MONTANA
BOARD OF INVESTMENTS

MONTANA BOARD OF INVESTMENTS CONSTITUTIONAL, STATUTORY, AND ADMINISTRATIVE RULES PROVISIONS

The following is an exhaustive compendium of all substantive constitutional and statutory provisions discussing the duties and obligations of the Board of Investments.

Montana Constitution

Article VIII, 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.

Article IX, Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (1/4) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund.

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.

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.

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.

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.

2-15-124. Quasi-judicial boards. 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.

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.

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.

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 divisions of the department of revenue that administer the Montana Alcoholic Beverage Code and the Montana Marijuana Regulation and Taxation Act.

(2) The state compensation insurance fund shall annually provide to the committee a report in accordance with 5-11-210 on its budget as approved by the state compensation insurance fund board of directors.

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.

5-11-222. Reports to legislature. (1) (a) Except as provided in subsection (1)(b) and (6), a report to the legislature means a biennial report required by the legislature and filed in

accordance with 5-11-210 on or before September 1 of each year preceding the convening of a regular session of the legislature.

(b) If otherwise specified in law, a report may be required more or less frequently than the biennial requirement in subsection (1)(a).

(2) Reports to the legislature include:

(a) annual reports on the unified investment program for public funds and public retirement systems and state compensation insurance fund assets audits from the board of investments in accordance with Article VIII, section 13 of the Montana constitution;

(b) federal mandates requirements from the governor in accordance with 2-1-407;

(c) activities of the state records committee in accordance with 2-6-1108;

(d) revenue studies from the director of revenue, if requested, in accordance with 2-7-104;

(e) legislative audit reports from the legislative audit division in accordance with 2-8-112 and 23-7-410;

(f) progress on gender and racial balance from the governor in accordance with 2-15-108;

(g) a mental health report from the ombudsman in accordance with 2-15-210;

(h) policies related to children and families from the interagency coordinating council for state prevention in accordance with 2-15-225;

(i) watercourse name changes, if any, from the secretary of state in accordance with 2-15-401;

(j) results of programs established in 2-15-3111 through 2-15-3113 from the livestock loss board in accordance with 2-15-3113;

(k) the allocation of space report from the department of administration required in accordance with 2-17-101;

(l) information technology activities in accordance with 2-17-512;

(m) state strategic information technology plan exceptions, if granted, from the department of administration in accordance with 2-17-515;

(n) the state strategic information technology plan and biennial report from the department of administration in accordance with 2-17-521 and 2-17-522;

(o) reports from standing, interim, and administrative committees, if prepared, in accordance with 2-17-825 and 5-5-216;

(p) statistical and other data related to business transacted by the courts from the court administrator, if requested, in accordance with 3-1-702;

(q) the judicial standards commission report in accordance with 3-1-1126;

(r) an annual report on the actual cost of legislation that had a projected fiscal impact from the office of budget and program planning in accordance with 5-4-208;

(s) a link to annual state agency reports on grants awarded in the previous fiscal year established by the legislative finance committee in accordance with 5-12-208;

(t) reports prepared by the legislative fiscal analyst, and as determined by the analyst, in accordance with 5-12-302(4);

(u) a report, if necessary, on administrative policies or rules adopted under 5-11-105 that may impair the independence of the legislative audit division in accordance with 5-13-305;

(v) if a waste of state resources occurs, a report from the legislative state auditor, in accordance with 5-13-311;

(w) school funding commission reports each fifth interim in accordance with 5-20-301;

(x) a report of political committee operations conducted on state-owned property, if required, from a political committee to the legislative services division in accordance with 13-37-404;

(y) a report concerning taxable value from the department of revenue in accordance with 15-1-205;

(z) a report on tax credits from the revenue interim committee in accordance with 15-30-2303;

(aa) semiannual reports on the Montana heritage preservation and development account from the Montana heritage preservation and development commission in accordance with 15-65-121;

(bb) general marijuana regulation reports from the department of revenue in accordance with 16-12-110;

(cc) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(dd) annual reports on general fund and nongeneral fund encumbrances from the department of administration in accordance with 17-1-102;

(ee) loans or loan extensions authorized for two consecutive fiscal years from the department of administration and office of commissioner of higher education, including negative cash balances from the commissioner of higher education, in accordance with 17-2-107;

(ff) a report of local government entities that have balances contrary to limitations provided for in 17-2-302 or that failed to reduce the charge from the department of administration in accordance with 17-2-304;

(gg) an annual report from the board of investments in accordance with 17-5-1650(2);

(hh) a report on retirement system trust investments and benefits from the board of investments in accordance with 17-6-230;

(ii) recommendations for reductions in spending and related analysis, if required, from the office of budget and program planning in accordance with 17-7-140;

(jj) a statewide facility inventory and condition assessment from the department of administration in accordance with 17-7-202;

(kk) actuary reports and investigations for public retirement systems from the public employees' retirement board in accordance with 19-2-405;

(ll) a work report from the public employees' retirement board in accordance with 19-2-407;

(mm) annual actuarial reports and evaluations from the teachers' retirement board in accordance with 19-20-201;

(nn) reports from the state director of K-12 career and vocational and technical education, as requested, in accordance with 20-7-308;

(oo) 5-year state plan for career and technical education reports from the board of regents in accordance with 20-7-330;

(pp) a gifted and talented students report from the office of public instruction in accordance with 20-7-904;

(qq) status changes for at-risk students from the office of public instruction in accordance with 20-9-328;

(rr) status changes for American Indian students from the office of public instruction in accordance with 20-9-330;

(ss) reports regarding the Montana Indian language preservation program from the office of public instruction in accordance with 20-9-537;

(tt) proposals for funding community colleges from the board of regents in accordance with 20-15-309;

(uu) expenditures and activities of the Montana agricultural experiment station and extension service, as requested, in accordance with 20-25-236;

(vv) reports, if requested by the legislature, from the president of each of the units of the higher education system in accordance with 20-25-305;

(ww) reports, if prepared by a public postsecondary institution, regarding free expression activities on campus in accordance with 20-25-1506;

(xx) reports from the Montana historical society trustees in accordance with 22-3-107;

(yy) state lottery reports in accordance with 23-7-202;

(zz) a report from the division of banking and financial institutions, if required, from the department of administration in accordance with 32-11-306;

(aaa) state fund reports, if required, from the commissioner in accordance with 33-1-115;

(bbb) reports from the department of labor and industry in accordance with 39-6-101;

(ccc) victim unemployment benefits reports from the department of labor and industry in accordance with 39-51-2111;

(ddd) state fund business reports in accordance with 39-71-2363;

(eee) risk-based capital reports, if required, from the state fund in accordance with 39-71-2375;

(fff) child custody reports from the office of the court administrator in accordance with 41-3-1004;

(ggg) reports of remission of fine or forfeiture, respite, commutation, or pardon granted from the governor in accordance with 46-23-316;

(hhh) annual statewide public defender reports from the office of state public defender in accordance with 47-1-125;

(iii) a trauma care system report from the department of public health and human services in accordance with 50-6-402;

(jjj) an older Montanans trust fund report from the department of public health and human services in accordance with 52-3-115;

(kkk) Montana criminal justice oversight council reports in accordance with 53-1-216;

(lll) medicaid block grant reports from the department of public health and human services in accordance with 53-1-611;

(mmm) reports on the approval and implementation status of medicaid section 1115 waivers in accordance with 53-2-215;

(nnn) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(ooo) medicaid funding reports from the department of public health and human services in accordance with 53-6-110;

(ppp) proposals regarding managed care for medicaid recipients, if required, from the department of public health and human services in accordance with 53-6-116;

(qqq) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(rrr) a compliance and inspection report from the department of corrections in accordance with 53-30-604;

(sss) emergency medical services grants from the department of transportation in accordance with 61-2-109;

(ttt) annual financial reports on the environmental contingency account from the department of environmental quality in accordance with 75-1-1101;

(uuu) the Flathead basin commission report in accordance with 75-7-304;

(vvv) a report from the land board, if prepared, in accordance with 76-12-109;

(www) an annual state trust land report from the land board in accordance with 77-1-223;

(xxx) a noxious plant report, if prepared, from the department of agriculture in accordance with 80-7-713;

(yyy) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(zzz) reports on the allocation of renewable resources grants and loans for emergencies, if required, from the department of natural resources and conservation in accordance with 85-1-605;

(aaaa) water storage projects from the governor's office in accordance with 85-1-704;

(bbbb) upper Clark Fork River basin steering committee reports, if prepared, in accordance with 85-2-338;

(cccc) upland game bird enhancement program reports in accordance with 87-1-250;

(dddd) private land/public wildlife advisory committee reports in accordance with 87-1-269;

(eeee) a future fisheries improvement program report from the department of fish, wildlife, and parks in accordance with 87-1-272;

(ffff) license revenue recommendations from the department of fish, wildlife, and parks in accordance with 87-1-629;

(gggg) land information data reports from the state library in accordance with 90-1-404;

(hhhh) hydrocarbon and geology investigation reports from the bureau of mines and geology in accordance with 90-2-201;

(iiii) coal ash markets investigation reports from the department of commerce in accordance with 90-2-202;

(jjjj) an annual report from the pacific northwest electric power and conservation planning council in accordance with 90-4-403;

(kkkk) community property-assessed capital enhancements program reports from the Montana facility finance authority in accordance with 90-4-1303;

(llll) veterans' home loan mortgage loan reports from the board of housing in accordance with 90-6-604;

(mmmm) matching infrastructure planning grant awards by the department of commerce in accordance with 90-6-703(3); and

(nnnn) treasure state endowment program reports from the department of commerce in accordance with 90-6-710;

(3) Reports to the legislature include reports made to an interim committee as follows:

(a) reports to the law and justice interim committee, including:

(i) findings of the domestic violence fatality review commission in accordance with 2-15-2017;

(ii) the report from the missing indigenous persons review commission in accordance with 2-15-2018;

(iii) reports from the department of justice and public safety officer standards and training council in accordance with 2-15-2029;

(iv) information on the Montana False Claims Act from the department of justice in accordance with 17-8-416;

(v) annual case status reports from the attorney general in accordance with 41-3-210;

(vi) office of court administrator reports in accordance with 41-5-2003;

(vii) statewide public safety communications system activities from the department of justice in accordance with 44-4-1606;

(viii) reports on the status of the crisis intervention team training program from the board of crime control in accordance with 44-7-110;

(ix) restorative justice grant program status and performance from the board of crime control in accordance with 44-7-302;

(x) reports on offenders under supervision with new offenses or violations from the department of corrections in accordance with 46-23-1016;

