adequate to carry out a pledge of or an agreement as to the rates, charges, and other fees and of the interest and amortization payments and the right to require the board or eligible government unit to carry out any other agreements with the holders of the notes or bonds and to perform their duties under this part;
- (b) bring a civil action upon the notes or bonds;
- (c) by civil action require the board or eligible government unit to account as if it were the trustee of an express trust for the holders of the notes or bonds;
- (d) by civil action enjoin anything that may be unlawful or in violation of the rights of the holders of the notes or bonds;
- (e) declare all the notes or bonds due and payable and, if all defaults are made good, then, with the consent of the holders of 25% of the principal amount of the outstanding notes or bonds, annul the declaration and its consequences.

(2) The trustee, in addition to the powers stated in subsection (1), has all the powers necessary for the exercise of functions specifically set out or incident to the general representation of bondholders or noteholders in the enforcement and protection of their rights.

(3) Before declaring the principal of notes or bonds due and payable, the trustee shall give 30 days' notice in writing to the governor, the attorney general, and the board or eligible government unit defaulting.

History: En. Sec. 29, Ch. 620, L. 1983; amd. Sec. 12, Ch. 208, L. 1995.

### **Exemption from execution and sale 17-5-1648**

17-5-1648. Exemption from execution and sale. All property of the board, other than its revenues or funds received pursuant to this part, is exempt from levy and sale by virtue of an execution, and no execution or other judicial process may issue against such property. A judgment against the board constitutes a charge or lien upon such property.

History: En. Sec. 30, Ch. 620, L. 1983.

### **Municipal Finance Consolidated Act must have an Annual Audit 17-5-1649**

17-5-1649. Annual audit. The board's books and records must be audited at least once each fiscal year by or at the direction of the legislative auditor. The actual costs of the audit shall be paid from the board's funds.

History: En. Sec. 31, Ch. 620, L. 1983; amd. Sec. 2, Ch. 308, L. 1985; amd. Sec. 3, Ch. 94, L. 1987.

### **Municipal Finance Consolidated Act Annual Report Requirements 17-5-1650**

17-5-1650. Annual report. By December 31 of each year, the board shall publish a financial report for distribution to the governor, the legislature, and the public. Distribution to the legislature is accomplished by providing two copies to the legislative services division and a copy to a legislator on request. The report must include a statement of the board's current financial position with respect to its activities under this part, a summary of its activities pursuant to this part during the previous year (including a listing of the eligible governmental securities purchased by the board, a listing of the bonds

and notes sold by the board, and a summary of the performance of any other investments of the board's funds received under this part), an estimate of the levels of activities for the next year, and a comparison of the activities during the previous year with the estimates of those activities that were made in the previous annual report.

History: En. Sec. 32, Ch. 620, L. 1983; amd. Sec. 4, Ch. 94, L. 1987; amd. Sec. 23, Ch. 112, L. 1991; amd. Sec. 20, Ch. 349, L. 1993; amd. Sec. 13, Ch. 208, L. 1995; amd. Sec. 56, Ch. 545, L. 1995.

### **Limitations on board's power 17-5-1651**

17-5-1651. Limitations on board's power. Under this part, the board may not:

- (1) make loans of money to any person, firm, or corporation other than an eligible government unit or purchase securities issued by any person, firm, or corporation other than an eligible government unit as provided in this part;
- (2) emit bills of credit, accept deposits of money for time or demand deposit, engage in any form or manner in the conduct of any private or commercial banking business, or act as a savings bank or savings and loan association;
- (3) be or constitute a bank or trust company within the jurisdiction or under the control of the state banking board, the department of administration, or the comptroller of the currency of the United States department of the treasury;
- (4) be or constitute a bank, banker, or dealer in securities within the meaning of or subject to the provisions of any securities, securities exchange, or securities dealers law of the United States or of this state or of any other state.

History: En. Sec. 33, Ch. 620, L. 1983; amd. Sec. 14, Ch. 208, L. 1995; amd. Sec. 44, Ch. 483, L. 2001.

### **Loans to state agencies 17-5-2001**

17-5-2001. Loans to state agencies. (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in [17-2-102](#), is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

- (a) the term of the indebtedness does not exceed the useful life of the items being financed; and
- (b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

(2) (a) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$28.5 million, payable over a term not to exceed 15 years, for financing the cost of an information technology system for the production and maintenance of motor vehicle title and registration records and driver's license records.

(b) For purposes of the financing of the motor vehicle information technology system, loans are payable from the money in the motor vehicle information technology system account as provided in [61-3-550](#). The term of the indebtedness may not exceed the useful life of the items being financed. At the time that the loan is made, the projected revenue of the motor vehicle information technology system account, based upon the fees approved by the legislature, must be sufficient to repay the indebtedness over the proposed term.

(3) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$4.6 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system, and other associated costs, for the implementation of the REAL ID Act of 2005. Loans are payable from the state special revenue fund provided for in [61-5-129\(4\)\(b\)](#). (Subsection (3) void on occurrence of contingency-- sec. 8, Ch. 443, L. 2017.)

History: En. Sec. 2, Ch. 483, L. 1997; amd. Sec. 2, Ch. 394, L. 2001; amd. Sec. 2, Ch. 562, L. 2003; amd. Sec. 4, Ch. 597, L. 2003; amd. Sec. 2, Ch. 550, L. 2005; amd. Sec. 2, Ch. 50, L. 2007; amd. Sec. 2, Ch. 443, L. 2017.

### **Local Government Debt Limitations Not To Apply To Short-Term Obligations 7-6-115**

7-6-1115. Local government debt limitations not to apply to short-term obligations. The debt limitations for local governments in Title 7, chapter 7, and Title 20, chapter 9, do not apply to short-term obligations issued in accordance with this part. History: En. Sec. 7, Ch. 481, L. 1985.

### **Issuance of obligations – authorizations – conditions 20-9-471**

20-9-471. Issuance of obligations -- authorization -- conditions. (1) The trustees of a school district may, without a vote of the electors of the district, secure loans from or issue and sell to the board of investments or, as provided in subsection (2), a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in [31-1-111](#), obligations for the purpose of financing all or a portion of:

(a) the costs of vehicles and equipment and construction of buildings used primarily for the storage and maintenance of vehicles and equipment;

(b) the costs associated with renovating, rehabilitating, and remodeling facilities, including but not limited to roof repairs, heating, plumbing, electrical systems, and cost-saving measures as defined in [90-4-1102](#);

(c) the costs of nonpermanent modular classrooms necessary for student instruction when existing buildings of the district are determined to be inadequate by the trustees;

(d) any other expenditure that the district is otherwise authorized to make, subject to subsection (5), including the payment of settlements of legal claims and judgments; and

(e) the costs associated with the issuance and sale of the obligations.

(2) (a) Before seeking to secure a loan or issue and sell obligations to a regulated lender specified in subsection (1), the trustees shall first offer the board of investments a written notice of the board's right of first refusal.

(b) If the board of investments accepts the offer to issue a loan or purchase obligations, the board shall provide a written response to the trustees by the later of:

(i) 120 days following delivery of the trustees' offer to the board; or

(ii) the day after the next meeting of the board of investments.

(c) If the trustees have not received a written acceptance by the deadline provided for in subsection (2)(b), the trustees may seek to secure a loan or issue and sell an obligation to a regulated lender specified in subsection (1).

(3) The term of the obligation, including an obligation for a qualified energy project, may not exceed 15 fiscal years. For the purposes of this subsection, a "qualified energy project" means a project designed to reduce energy use in a school facility and from which the resulting energy cost savings are projected to meet or exceed the debt service obligation for financing the project, as determined by the department of environmental quality.

- (4) (a) At the time of issuing the obligation, there must exist an amount in the budget of an applicable budgeted fund of the district for the current fiscal year available and sufficient to make the debt service payment on the obligation coming due in the current year. The budget of an applicable budgeted fund of the district for each following year in which any portion of the principal of and interest on the obligation is due must provide for payment of that principal and interest.
- (b) For an obligation sold under subsection (1)(d) for the purposes of paying a tax protest refund, a district may pledge revenue from a special tax protest refund levy for the repayment of the obligation, pursuant to [15-1-402\(7\)](#).
- (5) Except as provided in [20-9-502](#), [20-9-503](#), and subsections (1)(a) and (1)(c) of this section, the proceeds of the obligation may not be used to acquire real property or construct a facility unless:
- (a) the acquisition or construction project does not constitute more than 20% of the square footage of the existing real property improvements made to a facility containing classrooms;
- (b) the 20% square footage limitation may not be exceeded within any 5-year period; and
- (c) the electors of the district approve a proposition authorizing the trustees to apply for funds through the board of investments or a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in [31-1-111](#), for the construction project. The proposition must be approved at an election held in accordance with all of the requirements of [20-9-428](#), except that the proposition is considered to have passed if a majority of the qualified electors voting approve the proposition.
- (6) The school district may not submit for a vote of the electors of the district a proposition to impose a levy to pay the principal or any interest on an obligation that is payable from the guaranteed cost savings under energy performance contracts as defined in [90-4-1102](#).
- (7) Except as provided in subsection (4)(b), the obligation must state clearly on its face that the obligation is not secured by a pledge of the school district's taxing power but is payable from amounts in its general fund or other legally available funds.
- (8) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.
- (9) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments or a bank, building and loan association, savings and loan association, or credit union that is a regulated lender, as defined in [31-1-111](#), at par, at a discount, or with a premium and on any other terms and conditions that the trustees determine to be in the best interests of the district.
- (10) The principal amount of the obligation, when added to the outstanding bonded indebtedness of the district, may not exceed the debt limitation established in [20-9-406](#).

