

BEFORE THE BOARD OF INVESTMENTS  
OF THE STATE OF MONTANA

In the matter of the amendment of	)	NOTICE OF PUBLIC HEARING ON
ARM 8.97.715, 8.97.716, and	)	PROPOSED AMENDMENT,
8.97.718; the repeal of ARM	)	REPEAL, TRANSFER, AND
8.97.717, 8.97.719, 8.97.1101,	)	AMENDMENT AND TRANSFER
8.97.1502, 8.97.1601, 8.97.1701,	)	
8.97.1702, 8.97.1706, 8.97.1708,	)	
8.97.1709, 8.97.1801, 8.97.1802,	)	
8.97.1803, 8.97.1804, 8.97.1805,	)	
8.97.1901, 8.97.1902, and 8.97.1903;	)	
the transfer of ARM 8.97.1201,	)	
8.97.1704, and 8.97.1705; and the	)	
amendment and transfer of ARM	)	
8.97.1202 and 8.97.1703 related to	)	
the Board of Investment rules	)	
generally	)	

TO: All Concerned Persons

1. On March 23, 2021, at 10:00 a.m., the Board of Investments will hold a public hearing via remote conferencing to consider the proposed amendment, repeal, transfer, and amendment and transfer of the above-stated rules. Interested persons may access the public hearing in the following ways:

(a) Join Zoom Meeting: [https://mt.gov.zoom.us/j/97986293794?pwd=S3RqMnYyM3BzZFVpSHIZSG1WUIVLUT09](https://mt.gov.zoom.us/j/97986293794?pwd=S3RqMnYyM3BzZFVpSHIZSG1WUIVLUT09;);  
Meeting ID: 979 8629 3794;

(b) Dial by Telephone:  
+1 406 444 9999 (Helena)  
+1 206 337 9723 (Seattle)  
+1 646 558 8656 (New York)  
+1 213 338 8477 (Los Angeles),  
Meeting ID: 979 8629 3794, Password: 453844.

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 March 19, 2021. 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rules chapter and other related rules, the board observes that certain rules contain redundancies to statute, contain outdated programs, contain outdated definitions, text usage, or writing styles; and in some cases, do not reflect current board practices. The rule amendments in this proposal notice represent a general review of all board rules to eliminate duplicative or unnecessary rules and amend rules to reflect current statute or board practice.

The board proposes to amend ARM 8.97.715, 8.97.716, and 8.97.718 and to remove outdated definitions and terminology; and to update current statutory terminology.

The board further proposes to repeal ARM 8.97.717, 8.97.719, 8.97.1101, 8.97.1502, 8.97.1601, 8.97.1701, 8.97.1702, 8.97.1706, 8.97.1708, 8.97.1709, 8.97.1801, 8.97.1802, 8.97.1803, 8.97.1804, 8.97.1805, 8.97.1901, 8.97.1902, and 8.97.1903, to eliminate unnecessary redundancies to statute and redundancies found in the board's governing policies, to eliminate rules related to board programs that are no longer utilized, and to remove rules that repeat statutory provisions.

Some rules currently in limiting subchapters are intended to apply to all board operations. The board proposes to revise and transfer the content of five rules to apply to all board operations: ARM 8.97.1201, 8.97.1202, 8.97.1703, 8.97.1704, and 8.97.1705, into general provisions in ARM Title 8, chapter 97, subchapter 3.

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:

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

~~(1) The definitions contained herein shall govern with respect to subchapters 7 and 9.~~

~~(2) As used in subchapters 7 and 9, and unless the context clearly requires another meaning:~~

(a) through (d) remain the same but are renumbered (1) through (4).

~~(e) "INTERCAP-EZ program" means the program described in ARM 8.97.913(2).~~

(f) and (g) remain the same but are renumbered (5) and (6).

~~(h) (7)~~ "Program(s)" include, but are not limited to, the INTERCAP revolving loan program and other board programs developed pursuant to the Act.

~~(i) (8)~~ "Reserve fund" means the Municipal Finance Consolidation Act reserve fund, as defined in 17-5-1604, MCA, and created by the board pursuant to 17-5-1630, MCA.

(j) remains the same but is renumbered (9).

AUTH: 17-5-1605, MCA

IMP: 17-5-1606, 17-5-1611, 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 INTERCAP-EZ because the program no longer exists and ARM 8.97.913 is repealed.

The board proposes to strike references to subchapter 9 for the reason that subchapter 9 was repealed in 2000.

The board proposes adding the phrase "revolving loan" in proposed (7) to clearly indicate the type of loan it is.

The board proposes clarifying amendments to proposed (8) to identify the statutory reference to the Municipal Finance Consolidation Act.

Generally, the purpose of ARM 8.97.715 is to define and refer to the INTERCAP program, a term not specifically used in statute.

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 ~~described in ARM 8.97.910 through 8.97.920.~~

AUTH: 17-5-1605, MCA

IMP: 17-5-1606, 17-5-1611, MCA

REASONABLE NECESSITY: The board proposes to strike references to subchapter 9 for the reason that subchapter 9 was repealed in 2000.

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, ~~and ARM 8.97.719.~~

(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 ~~under ARM 8.97.719.~~ 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~~ final discretion to refer any application to the board for its approval.

(3) remains the same.

AUTH: 17-5-1605, MCA

IMP: 17-5-1611, MCA

REASONABLE NECESSITY: The board proposes to amend ARM 8.97.718 to strike two references to ARM 8.97.719, which are proposed for repeal in this notice. Additionally, (2) is proposed for amendment to reflect that the executive director has the discretion whether to bring applications before the board.