(xi) supervision responses grid reports from the department of corrections in accordance with 46-23-1028;

(xii) statewide public defender reports and information from the office of state public defender in accordance with 47-1-125;

(xiii) every 5 years, a percentage change in public defender funding report from the legislative fiscal analyst in accordance with 47-1-125;

(xiv) every 5 years, statewide public defender reports on the percentage change in funding from the office of state public defender in accordance with 47-1-125; and

(xv) a report from the quality assurance unit from the department of corrections in accordance with 53-1-211;

(b) reports to the state administration and veterans' affairs interim committee, including:

(i) a report that includes information technology activities and additional information from the information technology board in accordance with 2-17-512 and 2-17-513;

(ii) a report from the capitol complex advisory council in accordance with 2-17-804;

(iii) a report on the employee incentive award program from the department of administration in accordance with 2-18-1103;

(iv) a board of veterans' affairs report in accordance with 10-2-102;

(v) a report on grants to the Montana civil air patrol from the department of military affairs in accordance with 10-3-802;

(vi) annual reports on statewide election security from the secretary of state in accordance with 13-1-205;

(vii) a report regarding the youth voting program, if requested, from the secretary of state in accordance with 13-22-108;

(viii) a report from the commissioner of political practices in accordance with 13-37-120;

(ix) a report on retirement system trust investments from the board of investments in accordance with 17-6-230;

(x) actuarial valuations and other reports from the public employees' retirement board in accordance with 19-2-405 and 19-3-117;

(xi) actuarial valuations and other reports from the teachers' retirement board in accordance with 19-20-201 and 19-20-216;

(xii) a report on the reemployment of retired members of the teachers' retirement system from the teachers' retirement board in accordance with 19-20-732; and

(xiii) changes, if any, affecting filing-office rules under the Uniform Commercial Code from the secretary of state in accordance with 30-9A-527;

(c) reports to the children, families, health, and human services interim committee, including:

(i) performance data from the department of public health and human services in accordance with 2-15-2225;

(ii) quarterly reports on data requirements from the department of public health and human services in accordance with 5-12-303;

(iii) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(iv) Montana HELP Act workforce development reports from the department of public health and human services in accordance with 39-12-103;

(v) annual reports from the child and family ombudsman in accordance with 41-3-1211;

(vi) reports on activities and recommendations on child protective services activities, if required, from the child and family ombudsman in accordance with 41-3-1215;

(vii) reports on the out-of-state placement of high-risk children with multiagency service needs from the department of public health and human services in accordance with 52-2-311;

(viii) private alternative adolescent residential and outdoor programs reports from the department of public health and human services in accordance with 52-2-803;

(ix) an annual Montana parents as scholars program report from the department of public health and human services in accordance with 53-4-209;

(x) provider rate, medicaid waiver, or medicaid state plan change reports from the department of public health and human services in accordance with 53-6-101;

(xi) a report concerning mental health managed care services, if managed care is in place, from the advisory council in accordance with 53-6-710;

(xii) quarterly medicaid reports related to expansion from the department of public health and human services in accordance with 53-6-1325;

(xiii) annual Montana developmental center reports from the department of public health and human services in accordance with 53-20-225; and

(xiv) annual children's mental health outcomes from the department of public health and human services in accordance with 53-21-508;

(xv) suicide reduction plans from the department of public health and human services in accordance with 53-21-1102;

(d) reports to the economic affairs interim committee, including:

(i) the annual state compensation insurance fund budget from the board of directors in accordance with 5-5-223 and 39-71-2363;

(ii) general marijuana regulation reports from the department of revenue in accordance with 16-12-110(3);

(iii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(3);

(iv) annual reports on complaints against physicians certifying medical marijuana use from the board of medical examiners in accordance with 16-12-532(4);

(v) an annual report on the administrative rate required from the department of commerce from the Montana heritage preservation and development commission in accordance with 22-3-1002;

(vi) state fund reports from the insurance commissioner, if required, in accordance with 33-1-115;

(vii) risk-based capital reports, if required, from the state fund in accordance with 33-1-115 and 39-71-2375;

(viii) annual reinsurance reports from the Montana reinsurance association board required in accordance with 33-22-1308;

(ix) reports from the department of labor and industry concerning board attendance in accordance with 37-1-107;

(x) annual reports on physician complaints related to medical marijuana from the board of medical examiners in accordance with 37-3-203;

(xi) prescription drug registry reports from the board of pharmacy in accordance with 37-7-1514;

(xii) status reports on the special revenue account and fees charged as a funding source from the board of funeral service in accordance with 37-19-204;

(xiii) unemployment insurance program integrity act reports from the department of labor and industry in accordance with 39-15-706;

(xiv) status reports on the distressed wood products industry revolving loan program from the department of commerce in accordance with 90-1-503;

(e) reports to the education interim committee, including:

(i) reemployment of retired teachers, specialists, and administrators reports from the retirement board in accordance with 19-20-732;

(ii) a report on participation in the interstate compact on educational opportunity for military children in accordance with 20-1-231;

(iii) grow your own grant program reports from the commissioner of higher education in accordance with 20-4-601;

(iv) standards of accreditation proposals and economic impact statements from the board of public education in accordance with 20-7-101;

(v) advanced opportunity program reports from the board of public education in accordance with 20-7-1506;

(vi) progress on transformational learning plans from the board of public education in accordance with 20-7-1602;

(vii) budget amendments, if needed, from school districts in accordance with 20-9-161;

(viii) annual Montana resident student financial aid program reports from the commissioner of higher education in accordance with 20-26-105;

(ix) a historic preservation office report from the historic preservation officer in accordance with 22-3-423; and

(x) interdisciplinary child information agreement reports from the office of public instruction in accordance with 52-2-211;

(f) reports to the energy and telecommunications interim committee, including:

(i) the high-performance building report from the department of administration in accordance with 17-7-214;

(ii) an annual report from the consumer counsel in accordance with 69-1-222;

(iii) annual universal system benefits reports from utilities, electric cooperatives, and the department of revenue in accordance with 69-8-402;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501; and

(v) geothermal reports from the Montana bureau of mines and geology in accordance with 90-3-1301;

(g) reports to the revenue interim committee, including:

(i) use of the qualified endowment tax credit report from the department of revenue in accordance with 15-1-230;

(ii) tax rates for the upcoming reappraisal cycle from the department of revenue in accordance with 15-7-111;

(iii) gray water property tax abatement usage reports from the department of revenue in accordance with 15-24-3211;

(iv) information about job growth incentive tax credits from the department of revenue in accordance with 15-30-2361;

(v) student scholarship contributions from the department of revenue in accordance with 15-30-3112;

(vi) tax havens from the department of revenue in accordance with 15-31-322;

(vii) media production tax credit economic impact reports from the department of commerce in accordance with 15-31-1011;

(viii) medical marijuana registry reports from the department of revenue in accordance with 16-12-532(5);

(ix) complaints against physicians certifying use of medical marijuana from the board of medical examiners in accordance with 16-12-532(5); and

(x) reports that actual or projected receipts will result in less revenue than estimated from the office of budget and program planning, if necessary, in accordance with 17-7-140;

(h) reports to the transportation interim committee, including:

(i) biodiesel tax refunds from the department of transportation in accordance with 15-70-433;

(ii) cooperative agreement negotiations from the department of transportation in accordance with 15-70-450;

(iii) an annual alternative project delivery contracting report from the department of transportation in accordance with 60-2-119; and

(iv) a special fuels inspection report from the department of transportation in accordance with 61-10-154;

(i) reports to the environmental quality council, including:

(i) compliance and enforcement reports required in accordance with 75-1-314;

(ii) the state solid waste management and resource recovery plan, every 5 years, from the department of environmental quality in accordance with 75-10-111;

(iii) annual orphan share reports from the department of environmental quality in accordance with 75-10-743;

(iv) Libby asbestos superfund oversight committee reports in accordance with 75-10-1601;

(v) annual subdivision sanitation reports from the department of environmental quality in accordance with 76-4-116;

(vi) state trust land accessibility reports from the department of natural resources and conservation in accordance with 77-1-820;

(vii) biennial land banking reports and annual state land cabin and home site sales reports from the department of natural resources and conservation in accordance with 77-2-366;

(viii) biennially invasive species reports from the departments of fish, wildlife, and parks and natural resources and conservation in accordance with 80-7-1006;

(ix) annual upper Columbia conservation commission reports in accordance with 80-7-1026;

(x) annual invasive species council reports in accordance with 80-7-1203;

(xi) sand and gravel reports, if an investigation is completed, in accordance with 82-2-701;

(xii) annual sage grouse population reports from the department of fish, wildlife, and parks in accordance with 87-1-201;

(xiii) annual gray wolf management reports from the department of fish, wildlife, and parks in accordance with 87-1-901;

(xiv) biennial Tendoy Mountain sheep herd reports from the department of fish, wildlife, and parks in accordance with 87-2-702;

(xv) wildlife habitat improvement project reports from the department of fish, wildlife, and parks in accordance with 87-5-807; and

(xvi) annual sage grouse oversight team activities and staffing reports in accordance with 87-5-918;

(j) reports to the water policy interim committee, including:

(i) drought and water supply advisory committee reports in accordance with 2-15-3308;

(ii) total maximum daily load reports from the department of environmental quality in accordance with 75-5-703;

(iii) state water plans from the department of natural resources and conservation in accordance with 85-1-203;

(iv) small-scale hydroelectric power generation reports from the department of natural resources and conservation in accordance with 85-1-501;

(v) renewable resource grant and loan program reports from the department of natural resources and conservation in accordance with 85-1-621;

(vi) quarterly adjudication reports from the department of natural resources and conservation and the water court in accordance with 85-2-281;

(vii) water reservation reports from the department of natural resources and conservation in accordance with 85-2-316;

(viii) instream flow reports from the department of fish, wildlife, and parks in accordance with 85-2-436; and

(ix) ground water investigation program reports from the bureau of mines and geology in accordance with 85-2-525;

(k) reports to the local government interim committee, including:

(i) sand and gravel, if an investigation is completed, in accordance with 82-2-701;

(ii) assistance to local governments on federal land management proposals from the department of commerce in accordance with 90-1-182; and

(iii) emergency financial assistance to local government reports from the department of commerce, if requests are made, in accordance with 90-6-703(2);

(l) reports to the state-tribal relations committee, including:

(i) reports from the missing indigenous persons review commission in accordance with 2-15-2018;

(ii) the Montana Indian language preservation program report from the state-tribal economic development commission in accordance with 20-9-537;

(iii) reports from the missing indigenous persons task force in accordance with 44-2-411

(iv) a decennial economic contributions and impacts of Indian reservations report from the department of commerce in accordance with 90-1-105;

(v) state-tribal economic development commission activities reports from the state-tribal economic development commission in accordance with 90-1-132; and

(vi) state-tribal economic development commission reports provided regularly by the state director of Indian affairs in accordance with 90-11-102.