History: En. Sec. 1, Ch. 264, L. 1989; amd. Sec. 1, Ch. 719, L. 1991; amd. Sec. 38, Ch. 767, L. 1991; amd. Sec. 1, Ch. 37, L. 1995; amd. Sec. 1, Ch. 23, L. 1997; amd. Sec. 1, Ch. 499, L. 1997; amd. Sec. 2, Ch. 25, L. 2011; amd. Sec. 211, Ch. 49, L. 2015; amd. Sec. 7, Ch. 344, L. 2015; amd. Sec. 1, Ch. 1, L. 2017; amd. Sec. 1, Ch. 96, L. 2019.

### **Definitions cost saving measure 90-4-1102**

90-4-1102. Definitions. As used in this part, the following definitions apply:

- (1) "Cost-effective" or "cost-effectiveness" means that the sum of guaranteed cost savings and unguaranteed energy cost savings attributable to utility unit price escalation is equal to or greater than:
- (a) the energy performance contract financing repayment obligation, if any, each year of a finance term;
- (b) the total project cost of the cost-saving measures implemented divided by 20; or
- (c) the total project cost of the cost-saving measures implemented divided by the cost-weighted average useful life of the cost-saving measures.

- (2) "Cost-saving measure" means a facility improvement, repair, or alteration or equipment, fixtures, or furnishings added to or used in a facility and designed to reduce energy or water consumption or operation and maintenance costs. The term also includes vehicle acquisitions, changes to utility rate or tariff schedules, or fuel source changes that result in cost savings.
- (3) "Department" means the department of environmental quality provided for in [2-15-3501](#).
- (4) "Energy performance contract" means a cost-effective contract between a governmental entity and a qualified energy service provider for implementation of one or more cost-saving measures and guaranteed cost savings.
- (5) "Finance term" means the length of time for repayment of funds borrowed for an energy performance contract.
- (6) "Governmental entity" means:
- (a) a department, board, commission, institution, or branch of state government;
  - (b) a county, consolidated city-county government, city, town, or school district;
  - (c) a special district, as defined in [2-2-102](#);
  - (d) the university system or a unit of the university system; or
  - (e) a community college district.
- (7) "Guarantee period" means the period of time from the effective date of the contract until guaranteed cost savings are achieved in accordance with [90-4-1114](#)(5).
- (8) "Guaranteed cost savings" means a guaranteed annual measurable monetary reduction in utility and operating and maintenance costs for each year of a guarantee period resulting from cost-saving measures. Guaranteed cost savings for utility cost savings must be calculated using mutually agreed on baseline utility rates in use at the time of an investment-grade energy audit. Guaranteed cost savings for operation and maintenance cost savings must be calculated using mutually agreed on baseline operation and maintenance costs at the time of an investment-grade energy audit.
- (9) "Investment-grade energy audit" means a study of energy or water usage of a public building performed by a qualified energy service provider utilizing a professional engineer licensed in the state of Montana. It includes detailed descriptions of the improvements recommended for the project, the estimated costs of the improvements, and the operation and maintenance cost savings and utility cost savings projected to result from the recommended improvements. The study must contain all information required pursuant to [90-4-1113](#)(2).
- (10) "Measurement and verification" means the methodology, measurements, inspections, and mathematical calculations to determine utility consumption before and after an energy performance contract is implemented. The measurement and verification report may be for an individual cost-saving measure or an entire project.
- (11) "Operation and maintenance cost savings" means a measurable decrease in operation and maintenance costs as a direct result of cost-saving measures calculated using baseline operation and maintenance costs. The term does not include the shifting of personnel costs or similar short-term cost savings that cannot be definitively measured.
- (12) "Person" means an individual, corporation, partnership, firm, association, cooperative, limited liability company, limited liability partnership, or any other similar entity.
- (13) "Qualified energy service provider" means a person included on the department's list of qualified energy service providers.
- (14) "Total project cost" means the total cost of the project, including costs of the investment-grade energy audit, energy performance contract, measurement and verification, and financing.
- (15) "Utility cost savings" means expenses for utilities that are eliminated or avoided on a long-term basis as a result of equipment installed or modified or services performed by a qualified energy service provider. Utility cost savings include expenses for natural gas, propane or similar fuels, electricity, water, wastewater, and waste disposal.



History: En. Sec. 2, Ch. 162, L. 2005; amd. Sec. 5, Ch. 439, L. 2009; amd. Sec. 9, Ch. 344, L. 2015; amd. Sec. 1, Ch. 311, L. 2019.

### **8.97.715 Definitions**

For the purposes of this subchapter, the following definitions apply:

- (1) "Act" means the Municipal Finance Consolidation Act of 1983 as set forth in Title 17, chapter 5, part 16, MCA.
  - (2) "Bond" means any bond or note issued by the board pursuant to Title 17, chapter 5, part 16, MCA.
  - (3) "Eligible government unit" means eligible government unit as defined in 17-5-1604(3), MCA.
  - (4) "INTERCAP revolving program" or "INTERCAP program" means the intermediate term capital program administered by the board pursuant to Title 17, chapter 5, part 16, MCA.
  - (5) "Loan agreement" means the agreement, including the exhibits attached thereto and the security instrument, if any, between the borrower and the board or the bond or note resolution of the eligible government unit, all as originally executed or from time to time supplemented, modified or amended in accordance with the terms of the agreement, or the resolution, respectively.
  - (6) "Obligation" means any bond, note or bond anticipation note issued by an eligible government unit and payable from taxes, funds, special assessments, revenues derived from an enterprise owned by the eligible government unit, or any combination thereof.
  - (7) "Program(s)" include, but are not limited to, the INTERCAP revolving loan program and other board programs developed pursuant to the Act.
  - (8) "Reserve fund" means the Municipal Finance Consolidation Act reserve fund, as described in [17-5-1604](#), MCA, and created by the board pursuant to 17-5-1630, MCA.
  - (9) "Short term obligation" means any obligation with an actual or stated term of less than 12 months.
- History: [17-5-1605](#), MCA; [IMP](#), [17-5-1606](#), [17-5-1611](#), MCA; [NEW](#), 1992 MAR p. 2275, Eff. 10/16/92; [AMD](#), 1996 MAR p. 766, Eff. 3/22/96; [AMD](#), 2021 MAR p. 466, Eff. 5/1/21.

### **8.97.716 Scope of Subchapter 7**

(1) This subchapter shall govern the submittal of and processing of applications to the board for financing and the purchase of obligations under the Act including, but not limited to, the INTERCAP revolving program.

History: [17-5-1605](#), MCA; [IMP](#), [17-5-1606](#), [17-5-1611](#), MCA; [NEW](#), 1992 MAR p. 2275, Eff. 10/16/92; [AMD](#), 2021 MAR p. 466, Eff. 5/1/21.

### **8.97.718 Application Procedure**

(1) An eligible government unit may apply for financing under a program by submitting an application to the board on a form provided by the board. The form shall elicit sufficient information to enable the board to determine whether the eligible government unit and the proposed loan meets the requirements of [17-5-1611](#) (8) , MCA.

(2) The bond program office of the board shall review the application to determine whether the application is complete. The bond program office may request the eligible government unit to provide additional information relevant to the evaluation of the application. Upon a determination by the bond program office that the application is complete, the executive director and bond program office may approve the loan, if authorized by these rules or board policy or make a recommendation to the board

for action on the application. The executive director shall have full discretion to refer any application to the board for its approval.

(3) If the application is approved, the bond program office shall notify the eligible government unit of the terms and conditions of the loan.

History: Sec. [17-5-1605](#), MCA; IMP, Sec. [17-5-1611](#), MCA; NEW, 1992 MAR p. 2275, Eff. 10/16/92; AMD, 1996 MAR p. 766, Eff. 3/22/96; AMD, 2021 MAR p. 466, Eff. 5/1/21.

### **8.97.720 Agreements**

(1) Upon approval of an application, the board may enter into a commitment agreement or may proceed to make the approved loan.

(2) A loan agreement must be executed and delivered prior to disbursement of any loan funds. The loan agreement must contain the pledges, agreements and covenants necessary and appropriate to the type of loan being made and the project being financed.

(3) Prior to closing of the loan, an eligible government unit may withdraw its application for a loan for any reason. If an application is withdrawn, the commitment fee will be returned to the eligible government unit.

History: Sec. [17-5-1605](#), MCA; IMP, Sec. [17-5-1609](#), [17-5-1611](#), [17-5-1643](#), MCA; NEW, 1992 MAR p. 2275, Eff. 10/16/92; AMD, 1996 MAR p. 766, Eff. 3/22/96.

### **8.97.722 General Term, Interest Rates, Fees and Charges**

(1) The board may require an eligible government unit to pay interest on its obligations at a rate or rates sufficient to enable the board to pay debt service on any bonds or notes issued by the board, to reimburse the board for its administrative costs incurred in undertaking the program and its general operating and administrative expenses and to provide a reasonable allowance for losses that may be incurred in the program, including funding the reserve fund.

History: Sec. [17-5-1605](#), MCA; IMP, Sec. [17-5-1611](#), [17-5-1630](#), MCA; NEW, 1992 MAR p. 2275, Eff. 10/16/92; AMD, 1996 MAR p. 766, Eff. 3/22/96.

### **8.97.724 Closing Requirements**

(1) Prior to the board funding a loan, the eligible government unit shall provide the following:

(a) a complete transcript of all proceedings, if applicable, taken by the eligible government unit in connection with the authorization, issuance and sale of the obligations and security therefor, certified by the recording officer of the eligible government unit;

(b) certificates of the duly-authorized representatives of the eligible government unit as to the absence of litigation and the application to be made of the proceeds of the obligations;

(c) a legal opinion acceptable to the board as to the due and proper authorization and validity of the obligations and the security thereof; and

(d) such other items as may be requested by the board or its counsel.

History: Sec. [17-5-1605](#), MCA; IMP, Sec. [17-5-1611](#), MCA; NEW, 1992 MAR p. 2275, Eff. 10/16/92; AMD, 1996 MAR p. 766, Eff. 3/22/96.

