

# MONTANA

## BOARD OF INVESTMENTS

SPECIAL BOARD MEETING

*Zoom Conference*

August 16, 2022

10:00 am

### **AGENDA**

#### **CALL TO ORDER – Karl Englund, Board Chairman**

1. Notice of Video/Audio Recording
2. Roll Call
3. Public Comment – *Public Comment on issues with Board Jurisdiction*
4. Administrative Rule Hearing RE: MAR Notice No. 8-97-101
5. Adjournment

BEFORE THE BOARD OF INVESTMENTS  
OF THE STATE OF MONTANA

In the matter of the amendment of ) NOTICE OF PUBLIC HEARING ON  
ARM 8.97.313 and 8.97.1707 ) PROPOSED AMENDMENT  
pertaining to Board of Investments )  
rules )

TO: All Concerned Persons

1. On August 16, 2022, at 10:00 a.m., the Board of Investments will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested persons may access the public hearing in the following ways:

[https://mt-gov.zoom.us/j/84932998296?pwd=4fKVnymY1auBWZF9F\\_zxWoCimGBncp.1](https://mt-gov.zoom.us/j/84932998296?pwd=4fKVnymY1auBWZF9F_zxWoCimGBncp.1)  
Meeting ID: 849 3299 8296  
Password: 004028

Dial by Telephone  
+1 646 558 8656  
Meeting ID: 849 3299 8296  
Password: 004028  
Find your local number: <https://mt-gov.zoom.us/u/kekeFo2hwI>

Join by SIP  
84932998296@zoomcrc.com

2. The Board of Investments will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the board of the nature of the accommodation needed, no later than 5 p.m. on August 9, 2022. Please contact Dan Whyte, Chief Legal Counsel, Board of Investments, 2401 Colonial Drive, Third Floor, Helena, Montana 59601; telephone (406) 444-0587; fax (406) 449-6579; or [dwhyte@mt.gov](mailto:dwhyte@mt.gov).

3. GENERAL STATEMENT OF REASONABLE NECESSITY. ARM Title 8, chapter 97 contains the board's administrative rules regarding the board's administration of the Unified Investment Program.

Based on the board's periodic review of its rules chapter and other related rules, the board observes that a certain rule contains a reference to a repealed rule.

The board proposes to amend ARM 8.97.313 to reflect the public nature of board documents and the exceptions for confidentiality. The board proposes to amend ARM 8.97.1707 to eliminate the reference to repealed ARM 8.97.1706 and to reflect that an application for financing is to be submitted according to board instructions.

While this general statement of reasonable necessity covers the basis for the following proposed rulemaking, it is supplemented below, where necessary, to explain rule-specific changes.

4. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

8.97.313 CONFIDENTIALITY OF INFORMATION (1) ~~Except as provided in (2), information~~ Information submitted to the board will be treated as public information, except when the demand of individual privacy clearly exceeds the merits of public disclosure, the information is confidential, or contains intellectual property or proprietary information.

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

(a) information determined to be personally identifiable information under Montana law;

(b) documents and discussions protected by the attorney-client privilege or attorney work product doctrine; and

(c) personnel matters.

(3) Intellectual property and proprietary information will be protected from public disclosure in accordance with the board's nondisclosure agreement.

~~(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.~~

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1521, MCA

8.97.1707 APPLICATION PROCEDURES AND PUBLIC HEARING REQUIREMENTS (1) through (5) remain the same.

(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 by the board.

(7) through (9) remain the same.

AUTH: 17-5-1504, 17-5-1521, MCA

IMP: 17-5-1504, 17-5-1521, 17-5-1526, 17-5-1527, MCA

REASONABLE NECESSITY: In addition to the general statement of reasonable necessity provided above, the board proposes amending the language to strike the reference to ARM 8.97.1706 since that rule is repealed and to indicate that the board will determine application requirements as necessary.

5. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Dan Whyte, Chief Legal Counsel, 2401 Colonial Drive, Third Floor, P.O. Box 200126, Helena, MT 59604-0126; telephone (406) 444-0587; fax (406) 449-6579; or e-mail [dwhyte@mt.gov](mailto:dwhyte@mt.gov) and must be received no later than 5:00 p.m., August 19, 2022.

6. The Board of Investments has been designated to preside over and conduct the hearing.

7. The Board of Investments maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 5 above or to faxed to the office at (406) 449-6579 or may be made by completing a request form at any rules hearing held by the Board of Investments.

8. An electronic copy of this notice is available on the board's web site at [www.investmentmt.com](http://www.investmentmt.com), or through the Secretary of State's web site at [sosmt.gov/ARM/register](http://sosmt.gov/ARM/register).

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

BOARD OF INVESTMENTS  
Karl Englund, Chair

/s/ Dan Whyte  
Dan Whyte  
Rule Reviewer

/s/ Dan Villa  
Dan Villa, Executive Director  
Board of Investments

Certified to the Secretary of State July 12, 2022.