(4) (a) Except as provided in subsections (4)(b) and (6) and unless otherwise required by law, a report made to the legislature in accordance with subsection (3) may be provided orally before September 1 of each year preceding the convening of a regular session of the legislature and in accordance with 5-11-210(1)(b).

(b) After receiving an oral report, an interim or administrative committee responsible for receiving the report may request a written report be filed with the legislature in accordance with 5-11-210(1)(a).

(c) This section may not be interpreted to preclude an interim or administrative committee from requesting additional information.

(5) Reports to the legislature include multistate compact and agreement reports including:

(a) multistate tax compact reports in accordance with 15-1-601;

(b) interstate compact on educational opportunity for military children reports in accordance with 20-1-230 and 20-1-231;

(c) compact for education reports in accordance with 20-2-501;

(d) Western regional higher education compact reports in accordance with 20-25-801;

(e) interstate insurance product regulation compact reports in accordance with 33-39-101;

(f) interstate medical licensure compact reports in accordance with 37-3-356;

(g) interstate compact on juveniles reports in accordance with 41-6-101;

(h) interstate compact for adult offender supervision reports in accordance with 46-23-1115;

(i) vehicle equipment safety compact reports in accordance with 61-2-201;

(j) multistate highway transportation agreement reports in accordance with 61-10-1101; and

(k) western interstate nuclear compact reports in accordance with 90-5-201.

(6) Reports, transfers, statements, assessments, recommendations and changes required under 17-7-138, 17-7-139, 17-7-140, 19-2-405, 19-2-407, 19-3-117, 19-20-201, 19-20-216, 20-7-101, 23-7-202, 33-1-115, and 39-71-2375 must be provided as soon as the report is published and publicly available. Reports required in subsections (2)(a), (2)(gg), (2)(hh), and (3)(b)(ix) must be provided following issuance of reports issued under Title 5, chapter 13.

7-6-202. Investment of public money in direct obligations of United States. (1) A local governing body may invest public money not necessary for immediate use by the county, city, or town in the following eligible securities:

(a) United States government treasury bills, notes, and bonds and in United States treasury obligations, such as state and local government series (SLGS), separate trading of registered interest and principal of securities (STRIPS), or similar United States treasury obligations;

(b) United States treasury receipts in a form evidencing the holder's ownership of future interest or principal payments on specific United States treasury obligations that, in the absence of payment default by the United States, are held in a special custody account by an independent trust company in a certificate or book-entry form with the federal reserve bank of New York; or

(c) obligations of the following agencies of the United States, subject to the limitations in subsection (2):

(i) federal home loan bank;

(ii) federal national mortgage association;

(iii) federal home mortgage corporation; and

(iv) federal farm credit bank.

(2) An investment in an agency of the United States is authorized under this section if the investment is a general obligation of the agency and has a fixed or zero-coupon rate and does not have prepayments that are based on underlying assets or collateral, including but not limited to residential or commercial mortgages, farm loans, multifamily housing loans, or student loans.

(3) The local governing body may invest in a United States government security money market fund if:

(a) the fund is sold and managed by a 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 may be amended;

(b) the fund consists only of eligible securities as described in this section;

(c) the use of repurchase agreements is limited to agreements that are fully collateralized by the eligible securities, as described in this section, and the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

(d) the fund is listed in a national financial publication under the category of "money market mutual funds", showing the fund's average maturity, yield, and asset size; and

(e) the fund's average maturity does not exceed 397 days.

(4) Except as provided in subsections (5) and (6), an investment authorized in this part may not have a maturity date exceeding 5 years, except when the investment is used in an escrow account to refund an outstanding bond issue in advance.

(5) An investment of the assets of a local government group self-insurance program established pursuant to 2-9-211 or 39-71-2103 in an investment authorized in this part may not have a maturity date exceeding 10 years, and the average maturity of all those authorized investments of a local government group self-insurance program may not exceed 6 years.

(6) An investment in zero-coupon United States government treasury bills, notes, and bonds purchased as a sinking fund investment for a balloon payment on qualified construction bonds described in 17-5-116(1) may have a maturity date exceeding 5 years if:

(a) the maturity date of the United States government treasury bills, notes, and bonds is on or before the date of the balloon payment; and

(b) the school district trustees provide written consent.

(7) This section may not be construed to prevent the investment of public funds under the state unified investment program established in Title 17, chapter 6, part 2.

7-6-1103. Issuance and sale of short-term obligations — procedure. (1) The issuance of short-term obligations must be authorized by an ordinance of the governing body that fixes the maximum amount of the obligations to be issued or, if applicable, the maximum amount that may be outstanding at any time, the maximum term and interest rate or rates to be borne by the obligations, the manner of sale, the maximum price, the form including bearer or registered as provided in Title 17, chapter 5, part 11, the terms, the conditions, and the covenants of the obligations. Short-term obligations issued under this section must bear fixed or variable rate or rates of interest that the governing body considers to be in the best interests of the local government. Variable rates of interest may be fixed in relationship to the standard or index that the governing body designates.

(2) The governing body may sell the short-term obligations at par or at a discount:

(a) at private negotiated sale to the board of investments as provided in Title 17, chapter 5, part 16; or

(b) at public sale to any other person. Any public sale must be noticed as provided in 7-7-4434.

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.

7-7-2112. Investment of certain construction bond proceeds. (1) Public funds realized from the sale of bonds by a county for the purpose of constructing public buildings or for other construction may be invested in any time or savings deposits, United States certificates of indebtedness, United States treasury notes, or United States treasury bonds having a maturity date of 1 year or less, when emergency conditions beyond the control of the county commissioners exist which preclude the construction of the projects for which the bonds were issued at the time such investments are made.

(2) Interest earned from such investments, including interest on the sale of bonds accrued in the period between the date of issue and the time of purchase, shall be credited to the sinking fund of the county, notwithstanding the provisions of 7-6-204(1).

(3) No provision of this section may be construed to prevent the investment of county or county high school money under the state unified investment program established in Title 17, chapter 6, part 2.

7-7-4275. Refunding of bond issue held by state by exchange for amortization bonds. (1) Subject to the approval of the board of investments, the council of any city or town is hereby authorized to issue amortization bonds for the purpose of refunding any outstanding bonds of such city or town held by the state and which were not issued either as amortization or serial bonds and to exchange the same for such outstanding bonds.

(2) Such amortization bonds shall conform in all respects to the definition of amortization bonds as set forth in 7-7-4209 and shall bear interest at such rate as may be agreed upon between the council of such city or town and the board of investments pursuant to 17-5-102. Such amortization bonds may be issued and exchanged for such outstanding bonds without submitting the question of issuing the same at an election, and it shall not be necessary to publish any notice of sale of such bonds.

(3) This section shall not be construed so as to deprive city or town councils of the right to advertise, sell, and issue refunding bonds in the manner provided in part 43.

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.

15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the major repair long-range building program account established in 17-7-221.

(3) The amount of 0.90% in fiscal year 2020 and 0.93% in fiscal year 2021 and in each fiscal year thereafter must be allocated for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking and must be deposited in the basic library services account established in 22-1-202.

(4) The amount of 3.77% in fiscal year 2020 and 3.71% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the department of natural resources and conservation for conservation districts and deposited in the conservation district account established in 76-15-106.

(5) The amount of 0.79% in fiscal year 2020 and 0.82% in fiscal year 2021 and in each fiscal year thereafter must be allocated to the Montana Growth Through Agriculture Act and deposited in the growth through agriculture account established in 90-9-104.

(6) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(7) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(8) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(9) The amount of 5.8% through June 30, 2023, and beginning July 1, 2023, the amount of 2.9% must be credited to the coal natural resource account established in 90-6-1001(2).

(10) After the allocations are made under subsections (2) through (9), $250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(11) (a) Subject to subsection (11)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on July 1 each year as follows:

(i) to the department of agriculture:

(A) $65,000 for the cooperative development center;

(B) $900,000 for the growth through agriculture program provided for in Title 90, chapter 9;

(C) $600,000 for the Montana food and agricultural development program provided for in Title 80, chapter 11;

(ii) to the department of commerce:

(A) $325,000 for a small business development center;

(B) $50,000 for a small business innovative research program;

(C) $625,000 for certified regional development corporations;

(D) $500,000 for the Montana manufacturing extension center at Montana state university-Bozeman; and

(E) $300,000 for export trade enhancement. (Terminates June 30, 2027—secs. 13, 15, 18, Ch. 343, L. 2019.)

15-38-202. Investment of resource indemnity trust fund — expenditure — minimum balance. (1) All money paid into the resource indemnity trust fund must be invested at the discretion of the board of investments. Only the net earnings, excluding unrealized gains and losses, may be appropriated and expended until the fund balance, excluding unrealized gains and losses, reaches $100 million. After the fund balance reaches $100 million, all net earnings, excluding unrealized gains and losses, and all receipts may be appropriated by the legislature and expended, provided that the fund balance, excluding unrealized gains and losses, may never be less than $100 million.

(2) (a) At the beginning of each fiscal year, there is allocated from the interest income of the resource indemnity trust fund:

(i) $3.2 million to be deposited in the natural resources projects state special revenue account, established in 15-38-302, for the purpose of making grants;

(ii) $300,000 to be deposited in the ground water assessment account established in 85-2-905;

(iii) $500,000 to the department of fish, wildlife, and parks for the purposes of 87-1-283. The future fisheries review panel shall approve and fund qualified mineral reclamation projects before other types of qualified projects.

(b) At the beginning of each biennium, there is allocated from the interest income of the resource indemnity trust fund:

(i) $650,000 to be deposited in the oil and gas production damage mitigation account pursuant to the conditions of 82-11-161;

(ii) $500,000 to be deposited in the water storage state special revenue account created by 85-1-631; and

(iii) $175,000 to be deposited in the environmental contingency account established in 75-1-1101.

(c) The remainder of the interest income is allocated as follows:

(i) Sixty-five percent of the interest income of the resource indemnity trust fund must be allocated to the natural resources operations state special revenue account established in 15-38-301.

(ii) Twenty-six percent of the interest income of the resource indemnity trust fund must be allocated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621.

(iii) Nine percent of the interest income of the resource indemnity trust fund must be allocated to the environmental quality protection fund provided for in 75-10-704.