## INVESTMENTS:

### **Unified Investment Program – Article VIII Revenue and Finance Section 13**

Section 13. Investment of public funds and public retirement system and state compensation insurance fund assets. (1) The legislature shall provide for a unified investment program for public funds and public retirement system and state compensation insurance fund assets and provide rules therefor, including supervision of investment of surplus funds of all counties, cities, towns, and other local governmental entities. Each fund forming a part of the unified investment program shall be separately identified. Except as provided in subsections (3) and (4), no public funds shall be invested in private corporate capital stock. The investment program shall be audited at least annually and a report thereof submitted to the governor and legislature.

(2) The public school fund and the permanent funds of the Montana university system and all other state institutions of learning shall be safely and conservatively invested in:

(a) Public securities of the state, its subdivisions, local government units, and districts within the state, or

(b) Bonds of the United States or other securities fully guaranteed as to principal and interest by the United States, or

(c) Such other safe investments bearing a fixed rate of interest as may be provided by law.

(3) Investment of public retirement system assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of an enterprise of a similar character with similar aims. Public retirement system assets may be invested in private corporate capital stock.

(4) Investment of state compensation insurance fund assets shall be managed in a fiduciary capacity in the same manner that a prudent expert acting in a fiduciary capacity and familiar with the circumstances would use in the conduct of a private insurance organization. State compensation insurance fund assets may be invested in private corporate capital stock. However, the stock investments shall not exceed 25 percent of the book value of the state compensation insurance fund's total invested assets.

History: Amd. Const. Amend. No. 25, approved Nov. 8, 1994; amd. Const. Amend. No. 34, approved Nov. 7, 2000.

### **Unified Investment Program General Provisions 17-6-201**

17-6-201. Unified investment program -- general provisions. (1) The unified investment program directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be administered by the board of investments in accordance with the prudent expert principle, which requires an investment manager to:

(a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

(c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) (a) Retirement funds may be invested in common stocks of any corporation.

(b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital stock" means only the common stock of a corporation.

(3) (a) This section does not prevent investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

- (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies that demonstrate an interest in making investments in Montana.
- (c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.
- (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion of a loan originated by a financial institution is not considered a direct loan.
- (e) This section does not prevent investment in home loan mortgages under the provisions of the Montana veterans' home loan mortgage program provided for in Title 90, chapter 6, part 6.
- (4) The board has the primary authority to invest state funds. Another agency may not invest state funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto investments made under its general supervision.
- (5) The board shall:
- (a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;
  - (b) determine the amount of surplus treasury cash to be invested;
  - (c) determine the type of investment to be made;
  - (d) prepare the claim to pay for the investment; and
  - (e) keep an account of the total of each investment fund and of all the investments belonging to the fund and a record of the participation of each treasury fund account in each investment fund.
- (6) The board may:
- (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a qualified appraiser.
  - (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to [17-6-101](#) and [17-6-105](#);
  - (c) direct the sale of securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.
- (7) The cost of administering and accounting for each investment fund must be deducted from the income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay the costs of administering and accounting for the Morrill Act fund is provided for in [77-1-108](#).
- History: (1), (2), (5) thru (7)En. Sec. 5, Ch. 298, L. 1973; amd. Sec. 1, Ch. 203, L. 1977; Sec. 79-308, R.C.M. 1947; (3), (4)En. 82A-204 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 90, Ch. 326, L. 1974; Sec. 82A-204, R.C.M. 1947; R.C.M. 1947, 79-308, 82A-204(4); amd. Sec. 1, Ch. 395, L. 1981; amd. Sec. 11, Ch. 281, L. 1983; amd. Sec. 19, Ch. 677, L. 1983; amd. Sec. 2, Ch. 183, L. 1985; amd. Sec. 3, Ch. 418, L. 1985; amd. Sec. 1, Ch. 158, L. 1987; amd. Sec. 1, Ch. 335, L. 1987; amd. Sec. 12, Ch. 581, L. 1987; amd. Sec. 1, Ch. 291, L. 1991; amd. Sec. 1, Ch. 46, L. 1993; amd. Sec. 1, Ch. 331, L. 1993; amd. Sec. 2, Ch. 37, Sp. L. November 1993; amd. Sec. 32, Ch. 18, L. 1995; amd. Sec. 1, Ch. 32, L. 1997; amd. Sec. 25, Ch. 422, L. 1997; amd. Sec. 12, Ch. 532, L. 1997; amd. Sec. 3, Ch. 549, L. 1997; amd. Sec. 2, Ch. 330, L. 1999; amd. Sec. 3, Ch. 471, L. 1999; amd. Sec. 5, Ch. 418, L. 2001; amd. Sec. 2, Ch. 247, L. 2007; amd. Sec. 6, Ch. 349, L. 2011.

## **Investment Funds -- General Provisions 17-6-202**

17-6-202. Investment funds -- general provisions. (1) For each treasury fund account into which state funds are segregated by the department of administration pursuant to [17-2-106](#), individual transactions and totals of all investments shall be separately recorded to the extent directed by the department.

(2) However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest, or devise from which the fund account originates to be invested shall be pooled in an account to be designated "treasury cash account" and placed in one of the investment funds designated in [17-6-203](#). The share of the income for this account shall be credited to the general fund.

(3) If, within the list in [17-6-203](#) of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata.

History: En. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; R.C.M. 1947, 79-309(part).

Collateralization of SSB – DDA Legal Interpretation

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Handling securities – custody of mortgages and repurchase agreements 17-6-221

17-6-221. Handling securities -- custody of mortgages and repurchase agreements. (1) Securities may be placed in safekeeping with banks subject to national supervision or Montana state examination, and a safekeeping receipt may be accepted in lieu of the actual securities.

(2) Custody and control of repurchase agreements and mortgages shall be accomplished by the receipt of a confirmation of purchase.

History: En. Sec. 440, Pol. C. 1895; re-en. Sec. 179, Rev. C. 1907; re-en. Sec. 174, R.C.M. 1921; Cal. Pol. C. Sec. 452; re-en. Sec. 174, R.C.M. 1935; amd. Sec. 8, Ch. 147, L. 1963; amd. Sec. 1, Ch. 152, L. 1971; amd. Sec. 1, Ch. 269, L. 1973; R.C.M. 1947, 79-201(8).

## **UIP Separate Investment Funds defined 17-6-203**

17-6-203. Separate investment funds. Separate investment funds must be maintained as follows:

(1) the permanent funds, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in Article X, sections 2 and 10, of the Montana constitution. The principal and any part of the principal of each fund constituting the Montana permanent fund type are subject to deposit at any time when due under the statutory provisions applicable to the fund and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises.

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system maintained by the state, including:

- (a) the public employees' retirement system described in Title 19, chapter 3;
- (b) the judges' retirement system described in Title 19, chapter 5;
- (c) the highway patrol officers' retirement system described in Title 19, chapter 6;
- (d) the sheriffs' retirement system described in Title 19, chapter 7;
- (e) the game wardens' and peace officers' retirement system described in Title 19, chapter 8;
- (f) the municipal police officers' retirement system described in Title 19, chapter 9;

- (g) the firefighters' unified retirement system described in Title 19, chapter 13;
- (h) the Volunteer Firefighters' Compensation Act under Title 19, chapter 17;
- (i) the teachers' retirement system described in Title 19, chapter 20; and
- (j) the workers' compensation program described in Title 39, chapter 71, part 23;
- (3) a pooled investment fund, including all other accounts within the treasury fund structure established by [17-2-102](#);
- (4) the fish and wildlife mitigation trust fund established by [87-1-611](#);
- (5) a fund consisting of gifts, donations, grants, legacies, bequests, devises, and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise, or contribution to be observed by the state of Montana. If a gift, donation, grant, legacy, bequest, devise, or contribution permits investment and is not otherwise restricted by its terms, it may be treated jointly with other gifts, donations, grants, legacies, bequests, devises, or contributions.
- (6) a fund consisting of coal severance taxes allocated to the coal severance tax trust fund under Article IX, section 5, of the Montana constitution. The principal of the coal severance tax trust fund is permanent. If the legislature appropriates any part of the principal of the coal severance tax trust fund by a vote of three-fourths of the members of each house, the appropriation or investment may create a gain or loss in the principal.
- (7) a Montana tobacco settlement trust fund established in accordance with Article XII, section 4, of the Montana constitution and Title 17, chapter 6, part 6; and
- (8) additional investment funds that are expressly required by law or that the board of investments determines are necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source.

History: Ap. p. Sec. 6, Ch. 298, L. 1973; amd. Sec. 7, Ch. 540, L. 1977; Sec. 79-309, R.C.M. 1947; Ap. p. Sec. 12, Ch. 70, L. 1929; re-en. Sec. 5668.30, R.C.M. 1935; amd. Sec. 21, Ch. 147, L. 1963; amd. Sec. 37, Ch. 100, L. 1973; Sec. 79-1212, R.C.M. 1947; R.C.M. 1947, 79-309(part), 79-1212; amd. Sec. 12, Ch. 281, L. 1983; amd. Sec. 4, Ch. 418, L. 1985; amd. Sec. 6, Ch. 445, L. 1987; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 12, Ch. 223, L. 1997; amd. Sec. 9, Ch. 34, L. 2001; amd. Sec. 4, Ch. 467, L. 2001; amd. Sec. 3, Ch. 99, L. 2011.

### **MBOI to use In-State Investment Firms 17-6-211**

17-6-211. Preference to in-state investment firms -- commitment agreement with board of housing. (1) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or financial institutions which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(2) The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977; R.C.M. 1947, 79-310; amd. Sec. 1, Ch. 81, L. 1979; amd. Sec. 1, Ch. 180, L. 1979; amd. Sec. 2, Ch. 395, L. 1981; amd. Sec. 1, Ch. 358, L. 1983; amd. Sec. 1, Ch. 360, L. 1983; amd. Sec. 1, Ch. 387, L. 1983; amd. Sec. 20, Ch. 677, L. 1983; amd. Sec. 5, Ch. 418, L. 1985; amd. Sec. 14, Ch. 421, L. 1985.