5. The board proposes to repeal the following rules:

8.97.717 DESCRIPTION OF MUNICIPAL FINANCE CONSOLIDATION ACT PROGRAMS

AUTH: 17-5-1605, MCA  
IMP: 17-5-1602, 17-5-1606, 17-5-1611, MCA

8.97.719 CRITERIA FOR EVALUATION OF ALL PROGRAM APPLICATIONS

AUTH: 17-5-1605, MCA  
IMP: 17-5-1611, MCA

8.97.1101 ORGANIZATIONAL RULE

AUTH: 2-4-201, 17-6-201, 17-6-324, MCA  
IMP: 2-4-201, 17-6-201, 17-6-324, MCA

8.97.1502 INTEREST RATE REDUCTION FOR LOANS FUNDED FROM THE COAL TAX TRUST

AUTH: 17-6-308, 17-6-324, MCA  
IMP: 17-6-304, 17-6-308, MCA

8.97.1601 BONDS AND NOTES OF BOARD

AUTH: 17-5-1504, 17-5-1521, 17-6-324, MCA  
IMP: 17-5-1504, 17-5-1521, 17-6-324, MCA

8.97.1701 DEFINITIONS

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

8.97.1702 DESCRIPTION OF ECONOMIC DEVELOPMENT BOND PROGRAMS

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1505, 17-5-1521, MCA

8.97.1706 APPLICATION AND FINANCING FEES, COSTS AND OTHER CHARGES

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

8.97.1708 PUBLIC INTEREST CRITERIA

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

8.97.1709 THIRTY DAY REVIEW REQUIREMENT

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

8.97.1801 DESCRIPTION OF MOBP PROGRAM

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

8.97.1802 ELIGIBILITY REQUIREMENTS OF MOBP PROGRAM

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

8.97.1803 CRITERIA FOR EVALUATING APPLICATIONS FOR PROJECT FINANCING UNDER THE MOBP PROGRAM

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

8.97.1804 INTEREST RATES

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

8.97.1805 CLOSING OF LOANS

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

8.97.1901 DESCRIPTION OF THE SABP PROGRAM

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1505, 17-5-1506, 17-5-1526, 17-5-1527, MCA

8.97.1902 ELIGIBILITY REQUIREMENTS OF SABP PROGRAM

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1506, 17-5-1521, 17-5-1526, 17-5-1527, MCA

8.97.1903 CRITERIA FOR EVALUATING APPLICATIONS FOR PROJECT FINANCING UNDER THE SABP PROGRAM

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1506, 17-5-1521, MCA

REASONABLE NECESSITY: As indicated in the general statement of reasonable necessity in paragraph 3, the board proposes repealing these rules because many repeat statutory language and are therefore in technical violation of 2-4-305(2), MCA. Additionally, many of the rules proposed for repeal do not meet current board policy or practice, including rules describing programs no longer in place.

6. The board proposes to transfer the following rules:

8.97.1201 (8.97.310) CITIZEN PARTICIPATION RULES

AUTH: 2-4-201, 17-6-324, MCA  
IMP: 2-4-201, 17-6-324, MCA

8.97.1704 (8.97.314) ALLOCATION OF CAPACITY

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

8.97.1705 (8.97.311) FALSE OR MISLEADING STATEMENTS

AUTH: 17-5-1504, 17-5-1521, MCA  
IMP: 17-5-1504, 17-5-1521, 17-6-201, 17-6-324, MCA

REASONABLE NECESSITY: The rules proposed for transfer are currently in subchapters of various Board programs but are intended to be general rules intended to apply to all Board programs. These are being transferred to a subchapter intended for general board practice.

7. The board proposes to transfer and amend the following rules, stricken matter interlined, new matter underlined:

8.97.1202 (8.97.312) PROCEDURAL RULES (1) The board hereby adopts and incorporates by reference ~~ARM 1.3.204 through 1.3.233~~ 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.

AUTH: 2-4-201, 17-6-324, MCA

IMP: 2-4-201, 17-6-324, MCA

REASONABLE NECESSITY: These rules proposed for transfer are currently in subchapters of various board programs but are intended to be general rules intended to apply to all board programs. These are being transferred to a subchapter intended for general board practice.

Additionally, the amendments to the proposed rule reflect striking outdated references to the Attorney General's model rules and amendment to reflect the correct Attorney General's model rules and the Secretary of State's model rules.

8.97.1703 (8.97.313) CONFIDENTIALITY OF INFORMATION (1) ~~Unless otherwise required by law~~ Except as provided in (2), information submitted ~~by a financial institution and borrower 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) through (g) remain the same.

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

(a) items ~~(1)(a)~~ (2)(a) through (g) of this rule;

(b) all written documents received or prepared concerning items ~~(1)(a)~~ (2)(a) through (g) of this rule;

(c) the investment officer's or ~~his~~ their designee's recommendation to the board regarding items ~~(1)(a)~~ (2)(a) through (g) and ~~his~~ 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.

~~(3) This rule is based on the board's finding that except for the information described in items (1)(a) through (g), the demands of individual privacy clearly exceed the merits of public disclosure of the personal, financial and business information that is contained in applications to the board.~~

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

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

REASONABLE NECESSITY: The proposed transfer of ARM 8.97.1703 to ARM Title 8, chapter 97, subchapter 3 is to reflect that laws related to public information and confidentiality apply to all board functions. In addition to the board's general statement of reasonable necessity, the board proposes amendments to ARM 8.97.1703 to provide recognition of the presumption that all information in the possession of the board is considered public information and confidentiality provisions apply in only limited circumstances.

8. 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., April 2, 2021.

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

10. 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 8 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.

11. 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).

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

13. With regard to the requirements of 2-4-111, MCA, the board has determined that the amendment, repeal, transfer, and amendment and transfer 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 February 16, 2021.