(3) Any formal budget document prepared by the legislature or the executive branch that proposes to appropriate funds other than as provided for by the allocations in subsection (2) must specify the amount of money from each allocation that is proposed to be diverted and the proposed use of the diverted funds. A formal budget document includes a printed and publicly distributed budget proposal or recommendation, an introduced bill, or a bill developed during the legislative appropriation process or otherwise during a legislative session.

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.

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.

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.

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

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

(2) "Board" means the board of examiners.

(3) "Bonds" means bonds, notes, or other interest-bearing obligations of an issuer.

(4) "Cap bonds" means those private activity bonds and that portion of governmental bonds for which a part of the volume cap is required to be allocated pursuant to the tax act.

(5) "Department" means the department of administration.

(6) "Governmental bonds" means bonds other than private activity bonds.

(7) "Issuer" means a state issuer or local issuer.

(8) "Local issuer" means a city, town, county, or other political subdivision of the state authorized to issue private activity bonds or governmental bonds.

(9) "Local portion" means that portion of the state's volume cap reserved for local issuers.

(10) "Montana board of housing" (MBH) means the board created in 2-15-1814.

(11) "Montana board of investments" (MBI) means the board provided for in 2-15-1808.

(12) "Montana facility finance authority" (MFFA) means the authority provided for in 2-15-1815.

(13) "Montana higher education student assistance corporation" (MHESAC) means the nonprofit corporation established to provide student loan capital to the student loan program established by the board of regents of higher education under Title 20, chapter 26, part 11.

(14) "Private activity bonds" (PABs) has the meaning prescribed under section 141 of the Internal Revenue Code, 26 U.S.C. 141.

(15) "State issuer" means the state and any agency of the state authorized to issue private activity bonds. For this part only, the Montana higher education student assistance corporation, to the extent authorized under federal law to issue private activity bonds, is considered a state issuer.

(16) "State portion" means that portion of the state's volume cap reserved for state issuers.

(17) "State's volume cap" means that amount of the volume cap specified by the department pursuant to 17-5-1311(2).

(18) "Tax act" means the latest limitation enacted by the United States congress on the amount of cap bonds that may be issued by a state or local issuer.

(19) "Volume cap" means, with respect to each calendar year, the principal amount of cap bonds that may be issued in the state in a calendar year as determined under the provisions of the tax act.

17-5-1312. Allocation to state issuers. (1) Except as provided in subsection (6), the state portion must be allocated to state issuers pursuant to 17-5-1316.

(2) As a condition of receiving an allocation, each state issuer:

(a) upon issuance of the bonds, shall pay 35 cents per thousand of bonds to be deposited in the state general fund for the purpose of funding a portion of the comprehensive annual financial report audit; and

(b) shall provide the legislative auditor with full access to its financial records.

(3) As long as the Montana higher education student assistance corporation requests and receives authority to issue bonds under this part, the corporation shall:

(a) comply with the provisions of Title 2, chapter 3, in all meetings of the corporation's board of directors or other governing body unless compliance would conflict with federal or state security disclosure laws; and

(b) provide the legislative auditor with full access to any management or loan servicing contracts.

(4) The following set-aside percentages of the state's volume cap must be made in each calendar year for the following state issuers:

State Issuer	Percentage
Board	4%
MBH	41%
MBI	25%
MHESAC	26%
MFFA	4%
Total	100%

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

(6) Prior to the set-aside expiration date, allocations may be made by the department to each state issuer only from its respective set-aside pursuant to 17-5-1316 and a state issuer is not entitled to an allocation except from its set-aside unless otherwise provided by the governor.

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

17-5-1325. Reassignment of bonding authority for agricultural purposes — contingency. If, at some time in the future, federal taxation laws allow the use of tax-exempt bonds to provide loans for the acquisition of farm or ranch land, a downpayment on the acquisition of farm or ranch land, or the acquisition or construction of depreciable property used in the operation of a farm or ranch, the allocation of bonding authority originally assigned to the Montana agricultural loan authority must be reassigned to the Montana board of investments to provide those loans.

17-5-1316. Allocations by the department. (1) The department shall administer the allocation of state's volume cap bonds to issuers in accordance with this section and 17-5-1312. Applications for an allocation for each issue of bonds must be made to the department in an acceptable form and, if applicable, must contain the following:

(a) the name of the issuer;

(b) a description of the purpose or purposes for which the proceeds of the state's volume cap bonds will be used, including, if appropriate, a description of the project or projects to be financed;

(c) the location of the project or projects;

(d) the name and address of each project owner and user;

(e) a certified copy of the inducement resolution adopted or official action taken by the issuer, pursuant to the tax act, approving the project or the purpose and granting preliminary authorization for the issuance of the state's volume cap bonds;

(f) the preliminary opinion of a qualified bond counsel stating that the proposed purpose for which the state's volume cap bonds are to be issued qualifies under applicable state law and the tax act and that the interest on the bonds is not taxable as gross income for purposes of federal income taxation;

(g) evidence that all public hearing requirements concerning the proposed purpose and project have been met;

(h) a copy of a letter from an underwriter, bank, or other financial institution certifying that in its opinion the proposed financing is feasible, that the state's volume cap bonds may be successfully sold under current market conditions, and that it has reviewed all of the information necessary to form its opinion;

(i) the amount of allocation requested; and

(j) such other information as the department considers necessary.

(2) The department shall issue allocations in chronological order of the receipt of completed applications. Completed applications received by the department on the same day must be ranked according to the earliest inducement resolution or official action date.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

7-5-1612. 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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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).

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.

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.

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.

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.

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.

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.

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. Except for the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, the share of the income for this account shall be credited to the general fund. For the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, the share of the income for this account must be credited to the debt and liability free account established in 17-6-214.

(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.

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.

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.

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.

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.

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.

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.

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.

17-6-214. Debt and liability free account — rules for deposits and transfers — purpose. (1) There is an account in the state special revenue fund established by 17-2-102 known as the debt and liability free account.

(2) The purpose of the debt and liability free account is to:

(a) pay the principal, interest, premiums, and any costs or fees associated with redeeming outstanding bonds, notes, or other obligations that have been authorized and issued pursuant to the laws of Montana and that are currently subject to optional redemption;

(b) pay the principal, interest, premiums, and any costs or fees associated with defeasing outstanding bonds, notes, or other obligations that have been authorized and issued pursuant to the laws of Montana that are not currently subject to optional redemption;

(c) forego or reduce the amount of an issuance of general obligation bonds paid from the general fund authorized by the legislature but not yet issued by the board of examiners prior to using funds from the account established in 17-7-209 for the same purpose; and

(d) pay in whole or in part legally resolved nonpension financial liabilities of the state of Montana.

(3) For the fiscal year beginning July 1, 2022, through the fiscal year ending June 30, 2025, interest income received pursuant to 17-6-202(2) is deposited into the account.

(4) Funds in the debt and liability free account are statutorily appropriated, as provided in 17-7-502, to the governor's office of budget and program planning and must be used in accordance with the requirements of this section.

(5) Funds expended from the account in this section may not be included in the calculation of annual transfers in 17-7-208.

(6) The office of budget and program planning shall prioritize the use of funds for the uses outlined in subsections (1)(a) through (1)(c).

(7) Within 15 days of the close of each fiscal quarter, the office of budget and program planning shall submit a written report to the legislative finance committee in accordance with 5-11-210 that identifies the amount and the type of debt payoff or other expenditure from the account established in this section for the previous fiscal quarter.

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.

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.

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.

17-6-231. Definitions. For the purposes of 17-6-232, 17-6-233, and this section:

(1) (a) "Material" means a risk or return regarding which there is a substantial likelihood that a reasonable investor would attach importance when:

(i) evaluating the potential financial return and financial risks of an existing or prospective investment; or

(ii) exercising, or declining to exercise, any rights appurtenant to securities.

(b) When used to qualify a risk or return, the term does not include furthering nonpecuniary, environmental, social, governance, or other similarly oriented considerations, or any portion of a risk or return that primarily relates to events that involve a high degree of uncertainty regarding what may or may not occur in the distant future and are systemic, general, or not investment-specific in nature.

(2) "Nonpecuniary" includes any action taken or factor considered by a fiduciary with any purpose to further environmental, social, governance, or other similarly oriented considerations.

(3) (a) "Pecuniary factor" means a factor that has a material effect on the financial risk or financial return of an investment based on appropriate investment horizons consistent with the plan's investment objectives and funding policy.

(b) The term does not include nonpecuniary factors.

17-6-232. Consideration of nonpecuniary factors prohibited. (1) The evaluation by the board of investments or the evaluation or exercise of any right appurtenant to an investment must take into account only pecuniary factors.

(2) Environmental, social, governance, or other similarly oriented considerations are pecuniary factors only if they present economic risks or opportunities that qualified investment professionals would treat as material economic considerations under generally accepted investment theories. The weight given to those factors must solely reflect a prudent assessment of their impact on risk and return.

(3) The board, when considering environmental, social, governance, or other similarly oriented factors as pecuniary factors, is also required to examine the level of diversification, the degree of liquidity, and the potential risk-return in comparison with other available investment alternatives that would play a similar role in their plans' portfolios.

(4) Any pecuniary consideration of environmental, social, governance, or other similarly oriented factors must necessarily include evaluating whether greater returns can be achieved through investments that rank poorly on these factors.

17-6-233. Voting ownership interests. (1) All shares held directly or indirectly by or on behalf of the board must be voted solely in the pecuniary interest of the beneficiaries of the funds.

(2) Voting to further nonpecuniary, environmental, social, governance, or other similarly oriented considerations is prohibited.

(3) The board may not follow the recommendations of a proxy advisory firm or other service providers unless the firm or service provider commits to follow proxy voting guidelines that are consistent with the board's obligation to act based solely on pecuniary factors unless no economically practicable alternative is available.

17-6-234. Enforcement by attorney general. The attorney general may bring an action in the appropriate Montana district court to prevent or restrain violations of 17-6-231 through 17-6-233.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

17-6-801. Montana housing infrastructure revolving loan fund account. (1) There is a Montana housing infrastructure revolving loan fund account within the state special revenue fund type established in 17-2-102 to the credit of the board of investments. Money deposited in the account established in this section must be invested by the board of investments as provided by law.

(2) The principal of the account may only be appropriated by a vote of two-thirds of the members of each house of the legislature.

17-6-802. Purpose. The purpose of the loans made and the bonds or other securities issued and purchased pursuant to this part are:

(1) to increase home ownership and provide more long-term rental opportunity;

(2) to increase housing supply and offer diverse housing types to meet the needs of population growth; and

(3) to create partnerships between the state, local governments, private sector developers, and applicants for residential development to finance necessary infrastructure for housing.