## Local Governments participation in UIP

### Short-Term Investment of Local Government Funds 17-6-204

17-6-204. Short-term investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision that has funds that are available for investment and are not required by law or by any covenant or agreement with bondholders or others to be segregated and invested in a different manner may direct its treasurer to remit the funds to the state treasurer for investment under the direction of the board of investments as part of the short-term pooled investment fund.

(2) A separate account, designated by name and number for each participant in the fund, must be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report must be furnished to each participant having a beneficial interest in the short-term pooled investment fund, showing the changes in investments made during the preceding month. Details of any investment transaction must be furnished to any participant upon request.

(3) The principal and accrued income, and any part of that amount, of each account maintained for a participant in the short-term pooled investment fund is subject to payment at any time from the fund upon request. Accumulated income must be remitted to each participant at least annually.

(4) An order or warrant may not be issued upon any account for a larger amount than the principal and accrued income of the account to which it applies. If any order or warrant is issued, the participant receiving it shall reimburse the excess amount to the fund from any funds not otherwise appropriated. The state treasurer is liable under the treasurer's official bond for any amount not reimbursed.

History: En. Sec. 8, Ch. 298, L. 1973; R.C.M. 1947, 79-311; amd. Sec. 217, Ch. 56, L. 2009; amd. Sec. 2, Ch. 84, L. 2015.

### Long-Term Investment of Local Govt Funds 17-6-205

17-6-205. Long-term investment of local government funds. (1) The governing body of any city, county, school district, or other local government unit or political subdivision may participate in the various investment pools or other investments offered by the board of investments not otherwise prohibited by law.

(2) A local government may invest with the board of investments under this section if:

(a) the source of the original principal for investment with the board is from an identifiable action or event such as a legal settlement, judgment, bequest, insurance settlement, trust fund, or other one-time source of funds;

(b) the local government does not anticipate the need to expend 50% or more of the original principal for investment within 5 years from the initial investment with the board;

(c) the initial investment is at least \$10 million; and

(d) the local government agrees to the board's investment policies, including those addressing liquidity needs, risk and return considerations, asset allocation, permissible investments, and any other necessary investment considerations or limits.

(3) The board of investments is not obligated to accept any funds for investment under this section. No local government is obligated to invest with the board under this section.

History: En. Sec. 1, Ch. 84, L. 2015.

### 2.43.3505 ESTABLISHMENT OF LONG-TERM DISABILITY TRUST FUND

(1) The board shall establish a long-term disability trust fund to be used exclusively for the payment of disability benefits to participants of the Defined Contribution Retirement Plan (DCRP).

(2) The long-term disability trust fund is a governmental plan under Internal Revenue Code section 401(a)(24) and may be invested in one or more group trust funds as determined by the Montana Board of Investments.

(a) The group trust fund or funds may be a group trust fund presently in existence or later established as permitted under IRC section 401(a)(24), IRS Revenue Ruling 81-100, IRS Revenue Ruling 2004-67, IRS Revenue Ruling 2011-1, and IRS Revenue Ruling 2014-24.

(b) The group trust fund or funds must be operated and maintained exclusively for the commingling and collective investment of monies pursuant to applicable IRS guidance and must be adopted as a part of the long-term disability trust fund.

(c) No part of the corpus or income of the long-term disability trust fund may be used for, or diverted to, any purpose other than the exclusive benefit of the disabled DCRP participants and their beneficiaries. This exclusive benefit provision is irrevocable.

(3) The long-term disability trust fund must be separate and distinct from the Defined Benefit Plan Trust Fund and the DCRP.

(4) The long-term disability trust fund must be funded by the statutorily determined percentage of the employers' contributions made for employees who are active DCRP participants.

(5) In addition to the requirements of (2), funds in the long-term disability trust fund will be invested pursuant to Article VIII, section 13, of the Constitution and Title 17, chapter 6, part 2, MCA.

History: [19-3-2104](#), [19-3-2141](#), MCA; [IMP](#), [19-2-504](#), [19-3-2117](#), [19-3-2141](#), MCA; [NEW](#), 2002 MAR p. 1884, Eff. 7/12/02; [TRANS](#), from ARM [2.43.1005](#), 2008 MAR p. 2467, Eff. 12/1/08; [AMD](#), 2015 MAR p. 812, Eff. 6/26/15.

#### 10.10.306 BANK ACCOUNTS OR OTHER DEPOSITORIES

(1) As provided by [20-9-212](#) and [20-9-504](#), MCA, the county treasurer is the custodian and depository of all school district monies except student extracurricular funds. Other bank accounts or depositories outside the control of the county treasurer shall be limited to:

(a) accounts with the state Board of Investments or investment firms maintaining a unified investment program in accordance with ARM [10.10.625](#);

(b) petty cash accounts;

(c) interim depository accounts for school lunch or driver's education fees;

(d) money held by the district in investment accounts established under [20-9-235](#), MCA; and

(e) gifts or endowments if such accounts are required by the donor.

(2) The county treasurer shall be the custodian for all other school district monies, including gifts, donations, endowments, interlocal agreements, direct federal or state revenues and district administered self-insurance programs.

History: [20-9-102](#), [20-9-201](#), MCA; [IMP](#), [20-9-212](#), [20-9-504](#), MCA; [NEW](#), 1990 MAR p. 717, Eff. 4/13/90; [AMD](#), 2000 MAR p. 632, Eff. 2/25/00; [AMD](#), 2002 MAR p. 1740, Eff. 6/28/02; [AMD](#), 2008 MAR p. 1692, Eff. 8/15/08.

#### 10.10.625 INVESTMENT POOLS (SCHOOL DISTRICTS)

(1) For purposes of this rule, "investment pool" is defined as a unified investment program established under [20-9-213](#) (4), MCA, by a Montana school district and one or more other school districts or other local governmental entities. "Investment pool" does not include an investment program hosted by the county as a countywide investment pool or a school district investment account established under [20-9-235](#), MCA.



(2) A school district participating in an investment pool shall enter into a written agreement with other participants, including one or more other school districts or local governments involved in the program. In addition to terms required by [7-11-105](#) , MCA, the agreement must state:

(a) the manner in which participants will share gains, losses, interest distributions and fees;

(b) that only the types of investments allowed by [20-9-213](#) (4) , [7-6-202](#) , and [7-6-213](#) , MCA, will be purchased;

(c) the procedures for dissolving the pool and distributing the ending balance to participants;

(d) the details specific to procedures necessary when more than one county treasurer is involved in funds combined in the investment pool;

(e) the party authorized to direct the purchase and redemption of investments (i.e. a representative of the host entity, investment pool committee or board, school district official, etc.) ; and

(f) that all elected officials, school district employees, and investment pool employees with duties related to the investment pool must be bonded.

(i) The bond may cover an individual or a blanket bond of the investment pool may cover all elected officials and employees or any combination.

(ii) The investment pool participants shall determine the amount for which an elected official or employee shall be bonded based on the amount of money or property handled and the opportunity for defalcation.

(3) Before participating in an investment pool a school district must have written documentation that the investment firm or entity contracted to administer the pool:

(a) complies with [20-9-204](#) , MCA, Article VIII, section 13, Montana Constitution, and is qualified and competent to provide investment services to the school districts;

(b) is either the state Board of Investments or an investment firm that is either registered with or has filed notice with the State Auditor under the provisions of Title 30, chapter 10, MCA;

(c) acquires pledged securities in the same manner and amount as required in [7-6-202](#) and [7-6-213](#) , MCA, for investments which are not guaranteed or uninsured investments; and

(d) provides each investment pool participant and associated county treasurer with a monthly report detailing:

(i) investment and redemption dates;

(ii) investment and redemption amounts, by school district fund;

(iii) fees charged for administering the investment pool;

(iv) the amount of interest accrued, reinvested and distributed, by fund;

(v) the balance of the district's investments, by fund; and

(vi) at fiscal year-end, the amount of interest accrued as of June 30 and the fair value of the district's share of pooled investments as of June 30 as prescribed by governmental accounting standards board (GASB) No. 31.

(4) A school district participating in an investment pool shall reconcile the district's records of investment balances and interest income to the county treasurer's reports and the investment firm's reports each month.

(5) When directed by a school district participating in an investment pool, a county treasurer shall invest the district's money within three days in an investment pool by issuing a treasurer's check, warrant, or wire transfer of funds to the state Board of Investments or investment firm that has registered or filed notice with the State Auditor administering the investment pool.

(a) When directing investments, the school district must provide written notification to the county treasurer stating the amount to invest and the fund making the investment.

(b) A school district shall not purchase investments using district warrants.

(6) A school district will direct the investment firm that has registered or filed notice with the State Auditor or State Board of Investments to deposit redeemed investments and interest income with the county treasurer, to the credit of the specific and appropriate school district fund.

(a) The school district will require that the investment firm or State Board of Investments informs the county treasurer in writing stating the funds to which the proceeds should be deposited and the amount of the interest earnings and principal contained in the proceeds.

(b) The school district shall not pay operating expenses from an investment pool without first returning the funds to the county treasurer. Operating expenses include but are not limited to salaries, service or construction contracts, and supplies and equipment.

(7) Each school district participating in an investment pool will monitor its cash balances maintained with the county treasurer and will promptly redeem investments to pay district warrants and bond principal and interest in a timely manner.

History: [20-9-102](#), [20-9-201](#); MCA; IMP, [20-9-212](#), MCA; NEW, 2000 MAR p. 632, Eff. 2/25/00; AMD & TRANS, 2002 MAR p. 1740, Eff. 6/28/02.