17-6-803. Terms. The total amount of loans made to an entity for an infrastructure project pursuant to 17-6-805(1) may not exceed:

(1) $1 million; or

(2) 50% of the projected project cost.

17-6-804. Eligibility — priority. (1) For the costs of an infrastructure project to be eligible to be paid by the proceeds of a loan or bonds or other securities of an eligible government unit as defined in 17-5-1604, the infrastructure project must provide for residential development at a minimum gross density of 10 units for each acre.

(2) Lending of at least $7 million of available funds must be prioritized to counties that have a population of less than 15,000 inhabitants that are located within a 30-mile radius of a state-owned facility that, on an annual average, houses at least 100 state inmates or behavioral health patients, and the state-owned facility is located in a county that has a population that does not exceed 15,000 inhabitants.

17-6-805. Financing — deed restrictions. (1) The board of investments may make loans from the account established in 17-6-801 to an eligible government unit as defined in 17-5-1604 or an applicant for residential development to cover the costs of demolition or expanding or extending water, wastewater, storm water, street, road, curb, gutter, and sidewalk infrastructure to serve new or rehabilitated residential development.

(2) The board of investments may purchase up to 50% of a bond or other security issued in accordance with state law by an eligible government unit as defined in 17-5-1604 to cover all or a portion of costs of expanding or extending water, wastewater, storm water, street, road, curb, gutter, and sidewalk infrastructure to serve new or rehabilitated residential development at an interest rate to be determined by the board of investments as an investment of the account established in 17-6-801.

(3) The board of investments shall:

(a) establish the terms and conditions of the loan, including the interest rate of the loan, with a term not to exceed 20 years;

(b) if an eligible government unit is the entity seeking a loan or issuing a bond or other security, require that the eligible government unit waive all impact fees for the developer or the amount of impact fees up to the amount of the loan or bond or other security, whichever amount is smaller;

(c) if an applicant for residential development is the entity seeking a loan, require that the applicant pay all impact fees due to the local government or the amount of impact fees up to the amount of the loan, whichever amount is smaller; and

(d) set policy requiring that housing built using infrastructure funded in part by a security pursuant to this section must provide for provisions to preserve long-term affordability of the housing that runs with the property for the term of the security.

(4) The board of investments shall include the amounts loaned and the status of all loans in the report required in 17-5-1650.

19-2-301. Short title. This chapter may be cited as "The Public Employees' Retirement Act".

19-2-302. Applicability. Except as otherwise provided in this title, this chapter applies to the provisions and administration of the retirement systems and plans within the systems under chapters 3, 5 through 9, and 13 of this title.

19-2-303. Definitions. Unless the context requires otherwise, for each of the retirement systems subject to this chapter, the following definitions apply:

(1) "Accumulated contributions" means the sum of all the regular and any additional contributions made by a member in a defined benefit plan, together with the regular interest on the contributions.

(2) "Active member" means a member who is a paid employee of an employer, is making the required contributions, and is properly reported to the board for the most current reporting period.

(3) "Actuarial cost" means the amount determined by the board in a uniform and nondiscriminatory manner to represent the present value of the benefits to be derived from the

additional service to be credited based on the most recent actuarial valuation for the system and the age, years until retirement, and current salary of the member.

(4) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality table and interest rate assumptions adopted by the board.

(5) "Actuarial liabilities" means the excess of the present value of all benefits payable under a defined benefit retirement plan over the present value of future normal costs in that retirement plan.

(6) "Actuary" means the actuary retained by the board in accordance with 19-2-405.

(7) "Additional contributions" means contributions made by a member of a defined benefit plan to purchase various types of optional service credit as allowed by the applicable retirement plan.

(8) "Annuity" means:

(a) in the case of a defined benefit plan, equal and fixed payments for life that are the actuarial equivalent of a lump-sum payment under a retirement plan and as such are not benefits paid by a retirement plan and are not subject to periodic or one-time increases; or

(b) in the case of the defined contribution plan, a payment of a fixed sum of money at regular intervals.

(9) "Banked holiday time" means the hours reported for work performed on a holiday that the employee may use for equivalent time off or that may be paid to the employee as specified by the employer's policy.

(10) "Benefit" means:

(a) the service retirement benefit, early retirement benefit, or disability retirement or survivorship benefit payment provided by a defined benefit retirement plan; or

(b) a payment or distribution under the defined contribution retirement plan, including a disability payment under 19-3-2141, for the exclusive benefit of a plan member or the member's beneficiary or an annuity purchased under 19-3-2124.

(11) "Board" means the public employees' retirement board provided for in 2-15-1009.

(12) "Contingent annuitant" means:

(a) under option 2 or 3 provided for in 19-3-1501, one natural person designated to receive a continuing monthly benefit after the death of a retired member; or

(b) under option 4 provided for in 19-3-1501, a natural person, charitable organization, estate, or trust that may receive a continuing monthly benefit after the death of a retired member.

(13) "Covered employment" means employment in a covered position.

(14) "Covered position" means a position in which the employee must be a member of the retirement system except as otherwise provided by law.

(15) "Defined benefit retirement plan" or "defined benefit plan" means a plan within the retirement systems provided for pursuant to 19-2-302 that is not the defined contribution retirement plan.

(16) "Defined contribution retirement plan" or "defined contribution plan" means the plan within the public employees' retirement system established in 19-3-103 that is provided for in chapter 3, part 21, of this title and that is not a defined benefit plan.

(17) "Department" means the department of administration.

(18) "Designated beneficiary" means the person, charitable organization, estate, or trust for the benefit of a natural person designated by a member or payment recipient to receive any

survivorship benefits, lump-sum payments, or benefit from a retirement account upon the death of the member or payment recipient, including annuities derived from the benefits or payments.

(19) "Direct rollover" means a payment by the retirement plan to the eligible retirement plan specified by the distributee or a payment from an eligible retirement plan to the retirement plan specified by the distributee.

(20) "Disability" or "disabled" means a total inability of the member to perform the member's duties by reason of physical or mental incapacity. The disability must be incurred while the member is an active member and must be one of permanent duration or of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(21) "Distributee" means:

(a) a member;

(b) a member's surviving spouse;

(c) a member's spouse or former spouse who is the alternate payee under a family law order as defined in 19-2-907; or

(d) effective January 1, 2007, a member's nonspouse beneficiary who is a designated beneficiary as defined by section 401(a)(9)(E) of the Internal Revenue Code, 26 U.S.C. 401(a)(9)(E).

(22) "Early retirement benefit" means the retirement benefit payable to a member following early retirement and is the actuarial equivalent of the accrued portion of the member's service retirement benefit.

(23) "Eligible retirement plan" means any of the following that accepts the distributee's eligible rollover distribution:

(a) an individual retirement account described in section 408(a) of the Internal Revenue Code, 26 U.S.C. 408(a);

(b) an individual retirement annuity described in section 408(b) of the Internal Revenue Code, 26 U.S.C. 408(b);

(c) an annuity plan described in section 403(a) of the Internal Revenue Code, 26 U.S.C. 403(a);

(d) a qualified trust described in section 401(a) of the Internal Revenue Code, 26 U.S.C. 401(a);

(e) effective January 1, 2002, an annuity contract described in section 403(b) of the Internal Revenue Code, 26 U.S.C. 403(b);

(f) effective January 1, 2002, a plan eligible under section 457(b) of the Internal Revenue Code, 26 U.S.C. 457(b), that is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or a political subdivision of a state that agrees to separately account for amounts transferred into that plan from a plan under this title; or

(g) effective January 1, 2008, a Roth IRA described in section 408A of the Internal Revenue Code, 26 U.S.C. 408A.

(24) "Eligible rollover distribution":

(a) means any distribution of all or any portion of the balance from a retirement plan to the credit of the distributee, as provided in 19-2-1011;

(b) effective January 1, 2002, includes a distribution to a surviving spouse or to a spouse or former spouse who is an alternate payee under a domestic relations order, as defined in section 414(p) of the Internal Revenue Code, 26 U.S.C. 414(p).

(25) "Employee" means a person who is employed by an employer in any capacity and whose salary is being paid by the employer or a person for whom an interlocal governmental entity is responsible for paying retirement contributions pursuant to 7-11-105.

(26) "Employer" means a governmental agency participating in a retirement system enumerated in 19-2-302 on behalf of its eligible employees. The term includes an interlocal governmental entity identified as responsible for paying retirement contributions pursuant to 7-11-105.

(27) "Essential elements of the position" means fundamental job duties. An element may be considered essential because of but not limited to the following factors:

(a) the position exists to perform the element;

(b) there are a limited number of employees to perform the element; or

(c) the element is highly specialized.

(28) "Excess earnings" means the difference, if any, between reported compensation and the limits provided in 19-2-1005(2) used to calculate a member's highest average compensation or final average compensation.

(29) "Fiscal year" means a plan year, which is any year commencing with July 1 and ending the following June 30.

(30) "Inactive member" means a member who terminates service and does not retire or take a refund of the member's accumulated contributions.

(31) "Internal Revenue Code" has the meaning provided in 15-30-2101.

(32) "Member" means either:

(a) a person with accumulated contributions and service credited with a defined benefit retirement plan or receiving a retirement benefit on account of the person's previous service credited in a retirement system; or

(b) a person with a retirement account in the defined contribution plan.

(33) "Membership service" means the periods of service that are used to determine eligibility for retirement or other benefits.

(34) (a) "Normal cost" or "future normal cost" means an amount calculated under an actuarial cost method required to fund accruing benefits for members of a defined benefit retirement plan during any year in the future.

(b) Normal cost does not include any portion of the supplemental costs of a retirement plan.

(35) "Normal retirement age" means the age at which a member is eligible to immediately receive a retirement benefit based on the member's age or both age and length of service, as specified under the member's retirement system, without disability and without an actuarial or similar reduction in the benefit.

(36) "Pension" means benefit payments for life derived from contributions to a retirement plan made from state- or employer-controlled funds.

(37) "Pension trust fund" means a fund established to hold the contributions, income, and assets of a retirement system or plan in public trust.

(38) "Plan choice rate" means the amount of the employer contribution as a percentage of payroll covered by the defined contribution plan members that is allocated to the public employees' retirement system's defined benefit plan pursuant to 19-3-2117 to actuarially fund the unfunded liabilities and the normal cost rate changes in a defined benefit plan resulting from member selection of the defined contribution plan.

(39) "Regular contributions" means contributions required from members under a retirement plan.

(40) "Regular interest" means interest at rates set from time to time by the board.

(41) "Retirement" or "retired" means the status of a member who has:

(a) terminated from service; and

(b) received and accepted a retirement benefit from a retirement plan.