## OPERATIONS:

### **MBOI Exempt Employees: 2-18-103(10) and 2-15-1808(2)**

2-18-103. Officers and employees excepted.

Parts 1 through 3 and 10 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 eight 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) chief information officer in the department of administration;
- (20) chief business development officer and six professional staff positions in the office of economic development provided for in [2-15-218](#); and

(21) the director of the office of state public defender provided for in [2-15-1029](#).

History: En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979; amd. Sec. 1, Ch. 176, L. 1983; amd. Sec. 11, Ch. 161, L. 1987; amd. Sec. 17, Ch. 581, L. 1987; amd. Sec. 21, Ch. 316, L. 1989; amd. Sec. 39, Ch. 613, L. 1989; amd. Sec. 2, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 447, L. 1991; amd. Sec. 2, Ch. 507, L. 1991; amd. Sec. 2, Ch. 395, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 3, Ch. 455, L. 1995; amd. Sec. 11, Ch. 545, L. 1995; amd. Sec. 24, Ch. 546, L. 1995; amd. Sec. 3, Ch. 339, L. 1997; amd. Sec. 3, Ch. 417, L. 1997; amd. Sec. 2, Ch. 549, L. 1997; amd. Sec. 32, Ch. 313, L. 2001; amd. Sec. 18, Ch. 483, L. 2001; amd. Sec. 16, Ch. 449, L. 2005; amd. Sec. 1, Ch. 24, L. 2011; amd. Sec. 3, Ch. 358, L. 2017; amd. Sec. 1, Ch. 61, L. 2019; amd. Sec. 1, Ch. 450, L. 2019.

2-15-1808. Board of investments -- allocation -- composition -- quasi-judicial.

(1) There is a board of investments within the department of commerce.

(2) Except as otherwise provided in this subsection, the board is allocated to the department for administrative purposes as prescribed in [2-15-121](#). The board may employ a chief investment officer and an executive director who have general responsibility for selection and management of the board's staff and for direct investment and economic development activities. The board shall prescribe the duties and annual salaries of the chief investment officer, executive director, and six professional staff positions. The chief investment officer, executive director, and six professional staff serve at the pleasure of the board.

(3) The board is composed of nine members appointed by the governor, as prescribed in [2-15-124](#), and two ex officio, nonvoting members. The members are:

(a) one member from the public employees' retirement board, provided for in [2-15-1009](#), and one member from the teachers' retirement board provided for in [2-15-1010](#). If either member of the respective retirement boards ceases to be a member of the retirement board, the position of that member on the board of investments is vacant, and the governor shall fill the vacancy in accordance with [2-15-124](#).

(b) seven members who will provide a balance of professional expertise and public interest and accountability, who are informed and experienced in the subject of investments, and who are representatives of:

- (i) the financial community;
- (ii) small business;
- (iii) agriculture; and
- (iv) labor; and

(c) two ex officio, nonvoting legislative liaisons to the board, of which one must be a senator appointed by the president of the senate and one must be a representative appointed by the speaker of the house. The liaisons may not be from the same political party. Preference in appointments is to be given to legislators who have a background in investments or finance. The legislative liaisons shall serve from appointment through each even-numbered calendar year and may attend all board meetings. Legislative liaisons appointed pursuant to this subsection (3)(c) are entitled to compensation and expenses, as provided in [5-2-302](#), to be paid by the legislative council.

(4) The board is designated as a quasi-judicial board for the purposes of [2-15-124](#).

History: En. Sec. 1, Ch. 581, L. 1987; amd. Sec. 1, Ch. 330, L. 1999; amd. Sec. 1, Ch. 190, L. 2007.

### **Economic Affairs Interim Committee oversight of Dept of Commerce 5-5-223**

5-5-223. Economic affairs interim committee. (1) The economic affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes:

- (a) department of agriculture;
  - (b) department of commerce;
  - (c) department of labor and industry;
  - (d) department of livestock;
  - (e) office of the state auditor and insurance commissioner;
  - (f) office of economic development;
  - (g) the state compensation insurance fund provided for in [39-71-2313](#), including the board of directors of the state compensation insurance fund established in [2-15-1019](#);
  - (h) the division of banking and financial institutions provided for in [32-1-211](#); and
  - (i) the division of the department of revenue that administers the Montana Alcoholic Beverage Code.
- (2) The state compensation insurance fund shall annually provide to the committee a report on its budget as approved by the state compensation insurance fund board of directors.

History: En. Sec. 25, Ch. 19, L. 1999; amd. Sec. 10, Ch. 210, L. 2001; amd. Sec. 19, Ch. 483, L. 2001; amd. Sec. 6, Ch. 489, L. 2001; amd. Sec. 2, Ch. 565, L. 2003; amd. Sec. 1, Ch. 91, L. 2011; amd. Sec. 1, Ch. 19, L. 2013; amd. Sec. 1, Ch. 333, L. 2015; amd. Sec. 1, Ch. 4, L. 2017.

### **SAVA Interim Committee to review MBOI reports 5-5-228**

5-5-228. State administration and veterans' affairs interim committee. (1) The state administration and veterans' affairs interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the public employee retirement plans and for the following executive branch agencies and, unless otherwise assigned by law, the entities attached to the agencies for administrative purposes:

- (a) department of administration, except:
    - (i) the state compensation insurance fund provided for in [39-71-2313](#), including the board of directors of the state compensation insurance fund established in [2-15-1019](#);
    - (ii) the state tax appeal board established in [2-15-1015](#);
    - (iii) the division of banking and financial institutions; and
    - (iv) the office of state public defender;
  - (b) department of military affairs; and
  - (c) office of the secretary of state.
- (2) The committee shall:
- (a) consider the actuarial and fiscal soundness of the state's public employee retirement systems, based on reports from the teachers' retirement board, the public employees' retirement board, and the board of investments, and study and evaluate the equity and benefit structure of the state's public employee retirement systems;
  - (b) establish principles of sound fiscal and public policy as guidelines;
  - (c) as necessary, develop legislation to keep the retirement systems consistent with sound policy principles; and
  - (d) publish, for legislators' use, information on the public employee retirement systems that the committee considers will be valuable to legislators when considering retirement legislation.
- (3) The committee may:
- (a) specify the date by which retirement board proposals affecting a retirement system must be submitted to the committee for the review pursuant to subsection (1); and

(b) request personnel from state agencies, including boards, political subdivisions, and the state public employee retirement systems, to furnish any information and render any assistance that the committee may request.

History: En. Sec. 30, Ch. 19, L. 1999; amd. Sec. 15, Ch. 210, L. 2001; amd. Sec. 1, Ch. 2, Sp. L. December 2005; amd. Sec. 3, Ch. 91, L. 2011; amd. Sec. 2, Ch. 19, L. 2013; amd. Sec. 1, Ch. 20, L. 2013; amd. Sec. 2, Ch. 41, L. 2015; amd. Sec. 7, Ch. 358, L. 2017; amd. Sec. 1, Ch. 145, L. 2019.

### **STIP average rate of return referenced for DOA approved interentity loans 17-2-107**

17-2-107. Accurate accounting records and interentity loans. (1) The department shall record receipts and disbursements for treasury funds and for accounting entities within treasury funds and shall maintain records in a manner that reflects the total cash and invested balance of each fund and each accounting entity. The department shall adopt the necessary procedures to ensure that interdepartmental or intradepartmental transfers of money or loans do not result in inflation of figures reflecting total governmental costs and revenue.

(2) (a) Except as provided in [77-1-108](#) and subject to [17-2-105](#), when the expenditure of an appropriation from a fund designated in [17-2-102\(1\)](#) through (3) is necessary and the cash balance in the accounting entity from which the appropriation was made is insufficient, the department may authorize a temporary loan, bearing no interest, of unrestricted money from other accounting entities if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. An accounting entity receiving a loan or an accounting entity from which a loan is made may not be so impaired that all proper demands on the accounting entity cannot be met even if the loan is extended.

(b) (i) When an expenditure from a fund or subfund designated in [17-2-102\(4\)](#) is necessary and the cash balance in the fund or subfund from which the expenditure is to be made is insufficient, the commissioner of higher education may authorize a temporary loan, bearing interest as provided in subsection (4) of this section, of money from the agency's other funds or subfunds if there is reasonable evidence that the income will be sufficient to repay the loan within 1 calendar year and if the loan is recorded in the state accounting records. A fund or subfund receiving a loan or from which a loan is made may not be so impaired that all proper demands on the fund or subfund cannot be met even if the loan is extended.

(ii) One accounting entity within each fund or subfund designated in [17-2-102\(4\)](#) must be established for the sole purpose of recording loans between the funds or subfunds. This accounting entity is the only accounting entity within each fund or subfund that may receive a loan or from which a loan may be made.

(c) A loan made under subsection (2)(a) or (2)(b) must be repaid within 1 calendar year of the date on which the loan is approved unless it is extended under subsection (3) or by specific legislative authorization.

(3) Under unusual circumstances, the director of the department or the board of regents may grant one extension for up to 1 year for a loan made under subsection (2)(a) or (2)(b). The director or board shall prepare a written justification and proposed repayment plan for each loan extension authorized and shall furnish a copy of the written justification and proposed repayment plan to the house appropriations and senate finance and claims committees at the next legislative session.

(4) Any loan from the current unrestricted subfund to funds designated in [17-2-102\(4\)\(a\)\(iv\)](#) and (4)(b) through (4)(f) must bear interest at a rate equivalent to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

(5) If for 2 consecutive fiscal yearends a loan or an extension of a loan has been authorized to the same accounting entity as provided in subsection (2) or (3), the department or the commissioner of higher education shall submit to the legislative fiscal analyst by September 1 of the following fiscal year a written report containing an explanation as to why the second loan or extension was made, an analysis of the solvency of the accounting entity or accounting entities within the university fund or subfund, and a plan for repaying the loans. The report must be provided in an electronic format.

(6) If for 2 consecutive fiscal yearends an accounting entity in a fund or subfund designated in [17-2-102](#)(4) has a negative cash balance, the commissioner of higher education shall submit to the legislative fiscal analyst by September 1 of the following fiscal year a written report containing an explanation as to why the accounting entity has a negative cash balance, an analysis of the solvency of the accounting entity, and a plan to address any problems concerning the accounting entity's negative cash balance or solvency. The report must be provided in an electronic format.

(7) (a) An accounting entity in a fund designated in [17-2-102](#)(1) through (3) may not have a negative cash balance at fiscal yearend. The department may, however, allow a fund type within each agency to carry a negative balance at any point during the fiscal year if the negative cash balance does not exist for more than 7 working days.

(b) (i) Except as provided in subsection (7)(b)(ii) of this section, a unit of the university system shall maintain a positive cash balance in the funds and subfunds designated in [17-2-102](#)(4).

(ii) If a fund or subfund inadvertently has a negative cash balance, the department may allow the fund or subfund to carry the negative cash balance for no more than 7 working days. If the negative cash balance exists for more than 7 working days, a transaction may not be processed through the statewide accounting, budgeting, and human resource system for that fund or subfund.

(8) Notwithstanding the provisions of subsections (2) through (4), the department may authorize loans to accounting entities in the federal and state special revenue funds with long-term repayment whenever necessary because of the timing of the receipt of agreed-upon reimbursements from federal, private, or other governmental entity sources for disbursements made. If possible, the loans must be made from funds other than the general fund. The department may approve the loans if the requesting agency can demonstrate that the total loan balance does not exceed total receivables from federal, private, or other governmental entity sources and receivables have been billed on a timely basis. The loan must be repaid under terms and conditions that may be determined by the department or by specific legislative authorization.

(9) A loan may not be authorized under this section to any fund or accounting entity that is owed federal or other third-party funds unless the requesting agency certifies to the agency approving the loan that it has and will continue to bill the federal government or other third party for the requesting agency's share of costs incurred in the fund or accounting entity on the earliest date allowable under federal or other third-party regulations applicable to the program. The requesting agency shall recertify its timely billing status to the agency that approved the loan at least monthly during the term of the loan. If at any time the requesting agency fails to recertify the timely billing, the agency that approved the loan shall cancel the loan and return the money to its original source.

History: En. Sec. 6, Ch. 147, L. 1963; amd. Sec. 1, Ch. 268, L. 1971; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-414(2), (3); amd. Sec. 1, Ch. 626, L. 1979; amd. Sec. 4, Ch. 28, L. 1981; amd. Sec. 1, Ch. 517, L. 1983; amd. Sec. 2, Ch. 136, L. 1985; amd. Sec. 1, Ch. 354, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. June 1986; amd. Sec. 1, Ch. 170, L. 1987; amd. Sec. 2, Ch. 341, L. 1987; amd. Sec. 34, Ch. 658, L. 1987; amd. Sec. 1, Ch. 151, L. 1989; amd. Sec. 1, Ch. 622, L. 1989; amd. Sec. 1, Ch. 628, L. 1991; amd. Sec. 5, Ch. 308, L. 1995; amd. Sec. 93, Ch. 42, L. 1997; amd. Sec. 1, Ch. 547, L. 1997; amd. Sec. 2, Ch. 11, L. 1999; amd. Sec. 2, Ch. 291, L. 1999; amd. Sec. 8, Ch. 34, L. 2001; amd. Sec. 1, Ch. 8, Sp. L. August 2002; amd. Sec. 1, Ch. 465, L. 2009; amd. Sec. 6, Ch. 120, L. 2013; amd. Sec. 14, Ch. 3, L. 2019.

## **Local government redemption of bonds held by state before maturity 17-6-213**

17-6-213. Redemption of bonds before maturity. (1) The board of investments shall permit any school district, town, city, or county to pay and redeem one or more of its bonds held by the state for the credit of any fund under the investment administration of the board of investments at any time before maturity.

(2) In calculating the unpaid interest accrued on any bond or bonds at the time of payment and redemption, interest for a fractional month must be calculated and collected for a full month.

(3) Payment and redemption of bonds must be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at that office would be disadvantageous to the redemptioner. When bonds have been paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail them to the proper treasurer together with the state treasurer's receipt.

(4) This section does not authorize or permit any school district, town, city, or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date of the bonds or to grant the right to pay any bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds.

History: En. Sec. 2, Ch. 33, L. 1907; re-en. Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R.C.M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929; re-en. Sec. 1916, R.C.M. 1935; amd. Sec. 36, Ch. 326, L. 1974; R.C.M. 1947, 79-1105; amd. Sec. 218, Ch. 56, L. 2009.

## **Protection of personal information -- compliance -- extensions. 2-6-1502**

2-6-1502. Protection of personal information -- compliance -- extensions. (1) Each state agency that maintains the personal information of an individual shall develop procedures to protect the personal information while enabling the state agency to use the personal information as necessary for the performance of its duties under federal or state law.

(2) The procedures must include measures to:

(a) eliminate the unnecessary use of personal information;

(b) identify the person or state agency authorized to have access to personal information;

(c) restrict access to personal information by unauthorized persons or state agencies;

(d) identify circumstances in which redaction of personal information is appropriate;

(e) dispose of documents that contain personal information in a manner consistent with other record retention requirements applicable to the state agency;

(f) eliminate the unnecessary storage of personal information on portable devices; and

(g) protect data containing personal information if that data is on a portable device.

(3) Except as provided in subsection (4), each state agency that is created after October 1, 2015, shall complete the requirements of this section within 1 year of its creation.

(4) The chief information officer provided for in **2-17-511** may grant an extension to any state agency subject to the provisions of the Montana Information Technology Act provided for in Title 2, chapter 17, part 5. The chief information officer shall inform the information technology board, the office of budget

and program planning, and the legislative finance committee of all extensions that are granted and of the rationale for granting the extensions. The chief information officer shall maintain written documentation that identifies the terms and conditions of each extension and the rationale for the extension. History: En. Sec. 26, Ch. 348, L. 2015.

## PENSIONS:

### **Reports on Retirement System Trust Fund Investments and Benefits 17-6-230**

17-6-230. Reports on retirement system trust fund investments and benefits. (1) As soon as practical after the end of each calendar year, the board of investments shall publish a report on each retirement system trust fund invested by the board. The report may be part of an annual report required pursuant to Article VIII, section 13, of the Montana constitution or [17-5-1650](#) but must summarize the following with respect to each retirement system trust fund:

- (a) asset allocation;
- (b) past and expected investment performance;
- (c) investment goals and strategies; and
- (d) Montana public employees' retirement system investments and performance compared with the public employees' retirement system investments and performance in other states.

(2) The board of investments shall annually at a public meeting present the report described in subsection (1) to the public employees' retirement board provided for in [2-15-1009](#) and the teachers' retirement board provided for in [2-15-1010](#). The board shall also provide the report to the legislature pursuant to [5-11-210](#) and to the state administration and veterans' affairs interim committee.

History: En. Sec. 1, Ch. 285, L. 2007; amd. Sec. 4, Ch. 155, L. 2013.

### **MPERA Presentation to Board of Investments 19-2-410**

19-2-410. Presentation to board of investments. The board shall annually at a public meeting present to the board of investments established in [2-15-1808](#) a financial and actuarial report of the retirement systems administered by the board and brief the board of investments on any benefit changes being considered by the board that may affect trust fund obligations.

History: En. Sec. 2, Ch. 285, L. 2007.

### **TRS Presentation to Board of Investments 19-20-215**

19-20-215. Presentation to board of investments. The retirement board shall annually at a public meeting present to the board of investments established in [2-15-1808](#) a financial and actuarial report of the retirement system and brief the board of investments on any benefit changes being considered by the retirement board that may affect trust fund obligations.

History: En. Sec. 3, Ch. 285, L. 2007.

### **MBOI to provide current yield on pension funds 19-18-403 (Firefighters)**

19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year



the average yield on investments of the fund made pursuant to [19-18-402](#), the surplus money in the fund must be remitted to the state treasurer for investment under the direction of the board of investments as is provided in [17-6-204](#). The board of investments shall advise the association of the current yield on investments of public retirement funds.

(2) As used in subsection (1), "surplus money" means the excess over the greater of the following:

- (a) 1 1/2 times the monthly benefit paid in the preceding month; or
- (b) \$5,000.

History: En. Sec. 5, Ch. 71, L. 1907; Sec. 3338, Rev. C. 1907; re-en. Sec. 5121, R.C.M. 1921; amd. Sec. 5, Ch. 58, L. 1927; amd. Sec. 1, Ch. 30, L. 1933; re-en. Sec. 5121, R.C.M. 1935; amd. Sec. 1, Ch. 9, L. 1963; amd. Sec. 1, Ch. 2, L. 1974; amd. Sec. 53, Ch. 348, L. 1974; amd. Sec. 1, Ch. 366, L. 1974; amd. Sec. 1, Ch. 197, L. 1975; amd. Sec. 17, Ch. 213, L. 1975; amd. Sec. 5, Ch. 157, L. 1977; R.C.M. 1947, 11-1914(2)(c); amd. Sec. 2, Ch. 393, L. 1979; amd. Sec. 7, Ch. 274, L. 1981; amd. Sec. 55, Ch. 566, L. 1981; amd. Sec. 1, Ch. 287, L. 1983; Sec. 19-11-403, MCA 1991; redes. 19-18-403 by Code Commissioner, 1993; amd. Sec. 49, Ch. 483, L. 2001.

### **MBOI to certify accumulated pension securities 19-2-407**

19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to [5-11-210](#) a report of its work for that fiscal year. The report must include but is not limited to:

- (a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;
- (b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and
- (c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.

(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, and other information required under applicable governmental accounting standards and as determined by the board.