(42) "Retirement account" means an individual account within the defined contribution retirement plan for the deposit of employer and member contributions and other assets for the exclusive benefit of a member of the defined contribution plan or the member's beneficiary.

(43) "Retirement benefit" means:

(a) in the case of a defined benefit plan, the periodic benefit payable as a result of service retirement, early retirement, or disability retirement under a defined benefit plan of a retirement system. With respect to a defined benefit plan, the term does not mean an annuity.

(b) in the case of the defined contribution plan, a benefit as defined in subsection (10)(b).

(44) "Retirement plan" or "plan" means either a defined benefit plan or a defined contribution plan under one of the public employee retirement systems enumerated in 19-2-302.

(45) "Retirement system" or "system" means one of the public employee retirement systems enumerated in 19-2-302.

(46) "Service" means employment of an employee in a position covered by a retirement system.

(47) "Service credit" means the periods of time for which the required contributions have been made to a retirement plan and that are used to calculate retirement benefits or survivorship benefits under a defined benefit retirement plan.

(48) "Service retirement benefit" means the retirement benefit that the member may receive at normal retirement age.

(49) "Statutory beneficiary" means the surviving spouse or dependent child or children of a member of the highway patrol officers', municipal police officers', or firefighters' unified retirement system who are statutorily designated to receive benefits upon the death of the member.

(50) "Supplemental cost" means an element of the total actuarial cost of a defined benefit retirement plan arising from benefits payable for service performed prior to the inception of the retirement plan or prior to the date of contribution rate increases, changes in actuarial assumptions, actuarial losses, or failure to fund or otherwise recognize normal cost accruals or interest on supplemental costs. These costs are included in the unfunded actuarial liabilities of the retirement plan.

(51) "Survivorship benefit" means payments for life to the statutory or designated beneficiary of a deceased member who died while in service under a defined benefit retirement plan.

(52) "Termination of employment", "termination from employment", "terminated employment", "terminated from employment", "terminate employment", or "terminates employment" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both; and

(b) the member is no longer receiving compensation for covered employment, other than any outstanding lump-sum payment for compensatory leave, sick leave, or annual leave.

(53) "Termination of service", "termination from service", "terminated from service", "terminated service", "terminating service", or "terminates service" means that:

(a) there has been a complete severance of a covered employment relationship by the positive act of either the employee, the employer, or both for at least 30 days;

(b) no written or verbal agreement exists between employee and employer that the employee will return to covered employment in the future;

(c) the member is no longer receiving compensation for covered employment; and

(d) the member has been paid all compensation for compensatory leave, sick leave, or annual leave to which the member was entitled. For the purposes of this subsection (53), compensation does not mean compensation as a result of a legal action, court order, or settlement to which the board was not a party.

(54) "Unfunded actuarial liabilities" or "unfunded liabilities" means the excess of a defined benefit retirement plan's actuarial liabilities at any given point in time over the value of its cash and investments on that same date.

(55) "Vested account" means an individual account within a defined contribution plan that is for the exclusive benefit of a member or the member's beneficiary. A vested account includes all contributions and the income on all contributions in each of the following accounts:

(a) the member's contribution account;

(b) the vested portion of the employer's contribution account; and

(c) the member's account for other contributions.

(56) "Vested member" or "vested" means:

(a) with respect to a defined benefit plan, except as provided in subsection (56)(b), a member or the status of a member who has at least 5 years of membership service;

(b) with respect to a member of the highway patrol officers' retirement system established in Title 19, chapter 6, who was hired on or after July 1, 2013, a member or the status of a member who has at least 10 years of membership service; or

(c) with respect to the defined contribution plan, a member or the status of a member who meets the minimum membership service requirement of 19-3-2116.

(57) "Written application" or "written election" means a written instrument, prescribed by the board or required by law, properly signed and filed with the board, that contains all required information, including documentation that the board considers necessary.

(58) "Written instrument" includes an electronic record containing an electronic signature, as defined in 30-18-102.

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.

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.

19-2-501. Pension trust funds established. A pension trust fund is established and maintained for each retirement plan within a system subject to this chapter as enumerated in 19-2-302.

19-2-502. Payments from pension trust funds. (1) The board shall administer the assets of the pension trust funds as provided in Article VIII, section 15, of the Montana constitution, subject to the specific provisions of chapters 2, 3, 5 through 9, and 13 of this title.

(2) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. The contract is entered into on the first day of a member's covered employment and may be enhanced by the legislature. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination of membership.

19-2-503. Management of pension trust funds. The pension trust funds must be managed as follows:

(1) The board is the trustee of all money collected for the retirement systems and has exclusive control of the administration of the pension trust funds except as otherwise provided by law.

(2) The department shall deposit in the state treasury all amounts received by the board as provided in this chapter.

(3) Except as provided in chapter 3, part 21, of this title, the state treasurer is custodian of the pension trust funds, subject to the exclusive control of the board for administration and the board of investments for the investment of the funds.

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.

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.

19-2-511. Limitation of liability. (1) The board shall exercise its fiduciary authority in the same manner that would be used by a prudent person acting in the same capacity who is familiar with the circumstances and in an enterprise of a similar character with similar aims.

(2) Plan fiduciaries are not liable for any loss to a participant's or beneficiary's account under a defined contribution plan or the university system retirement program established pursuant to 19-21-101 that results from the participant's or beneficiary's exercise of control.

(3) Plan fiduciaries are not responsible for the acts or omissions of any employer or reporting agency or of any vendor providing services to the defined contribution plan or the university system retirement program. Nothing in this subsection limits the liability of any vendor for services required by contract.

(4) Plan fiduciaries are not liable for their reliance on the express provisions of the defined contribution plan or the university system retirement program.

(5) Plan fiduciaries are not liable for investment losses incurred in the defined contribution plan or the university system retirement program as a result of incorrect reporting by an employer or other reporting agency.

19-3-511. Transfer and purchase of service credits and contributions from teachers' retirement system. (1) Except as provided in subsection (3)(b), an active member may, at any time before retirement, file a written application with the board to purchase in the public employees' retirement system the member's service in the teachers' retirement system to the extent that the member has either received or is eligible to receive a refund for the service.

(2) The cost of purchasing service credit under this section is the sum of subsections (2)(a) and (2)(b) as follows:

(a) The teachers' retirement system shall transfer an amount equal to 72% of the amount payable by the member.

(b) The member shall pay either directly or by transferring contributions on account with the teachers' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated with the teachers' retirement system, plus accrued interest. Interest must be calculated from the date of termination until payment is received by the public employees' retirement system, based on the interest tables in use by the teachers' retirement system.

(3) (a) The amount of service credit granted in subsection (1) must be on a month-by-month basis.

(b) Service credit transferred from the teachers' retirement system is subject to the provisions and limitations of 19-3-514, except as provided in subsection (3)(c).

(c) Active service transferred from the teachers' retirement system or refunded service from the teachers' retirement system that is eligible to be purchased under this section is not subject to service credit limitations.

(4) Subject to the provisions of 19-2-403, the board is the sole authority in determining the amount of service credit that a member may purchase under this section and the amount paid to the retirement system under subsection (2).

(5) If an active member who has service credit in the teachers' retirement system dies before the member purchases this service credit in the public employees' retirement system and if the service credit from both systems, when combined, entitles the member's designated beneficiary to a survivorship benefit, the payment of the survivorship benefit is the liability of the public employees' retirement system. Before payment of the survivorship benefit, the teachers' retirement board shall transfer to the public employees' retirement system the contributions necessary to purchase this service credit in the public employees' retirement system, as provided in subsection (2).

(6) If the board determines that a member was erroneously classified and reported to the teachers' retirement system, the member's accumulated contributions and service credit, together with the employer contributions plus interest, must be transferred to the public employees' retirement system. Employee and employer contributions due as calculated under 19-3-315 and 19-3-316 are the liability of the employee and the employing entity, respectively, where the error occurred. For the period of time that the employer contributions are held by the teachers' retirement system, interest paid on employer contributions transferred under this subsection must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

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.

19-5-401. Payments into pension trust fund. All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and money in the pension trust fund must be paid to the board, which shall credit the payments to the fund. These funds may be commingled with other pension trust funds of the board, but separate accounts must be maintained for the judges' retirement system.

19-8-501. Contributions to pension trust fund. The following must be paid to the board and must be credited to the pension trust fund:

(1) all contributions by the state from department of fish, wildlife, and parks money;

(2) all contributions by the state game wardens; and

(3) all interest on and increase of the investments and money in the pension trust fund.

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.

19-17-201. Administration of chapter. (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.

(2) The board shall deposit in the state treasury all amounts received by it as provided in this chapter.

(3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.

(4) The board shall review the benefits provided under this chapter and recommend to the legislature those changes in benefits that may be available for retired members and their beneficiaries.

(5) (a) Disputes regarding credited years of service must be resolved, either by staff of the board and the member or by the board prior to the commencement of the retirement or disability benefit.

(b) Payment of the benefit will be retroactive to the month following the month the retirement application was received by the board.

19-17-202. Reports of board. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year.

(2) The report must include:

(a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and

(b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan.

19-17-302. Investment of pension trust fund. (1) The pension trust fund must be invested by the 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 fund must be paid into the pension trust fund as received.

(3) For investment purposes, the pension trust fund may be commingled with other pension funds administered by the board, but a separate account must be maintained for each system.

19-18-403. Investment of fund by board of investments. (1) Whenever the average yield on investments of [firefighters'] 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.

19-19-203. Investment of fund. (1) All money in the fund in excess of such an amount as is considered necessary from time to time to meet current payments to retired police officers shall be invested as hereinafter provided. All interest on money belonging to the fund from any source belongs to and must be paid into the fund.

(2) Whenever the money in the police retirement fund exceeds the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 17-6-204:

(a) 1 1/2 times the monthly benefit paid in the preceding month; or

(b) $5,000.

(3) The funds deposited in the police retirement fund of a city or town after July 1, 1977, are limited to the investments in 17-6-211. However, these funds may be invested under the provisions of 17-6-204.

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.

19-20-409. Transfer of service credits and contributions from public employees' retirement system. (1) An active member may at any time before retirement file a written application with the retirement board to purchase all of the member's previous service credit in the public employees' retirement system. The amount that must be paid to the retirement system to purchase this service under this section is the sum of subsections (2) and (3).

(2) The public employees' retirement system shall transfer to the teachers' retirement system an amount equal to 72% of the amount paid by the member.

(3) The member shall pay either directly or by transferring contributions on account with the public employees' retirement system an amount equal to the member's accumulated contributions at the time that active membership was terminated, plus accrued interest. Interest must be calculated from the date of termination until a transfer is received by the retirement system, based on the interest tables in use by the public employees' retirement system.

(4) A member who purchases service from the public employees' retirement system in the teachers' retirement system must have completed 5 years of membership service in the teachers' retirement system to be eligible to receive creditable service pursuant to 19-20-402, 19-20-403, 19-20-404, 19-20-410, or 19-20-426.

(5) The retirement board shall determine the service credits that may be transferred.

(6) If an active member who also has service credit in the public employees' retirement system before becoming a member of the teachers' retirement system dies before purchasing this service in the teachers' retirement system and if the member's service credits from both systems, when combined, entitle the member's beneficiary to a death benefit, the payment of the death benefit is the liability of the teachers' retirement system. Before payment of the death benefit, the public employees' retirement board must transfer to the teachers' retirement system

the contributions necessary to purchase this service in the teachers' retirement system as provided in subsections (2) and (3).

(7) (a) If the teachers' retirement board determines that an individual's membership was erroneously classified and reported to the public employees' retirement system, the public employees' retirement board shall transfer to the teachers' retirement system the member's accumulated contributions and service, together with employer contributions plus interest.

(b) For the period of time that the employer contributions are held by the public employees' retirement system, interest paid on employer contributions transferred under this subsection (7) must be calculated at the short-term investment pool rate earned by the board of investments in the fiscal year preceding the transfer request.

(c) Any employee and employer contributions due as calculated in 19-20-602, 19-20-605, 19-20-608, and 19-20-609, plus interest, are the liability of the employee and the employing entity where the error occurred.

(8) A member who participated in the public employees' retirement system defined contribution plan provided for in Title 19, chapter 3, part 21, may purchase creditable service for the time spent as a participant in the defined contribution plan if:

(a) the member is vested in the teachers' retirement system and has completed at least 1 full year of active membership in the teachers' retirement system following the member's public employees' retirement system service;

(b) for each full year or portion of a year to be purchased pursuant to this subsection (8), the member contributes the actuarial cost of the service based on the most recent valuation of the system; and

(c) the member has withdrawn the member's money in the member's public employees' retirement system defined contribution plan account or has rolled over the amount required to purchase service in accordance with this subsection (8).

(9) Creditable service purchased under subsection (8) must be determined according to the laws and rules governing service credit in the public employees' retirement system.

19-20-501. Financial administration of money. The members of the retirement board are the trustees of all money collected for the retirement system, and as trustees, they shall provide for the financial administration of the money as provided in Article VIII, section 15, of the Montana constitution in the following manner:

(1) The money must be invested and reinvested by the state board of investments.

(2) The retirement board shall annually establish the rate of regular interest.

(3) In accordance with the provisions of 19-20-605(8), the amount to be credited to each reserve must be allocated from the interest and other earnings on the money of the retirement system actually realized during the preceding fiscal year, less the amount allocated to administrative expenses. The administrative expenses of the retirement system, less amortization of intangible assets, may not exceed 1.5% of retirement benefits paid.

(4) The state treasurer is the custodian of the collected retirement system money and of the securities in which the money is invested.

(5) For purposes of Article VIII, section 12, of the Montana constitution, all the reserves established by part 6 of this chapter must be accounts in the pension trust fund type of the treasury fund structure of the state.

(6) Benefits and refunds to eligible recipients are payable pursuant to a contract as contained in statute. Unless specifically provided for by statute, the contract does not contain revisions to statutes after the time of retirement or termination.

20-9-212. Duties of county treasurer. The county treasurer of each county:

(1) must receive and shall hold all school money subject to apportionment and keep a separate accounting of its apportionment to the several districts that are entitled to a portion of the money according to the apportionments ordered by the county superintendent or by the superintendent of public instruction. A separate accounting must be maintained for each county fund supported by a countywide levy for a specific, authorized purpose, including:

(a) the basic county tax for elementary equalization;

(b) the basic county tax for high school equalization;

(c) the county tax in support of the transportation schedules;

(d) the county tax in support of the elementary and high school district retirement obligations; and

(e) any other county tax for schools, including the community colleges, that may be authorized by law and levied by the county commissioners.

(2) whenever requested, shall notify the county superintendent and the superintendent of public instruction of the amount of county school money on deposit in each of the funds enumerated in subsection (1) and the amount of any other school money subject to apportionment and apportion the county and other school money to the districts in accordance with the apportionment ordered by the county superintendent or the superintendent of public instruction;

(3) shall keep a separate accounting of the receipts, expenditures, and cash balances for each fund;

(4) except as otherwise limited by law, shall pay all warrants properly drawn on the county or district school money;

(5) must receive all revenue collected by and for each district and shall deposit these receipts in the fund designated by law or by the district if a fund is not designated by law. Interest and penalties on delinquent school taxes must be credited to the same fund and district for which the original taxes were levied.

(6) shall send all revenue received for a joint district, part of which is situated in the county, to the county treasurer designated as the custodian of the revenue, no later than December 15 of each year and every 3 months after that date until the end of the school fiscal year;

(7) at the direction of the trustees of a district, shall assist the district in the issuance and sale of tax and revenue anticipation notes as provided in Title 7, chapter 6, part 11;

(8) shall register district warrants drawn on a budgeted fund in accordance with 7-6-2604 when there is insufficient money available in all funds of the district to make payment of the warrant. Redemption of registered warrants must be made in accordance with 7-6-2605 and 7-6-2606.

(9) when directed by the trustees of a district, shall invest the money of the district within 3 working days of the direction;

(10) each month, shall give to the trustees of each district an itemized report for each fund maintained by the district, showing the paid warrants, registered warrants, interest distribution, amounts and types of revenue received, and the cash balance;

(11) shall remit promptly to the department of revenue receipts for the county tax for a vocational-technical program within a unit of the university system when levied by the board of county commissioners under the provisions of 20-25-439;

(12) shall invest the money received from the basic county taxes for elementary and high school equalization, the county levy in support of the elementary and high school district retirement obligations, and the county levy in support of the transportation schedules within 3 working days of receipt. The money must be invested until the working day before it is required to be distributed to school districts within the county or remitted to the state. Clerks of a school district shall provide a minimum of 30 hours' notice in advance of cash demands to meet payrolls, claims, and electronic transfers that are in excess of $50,000, pursuant to 20-3-325. If a clerk of a district fails to provide the required 30-hour notice, the county treasurer shall assess a fee equal to any charges demanded by the state investment pool or other permissible investment manager for improperly noticed withdrawal of funds. Permissible investments are specified in 20-9-213(4). All investment income must be deposited, and credited proportionately, in the funds established to account for the taxes received for the purposes specified in subsections (1)(a) through (1)(d).

(13) shall remit on a monthly basis to the department of revenue, as provided in 15-1-504, all county equalization revenue received under the provisions of 20-9-331 and 20-9-333, including all interest earned, in repayment of the state advance for county equalization prescribed in 20-9-347. Any funds in excess of a state advance must be used as required in 20-9-331(1)(b) and 20-9-333(1)(b).

20-9-213. Duties of trustees. The trustees of each district have the authority to transact all fiscal business and execute all contracts in the name of the district. A person other than the trustees acting as a governing board may not expend money of the district. In conducting the fiscal business of the district, the trustees shall:

(1) cause the keeping of an accurate, detailed accounting of all receipts and expenditures of school money for each fund and account maintained by the district in accordance with generally accepted accounting principles and the rules prescribed by the superintendent of public instruction. The record of the accounting must be open to public inspection at any meeting of the trustees.

(2) authorize all expenditures of district money and cause warrants or checks, as applicable, to be issued for the payment of lawful obligations;

(3) issue warrants or checks, as applicable, on any budgeted fund in anticipation of budgeted revenue, except that the expenditures may not exceed the amount budgeted for the fund;

(4) invest any money of the district, whenever in the judgment of the trustees the investment would be advantageous to the district, either by directing the county treasurer to invest any money of the district or by directly investing the money of the district in eligible securities, as identified in 7-6-202, in savings or time deposits in a state or national bank, building or loan association, savings and loan association, or credit union insured by the FDIC or NCUA located in the state, or in a repurchase agreement that meets the criteria provided for in 7-6-213. All interest collected on the deposits or investments must be credited to the fund from which the money was withdrawn, except that interest earned on account of the investment of money realized from the sale of bonds must be credited to the debt service fund or the building fund, at the discretion of the board of trustees. The placement of the investment by the county treasurer is not

subject to ratable distribution laws and must be done in accordance with the directive from the board of trustees. A district may invest money under the state unified investment program established in Title 17, chapter 6, or in a unified investment program with the county treasurer, with other school districts, or with any other political subdivision if the unified investment program is limited to investments that meet the requirements of this subsection (4), including those investments authorized by the board of investments under Title 17, chapter 6. A school district that enters into a unified investment program with another school district or political subdivision other than the state shall do so under the auspices of and by complying with the provisions governing interlocal cooperative agreements authorized under Title 7, chapter 11, and educational cooperative agreements authorized under Title 20, chapter 9, part 7. A school district either shall contract for investment services with any company complying with the provisions of Title 30, chapter 10, or shall contract with the state board of investments for investment services.

(5) cause the district to record each transaction in the appropriate account before the accounts are closed at the end of the fiscal year in order to properly report the receipt, use, and disposition of all money and property for which the district is accountable;

(6) report annually to the county superintendent, not later than August 15, the financial activities of each fund maintained by the district during the last-completed school fiscal year, on the forms prescribed and furnished by the superintendent of public instruction. Annual fiscal reports for joint school districts must be submitted on or before August 15 to the county superintendent of each county in which part of the joint district is situated.

(7) whenever requested, report any other fiscal activities to the county superintendent, superintendent of public instruction, or board of public education;

(8) cause the accounting records of the district to be audited as required by 2-7-503; and

(9) perform, in the manner permitted by law, other fiscal duties that are in the best interests of the district.

20-9-435. Delivery of school district bonds and disposition of sale money. (1) After the school district bonds have been registered, the county treasurer shall:

(a) when the board of investments has purchased the bonds, forward the bonds to the board that, in turn, shall send the bonds to the state treasurer and shall pay the bonds in the manner provided by law; or

(b) if the purchaser is anybody other than the board of investments, deliver the bonds to the purchaser when full payment of the bonds has been made by the purchaser.

(2) If any of the trustees fails or refuses to pay into the proper county treasury the money arising from the sale of a bond, the trustee is guilty of a felony and shall be punished by imprisonment in the state prison for not less than 1 year or more than 10 years or by a fine of not more than $50,000, or both.