History: En. 68-1803 by Sec. 20, Ch. 323, L. 1973; amd. Sec. 4, Ch. 132, L. 1977; amd. Sec. 9, Ch. 332, L. 1977; R.C.M. 1947, 68-1803(2); amd. Sec. 9, Ch. 265, L. 1993; Sec. 19-3-306, MCA 1991; redes. 19-2-407 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 10, Ch. 471, L. 1999; amd. Sec. 8, Ch. 562, L. 1999; amd. Sec. 6, Ch. 285, L. 2007; amd. Sec. 2, Ch. 170, L. 2015.

### **MBOI to invest pension funds 19-2-504**

19-2-504. Investment of pension trust funds. (1) Except as provided in chapter 3, part 21, of this title, the pension trust funds of the retirement systems must be invested by the state board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust funds must be paid into the appropriate pension trust funds as received.

(3) The pension trust funds and the defined contribution retirement plan's long-term disability plan trust fund provided for in [19-3-2141](#) may be commingled for investment purposes, to the extent permitted by Montana law and as permitted under I.R.S. Revenue Ruling 81-100,1981-1 Cumulative

Bulletin 326, I.R.S. Revenue Ruling 2004-67, 2004-2 Cumulative Bulletin 28, I.R.S. Revenue Ruling 2011-1, 2011-2 Internal Revenue Bulletin 251, and I.R.S. Revenue Ruling 2014-24, 2014-37 Internal Revenue Bulletin 529 if:

- (a) the trust funds are operated or maintained exclusively for the commingling and collective investment of money; and
- (b) the trust funds in the group trust consist exclusively of trust assets held under retirement systems or plans qualified under one or more of the following:
  - (i) section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);
  - (ii) individual retirement accounts that are exempt under section 408(e) of the Internal Revenue Code, 26 U.S.C. 408(e);
  - (iii) eligible governmental plans that meet the requirements of section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b); and
  - (iv) governmental plans under section 401(a)(24) of the Internal Revenue Code, 26 U.S.C. 401(a)(24).
- (4) For purposes of subsection (3), a trust includes a custodial account that is treated as a trust under section 401(f) or 457(g)(3) of the Internal Revenue Code, 26 U.S.C. 401(f) or 457(g)(3).
- (5) The board shall adopt any collective or common group trust to which assets of the retirement systems or plans are transferred for investment pursuant to subsection (3) as part of the respective retirement systems or plans by executing appropriate participation agreements, adoption agreements, or trust agreements with the group trust's trustee.
- (6) The separate accounts maintained by the group trust for retirement systems or plans pursuant to subsection (7) may not be used for or diverted to any purpose other than for the exclusive benefit of the members and beneficiaries of those retirement systems or plans.
- (7) For purposes of valuation, separate accounts must be maintained for each system or plan, and the value of the separate account maintained by the group trust for the system or plan must be the fair market value of the portion of the group trust held for the system or plan, determined in accordance with generally recognized valuation procedures.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(2), (5); amd. Sec. 1, Ch. 221, L. 1991; amd. Sec. 14, Ch. 265, L. 1993; Sec. 19-3-602, MCA 1991; redes. 19-2-504 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 15, Ch. 471, L. 1999; amd. Sec. 1, Ch. 140, L. 2015.

## **MBOI members/employees may not have interest in pension investments 19-2-505/19-20-502**

(19-20-502 similar in TRS does not specifically mention MBOI)

19-2-505. Restrictions on use of funds. (1) Except as provided in this section, a member or an employee of the board or the board of investments may not:

- (a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust funds;
  - (b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust funds or deposits;
  - (c) in any manner use the pension trust funds except to make current and necessary payments that are authorized by the board;
  - (d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust funds; or
  - (e) engage in a transaction prohibited by section 503(b) of the Internal Revenue Code.
- (2) The assets of the retirement systems, including the assets of retirement accounts, may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their

beneficiaries and for paying the reasonable administrative expenses of the retirement systems administered by the board.

(3) The assets of the retirement systems remain in trust until a warrant has been negotiated or an electronic funds transfer has been deposited in accordance with law.

(4) Retirement benefits not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(5) The accumulated contributions of a vested or nonvested member that are not claimed within 5 years after the member's death are forfeited and revert to the retirement system trust fund.

(6) This section does not prevent the administration of an investment alternative within the defined contribution plan to the same extent that all other investment alternatives within the defined contribution plan are managed.

History: En. 68-1901 by Sec. 22, Ch. 323, L. 1973; amd. Sec. 5, Ch. 99, L. 1977; amd. Sec. 3, Ch. 286, L. 1977; amd. Sec. 10, Ch. 332, L. 1977; R.C.M. 1947, 68-1901(6), (7); amd. Sec. 2, Ch. 4, Sp. L. June 1986; amd. Sec. 15, Ch. 265, L. 1993; Sec. 19-3-603, MCA 1991; redes. 19-2-505 by Sec. 238, Ch. 265, L. 1993; amd. Sec. 5, Ch. 58, L. 1999; amd. Sec. 16, Ch. 471, L. 1999; amd. Sec. 11, Ch. 562, L. 1999; amd. Sec. 7, Ch. 99, L. 2001; amd. Sec. 4, Ch. 178, L. 2013.

### **MBOI member/employees may not have interest in Vol Firefighter Investments 19-17-106**

19-17-106. Pension trust fund established -- restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the board or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, and their dependent children, for supplemental payments for qualified fire companies, and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded.

History: En. Sec. 1, Ch. 175, L. 1995; amd. Sec. 91, Ch. 562, L. 1999; amd. Sec. 120, Ch. 99, L. 2001; amd. Sec. 6, Ch. 64, L. 2011.

## POSSIBLE INVESTMENTS ALLOWED:

### **General Fund Warrant purchase allowed 17-6-212**

17-6-212. State purchase of general fund warrants. (1) The state reserves a preference right, prior to the right of any person, company, or corporation, to purchase state general fund warrants issued with funds under the control of the board of investments and subject to investment.

(2) When the board of investments has under its control any funds subject to investment that in its judgment it would be advantageous to invest in state general fund warrants and there are not sufficient funds in the state general fund to pay warrants issued against the fund at the time that they are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be invested and fixing the amount or amounts to be invested. State general fund warrants registered by the state treasurer pursuant to [17-8-304\(1\)](#) and purchased by the board of investments must bear interest at a rate determined by the board. When determining the interest rate, the board shall consider:

(a) the duration of the investment by estimating the time at which the warrants will be redeemed pursuant to [17-8-304\(1\)](#); and

(b) the interest rate of the investments liquidated to provide the funds to purchase the warrants.

(3) The state treasurer shall attach to or stamp, write, or print upon each general fund warrant issued after the receipt of notice, until warrants totaling the amounts designated have been issued, a notice that the state will exercise its preference right to purchase the warrant.

(4) The state treasurer shall, when the marked warrant is presented, pay it out of the proper fund as designated by the board, and the warrant purchased must be registered as other state warrants and must bear interest as provided by law.

(5) When the designated amounts have been invested, the department shall notify the board of investments, which shall issue orders for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; re-en. Sec. 1912, R.C.M. 1921; amd. Sec. 1, Ch. 15, L. 1927; re-en. Sec. 1912, R.C.M. 1935; amd. Sec. 33, Ch. 326, L. 1974; R.C.M. 1947, 79-1101; amd. Sec. 1, Ch. 40, L. 1995; amd. Sec. 19, Ch. 325, L. 1995; amd. Sec. 97, Ch. 42, L. 1997; amd. Sec. 8, Ch. 48, L. 1997.

### **MBOH commitment/purchase of bonds allowed by MBOI 17-6-211(2)**

17-6-211. Preference to in-state investment firms -- commitment agreement with board of housing. (1) The board of investments shall endeavor to direct its portion of the state's investment business to those investment firms and/or financial institutions which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana.

(2) The board may enter into a commitment agreement with the board of housing at the time of an issue of bonds or notes by the board of housing providing for the purchase at a specified future date, not to exceed 15 years from the date of the issue, of all or any portion of the amount of mortgage loans purchased with the proceeds of the issue. The board of investments may charge reasonable fees for any commitment and may agree to purchase the mortgage loans on terms that in the judgment of the board of investments provide a fair market rate of return to the purchasers.

History: En. Sec. 7, Ch. 298, L. 1973; amd. Sec. 1, Ch. 92, L. 1974; amd. Sec. 1, Ch. 228, L. 1974; amd. Sec. 1, Ch. 316, L. 1977; R.C.M. 1947, 79-310; amd. Sec. 1, Ch. 81, L. 1979; amd. Sec. 1, Ch. 180, L. 1979; amd. Sec. 2, Ch. 395, L. 1981; amd. Sec. 1, Ch. 358, L. 1983; amd. Sec. 1, Ch. 360, L. 1983; amd. Sec. 1,

Ch. 387, L. 1983; amd. Sec. 20, Ch. 677, L. 1983; amd. Sec. 5, Ch. 418, L. 1985; amd. Sec. 14, Ch. 421, L. 1985.

### **MFFA commitment/purchase of bonds and loan allowed by MBOI 90-7-320**

90-7-320. Loans -- purchase of bonds and notes. Subject to the provisions of Title 17, chapter 6, the board of investments may, upon terms and conditions as the board considers reasonable:

- (1) loan money to the authority for deposit in the capital reserve account; and
- (2) purchase bonds and notes issued by the authority.

History: En. Sec. 5, Ch. 673, L. 1991.

### **MPERA Defined Contribution Plan allows for MBOI investment alternatives 19-3-2122**

19-3-2122. Investment alternatives -- notice of changes -- default fund. (1) The board shall provide for at least eight investment alternatives within the defined contribution plan. In providing for the plan's investment alternatives, only a vendor or vendors offering suitable and well-managed investments, licensed to conduct business in Montana, and regulated by the United States securities and exchange commission may be used, unless exempt from the commission's regulation.

- (2) The investment alternatives must include at least three that offer plan members the following:
  - (a) the ability to materially affect the potential return on amounts in the member's retirement account and the degree of risk to which those amounts are subject;
  - (b) a range of investment alternatives that:
    - (i) provides sound and diversified funds;
    - (ii) offers, under each alternative, a materially different risk and return characteristic than found in the other alternatives;
    - (iii) allows the member or beneficiary to choose among them to achieve a portfolio with an aggregate risk and return characteristic to achieve a point within the risk and return range normally appropriate for the member or beneficiary based on age, income, and individual retirement goals; and
    - (iv) tends to minimize through diversification the overall risk of large losses.
- (3) The investment alternatives may include the investment alternatives offered to members of the state deferred compensation plan pursuant to chapter 50 of this title.
- (4) The board shall from time to time review the suitability and management of investment alternatives and may change the alternatives to be offered. The board shall notify affected members of potential changes before any changes become effective.
- (5) Assets within each member's retirement account must be invested as directed by the member.
- (6) The board shall provide for a balanced fund to be established as a default investment fund. In the case of a member failing to direct how the member's retirement account is to be invested, the member's entire account must be invested in the default fund.
- (7) This section does not prohibit the board from contracting with the board of investments established in [2-15-1808](#) to provide one or more investment alternatives within the plan.

History: En. Sec. 55, Ch. 471, L. 1999; amd. Sec. 25, Ch. 490, L. 2001.

### **Petroleum Tank Release Compensation Board Loans Allowed for MBOI 17-6-225**

17-6-225. Loans to petroleum tank release compensation board. (1) The board of investments may loan funds to the petroleum tank release compensation board to cover temporary cash shortfalls. The total of all loans may not exceed the greater of \$15 million or 80% of the fees that the office of budget

and program planning projects will be collected under [75-11-314](#) during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan.

History: En. Sec. 1, Ch. 115, L. 1997.

#### Petroleum Tank Release Cleanup Fund 75-11-313

75-11-313. Petroleum tank release cleanup fund. (1) There is a petroleum tank release cleanup fund in the state special revenue fund established in [17-2-102](#). The fund is administered as a revolving fund by the board and is statutorily appropriated, as provided in [17-7-502](#), for the purposes provided for under subsections (3)(c) and (3)(d). Administrative costs under subsections (3)(a) and (3)(b) must be paid pursuant to a legislative appropriation.

(2) There is deposited in the fund:

- (a) all revenue from the petroleum storage tank cleanup fee as provided in [75-11-314](#);
- (b) money received by the board in the form of gifts, grants, reimbursements, or appropriations, from any source, intended to be used for the purposes of this fund;
- (c) money appropriated or advanced to the fund by the legislature;
- (d) money loaned to the board by the board of investments; and
- (e) all interest earned on money in the fund.

(3) As provided in [75-11-318](#), the fund may be used only:

- (a) to administer this part, including payment of board expenses associated with administration;
- (b) to pay the actual and necessary department expenses associated with administration;
- (c) to reimburse owners and operators for eligible costs caused by a release from a petroleum storage tank and approved by the board; and
- (d) for repayment of any advance and any loan made pursuant to [17-6-225](#), plus interest earned on the advance or loan.

(4) Whenever the board accepts a loan from the board of investments pursuant to [17-6-225](#), the receipts from the fees provided for in [75-11-314](#) in each fiscal year until the loan is repaid are pledged and dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that fiscal year.

History: En. Sec. 6, Ch. 528, L. 1989; amd. Sec. 1, Ch. 543, L. 1993; amd. Sec. 272, Ch. 42, L. 1997; amd. Sec. 3, Ch. 115, L. 1997; amd. Sec. 5, Ch. 245, L. 2003.

#### Nonimpairment By State 75-11-315

75-11-315. Nonimpairment by state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it may not in any way impair the obligations of any loan agreement between the board and the board of investments by repealing the petroleum storage tank cleanup fee imposed by [75-11-314](#) or by reducing it below the amount necessary to make annual loan payments.

#### Ability to borrow and repay MBOI 75-11-318

75-11-318. Powers and duties of board. (1) The board shall administer the petroleum tank release cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to owners and operators. The board may hire its own staff to assist in the implementation of this part.

(2) The board shall determine whether to approve reimbursement of eligible costs under the provisions of [75-11-309](#)(3), shall obligate money from the fund for approved costs, and shall act on requests for the guarantee of payments through the procedures and criteria provided in [75-11-309](#).

- (3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other business that may be necessary to administer its responsibilities under this part. The board shall meet at least quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and conducting other business as necessary.
- (4) The board shall use the fund to pay for:
- (a) department expenses incurred in providing assistance to the board. The board shall review and comment on all department administrative budget proposals that are assessed against the fund prior to submittal of the department budget for legislative approval. Department administrative expenses on behalf of the board may include:
    - (i) the review or preparation of corrective action plans;
    - (ii) the oversight of corrective action undertaken by owners and operators for the purposes of this part; and
    - (iii) the actual and necessary administrative support provided to the board.
  - (b) department of transportation staff expenses used for the collection of the petroleum storage tank cleanup fee;
  - (c) third-party review of corrective action plans or claims pursuant to [75-11-312](#);
  - (d) board staff expenses; and
  - (e) expenses of implementing the board's duties as provided in this part.
- (5) The board shall adopt rules to administer this part, including:
- (a) rules governing submission of claims by owners or operators to the department and board;
  - (b) procedures for determining owners or operators who are eligible for reimbursement and determining the validity of claims;
  - (c) procedures for the review and approval of corrective action plans;
  - (d) procedures for conducting board meetings, hearings, and other business necessary for the implementation of this part;
  - (e) the criteria and reimbursement rates applicable to those owners and operators who comply with a violation letter issued by the department; and
  - (f) other rules necessary for the administration of this part.
- (6) The board may apply for, accept, and repay loans from the board of investments pursuant to [17-6-225](#).
- (7) The board shall conduct an analysis of the short-term and long-term viability of the fund and report its findings to the director of the department and the legislative auditor by July 1 prior to each regular legislative session. This analysis must include but is not limited to:
- (a) trends in fund revenue and expenditure activity;
  - (b) exposure to long-term liabilities;
  - (c) impacts of changes in state and federal regulations relating to underground and aboveground storage tanks;
  - (d) availability of petroleum storage tank liability insurance in the private sector and trends in provisions of the insurance; and
  - (e) the continuing need for collection of all or part of the petroleum tank release cleanup fee.
- History: En. Sec. 9, Ch. 528, L. 1989; amd. Sec. 5, Ch. 763, L. 1991; amd. Sec. 4, Ch. 115, L. 1997; amd. Sec. 2, Ch. 259, L. 1999; amd. Sec. 2, Ch. 112, L. 2001; amd. Sec. 6, Ch. 245, L. 2003; amd. Sec. 5, Ch. 356, L. 2005.

### **Railway Authorities (Local Governments) allowed to participate in UIP 7-14-1635**

7-14-1635. Contracts for operation and use of facilities. (1) In connection with the operation of a railroad or a railroad facility owned or controlled by an authority, the authority may enter into contracts, leases, and other arrangements:

- (a) granting the privilege of operating or using the railroad or railroad facility;
- (b) leasing a railroad for operation by the lessee. However, a person may not be authorized to operate a railroad other than as a common carrier.
- (c) granting the privilege of supplying goods, commodities, services, or facilities along rail lines or in or upon other property; and
- (d) making available services to be furnished by the authority or its agents.

(2) In each case, the authority may establish the terms and conditions and fix the charges, rentals, or fees that must be reasonable and uniform for the same class of privilege or service and that must be established with regard to the property and improvements used and the expenses of operation to the authority.

(3) The authority may remit funds available for investment to the state treasurer for investment under the direction of the board of investments as part of the pooled investment fund.

History: En. Sec. 15, Ch. 333, L. 1993.

### **Rail Transportation Bonds allowed to be issued by MBOI 60-11-115**

60-11-115. Revolving loan account -- statutory appropriation -- rulemaking. (1) There is a revolving loan account to be administered by the department. Any interest or income that is earned by the account and loan repayments must be deposited into the revolving loan account unless revenue bonds are issued to fund a loan, in which case the loan repayments must be deposited in the debt service account. The department may request the board of investments to issue revenue bonds, as provided in [60-11-117](#) through [60-11-119](#), for the purpose of providing funds for a loan.

(2) The department may make loans from the account pursuant to [60-11-120](#).

(3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight assistance programs or for railroad projects must be deposited in the account.

(4) There is statutorily appropriated, as provided in [17-7-502](#), to the department up to \$2 million annually for the purposes of making loans pursuant to [60-11-120](#).

(5) Loans may not be made if the loan would cause the balance in the account to be less than \$500,000.

(6) The department may adopt rules to implement [60-11-113](#) through [60-11-116](#).

History: En. Sec. 3, Ch. 602, L. 2005.

MBOI defined within Rail Transportation Statutes [60-11-117](#)

60-11-117. Definitions. As used in [60-11-117](#) through [60-11-119](#), the following definitions apply:

(1) "Board" means the board of investments established in [2-15-1808](#).

(2) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to [60-11-117](#) through [60-11-119](#) as essential freight rail revenue bonds.

(3) "Cost", as applied to any project, means any cost of any part of the project pursuant to [60-11-120](#).

(4) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

(5) "Revenue" means the revenue from the operation of a rail line loan repayments and any delinquency charges on loan repayments.

History: En. Sec. 7, Ch. 602, L. 2005.



## **State Cabin Site Sale MBOI Investment Allowed 17-6-207**

17-6-207. Investment of state cabin site sales. The board of investments may purchase from approved lenders contracts for deed or mortgages for cabin sites on state trust land for the trust and legacy fund.  
History: En. Sec. 2, Ch. 488, L. 1991.