(3) All money realized from the sale of school district bonds must be paid to the county treasurer. The county treasurer shall credit the money to the building fund of the school district issuing the bonds, except money realized for accrued interest or the purposes defined in 20-9-403(1)(c) and (1)(d) must be deposited in the debt service fund and money realized for the purposes authorized in 20-9-403(1)(e) must be deposited in a fund, as provided for in 2-9-316, to pay a final judgment against the school district. The money realized from the sale of school district bonds must be immediately available to the school district, and the trustees may expend the

money without budgeted authorization only for the purposes for which the bonds were authorized by the school district bond election.

20-9-436. County attorney to assist in proceedings. The trustees of a school district conducting bond proceedings shall prepare and maintain a transcript of their bond proceedings. It is a part of the official duties of the county attorney of every county of this state to advise and assist the trustees of each school district of the county in its bond proceedings. Before any transcript of school district bond proceedings is sent to the board of investments, the county attorney shall carefully examine the transcript, and the transcript may not be sent until the county attorney has attached an opinion to the transcript that the proceedings are in full compliance with law. However, the trustees of any school district may, upon consent of the county attorney, employ any attorney licensed in Montana to assist the county attorney in the performance of these duties.

20-9-441. Redemption of bonds — investment of debt service fund money. (1) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more bonds of the school district held by the state of Montana, the county treasurer shall apply the money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice not less than 30 days before the next interest due date to the board of investments that the bonds will be paid on the interest due date. Before the interest due date, the county treasurer shall remit to the state treasurer the amount of money that is necessary to pay the bonds that are being redeemed and the interest due on the bonds. When the state treasurer receives the payment, the treasurer shall cancel the bonds and any unpaid coupons of the bonds and return the canceled bonds and coupons to the county treasurer.

(2) Whenever there is a sufficient amount of money in any school district debt service fund available to pay and redeem one or more optional bonds of the school district not held by the state of Montana, not yet due but then redeemable or becoming redeemable on the next interest due date, the county treasurer shall apply the available money in payment of as many of the bonds as can be paid and redeemed. The county treasurer shall give notice to the holder of the bonds, if known, or to any bank or financial institution at which the bonds are payable, at least 30 days before the next interest due date, that the bonds will be paid and redeemed on that date. If the bonds are payable at some bank or financial institution, the county treasurer shall remit to the bank or financial institution, before the interest due date, an amount sufficient to pay and redeem the bonds. If the bonds are not presented for payment and redemption on the interest due date, the accrual of interest ceases on the interest due date.

(3) Whenever there is money available in any school district debt service fund sufficient to pay and redeem one or more outstanding bonds not yet due or redeemable and not held by the state of Montana, the trustees of the school district may direct the county treasurer to purchase the bonds of the district if this can be done at not more than par and accrued interest or at a reasonable premium that the trustees may feel justified in paying, but not exceeding 6%.

(4) Whenever the trustees cannot purchase outstanding bonds of the school district at a reasonable price, the available debt service fund money must be invested by the trustees under the provisions of 20-9-213(4). The investments must be sold in ample time before the debt service fund money is required for the payment of the bonds of the school district.

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.

20-25-1404. Authorization to finance self-insured health plan for students. The commissioner may, subject to the approval of the board of regents, finance the initial costs to establish the plan established pursuant to 20-25-1401 by using any of the following methods:

(1) authorizing a long-term loan of university funds. The loan 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.

(2) issuing and selling bonds and notes in whole or in part for this purpose; or

(3) using any other lawful means, including the assessment of student fees.

22-1-226. Use of Montana state library trust. (1) The principal of the Montana state library trust established in 22-1-225 is subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Unless otherwise provided by the donor, donations received pursuant to 22-1-103 must be placed in the Montana state library trust.

(3) Interest earned on the principal of the Montana state library trust may be used for providing library service to Montanans, including those who, because of disability, cannot read standard print.

(4) Revenue that is not expended on the service authorized in subsection (3) and that is not expended at the end of each fiscal year remains in the Montana state library trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the library from the Montana state library trust.

22-3-114. Use of acquisitions trust funds — principal nonexpendable — investment of principal — reversion of unspent revenue. (1) The principal of the acquisitions trust established in 22-3-113 is intended to be a permanent fund subject to investment by the board of investments in accordance with investment principles established for the investment of state funds in Title 17, chapter 6, part 2.

(2) Revenue earned by the Montana historical society from sales provided for by 22-3-107(6) must be placed in the acquisitions trust.

(3) Interest earned on the principal of the acquisitions trust may be used only for the purpose of acquiring society library, museum, archive, and photoarchive items or collections.

(4) Revenue that is not expended on appropriate acquisitions authorized in subsection (3) and that remains at the end of each fiscal year reverts to the principal of the acquisitions trust for investment as provided in subsection (1).

(5) The provisions of 17-2-108 that require the expenditure of nongeneral fund money prior to the expenditure of general fund money do not apply to the expenditure of revenue made available to the society from the acquisitions trust.

22-3-1003. Powers of commission — contracts — rules. (1) (a) The Montana heritage preservation and development commission may contract with private organizations to assist in carrying out the purpose of 22-3-1001. The term of a contract may not exceed 20 years.

(b) The provisions of Title 18 may not be construed as prohibiting contracts under this section from being let by direct negotiation. The contracts may be entered into directly with a vendor and are not subject to state procurement laws.

(c) Architectural and engineering review and approval do not apply to the historic renovation projects or projects at historic sites unless stated in specific state appropriations for construction permitted under the commission's jurisdiction.

(d) The contracts must provide for the payment of prevailing wages.

(e) A contract for supplies or services, or both, may be negotiated in accordance with commission rules.

(f) Management activities must be undertaken to encourage the operation of properties in a manner that results in economic stability.

(g) Contracts may include the lease of property managed by the commission. Provisions for the renewal of a contract must be contained in the contract.

(2) (a) Except as provided in subsection (2)(b), the commission may not contract for the construction of a building, as defined in 18-2-101, in excess of $300,000 without the consent of the legislature. Building construction must be in conformity with applicable guidelines developed by the national park service of the U.S. department of the interior, the Montana historical society, and the Montana department of fish, wildlife, and parks. Funding for these projects must pass through directly to the commission.

(b) The commission may contract for the preservation, stabilization, or maintenance of existing structures or buildings for an amount that exceeds $300,000 without legislative consent if the commission determines that waiting for legislative consent would cause unnecessary

damage to the structures or buildings or would result in a significant increase in cost to conduct those activities in the future.

(3) (a) Subject to subsection (3)(b), the commission, as part of a contract, shall require that a portion of any profit be reinvested in the property and that a portion be used to pay the administrative costs of the property and the commission.

(b) The commission shall deposit the portion of profits not used for administrative costs and restoration of the properties in the general fund.

(4) The commission may solicit funds from other sources, including the federal government, for the management and operation of properties.

(5) (a) The commission may use volunteers to further the purposes of this part.

(b) The commission and volunteers stand in the relationship of employer and employee for purposes of and as those terms are defined in Title 39, chapter 71. The commission shall provide each volunteer with workers' compensation coverage, as provided in Title 39, chapter 71, during the course of the volunteer's assistance.

(6) Volunteers are not salaried employees and are not entitled to wages and benefits. The commission may, in its discretion, reimburse volunteers for their otherwise uncompensated out-of-pocket expenses, including but not limited to their expenditures for transportation, food, and lodging.

(7) The commission shall establish a subcommittee composed of an equal number of members of the Montana historical society board of trustees and commission members to review and recommend the sale of personal property from the former Bovey assets acquired by the 55th legislature. A recommendation to sell may be presented to the commission only if the recommendation is supported by a majority of the members of the subcommittee.

(8) The commission shall adopt rules establishing a policy for making acquisitions and sales of real and personal property. With respect to each acquisition or sale, the policy must give consideration to:

(a) whether the property represents the state's culture and history;

(b) whether the property can become economically stable;

(c) whether the property can contribute to the economic and social enrichment of the state;

(d) whether the property lends itself to programs to interpret Montana history;

(e) whether the acquisition or sale will create significant social and economic impacts to affected local governments and the state;

(f) whether the sale is supported by the director of the Montana historical society;

(g) whether the commission should include any preservation covenants in a proposed sale agreement for real property;

(h) whether the commission should incorporate any design review ordinances established by Virginia City into a proposed sale agreement for real property; and

(i) other matters that the commission considers necessary or appropriate.

(9) Except as provided in subsection (11), the proceeds of any sale under subsection (8) must be placed in the account established in 22-3-1004.

(10) Public notice and the opportunity for a hearing must be given in the geographical area of a proposed acquisition or sale of real property before a final decision to acquire or sell the property is made. The commission shall approve proposals for acquisition or sale of real property and recommend the approved proposal to the board of land commissioners.

(11) The commission, working with the board of investments, may establish trust funds to benefit historic properties. Interest from any trust fund established under this subsection must be used to preserve and manage assets owned by the commission.

(12) Prior to the convening of each regular session, the commission shall report to the governor and the legislature, as provided in 5-11-210, concerning financial activities during the prior biennium, including the acquisition or sale of any assets.

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.

39-71-503. Uninsured employers' fund — purpose and administration of fund — maintaining balance for administrative costs — appropriation. (1) There is created an uninsured employers' fund in the state special revenue account to pay:

(a) to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided in subsection (3);

(b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

(c) the expenses incurred by the department in administering the uninsured employers' fund.

(2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases involving:

(a) false or fraudulent claims for benefits; and

(b) criminal violations of 45-7-501.

(3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The department shall make payments that it considers appropriate as funds become available from time to time. The payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum payments of future projected benefits, including impairment awards, may not be made from the fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(b) The department shall maintain at least a 3-month balance based on projected budget costs for administration of the fund. The balance for administrative costs may be used by the department only in administering the fund.

(c) The maximum aggregate medical benefits expenditure that may be made from the fund may not exceed $100,000 for any single claim regardless of whether the claim arises from an injury or an occupational disease.

(4) The amounts necessary for the payment of benefits from the fund are statutorily appropriated, as provided in 17-7-502, from the fund.

39-71-915. Assessment of insurer — employers — definition — collection. (1) As used in this section, "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the Workers' Compensation Act without regard to the application of any deductible, regardless of whether the employer or the insurer pays the losses:

(a) total compensation benefits paid; and

(b) except for medical benefits in excess of $200,000 for each occurrence that are exempt from assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital treatment and prescription drugs.

(2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each employer insured by plan No. 3, the state fund. The assessment amount is the total amount from April 1 of the previous year through March 31 of the current year paid by the fund plus the expenses of administration less other realized income that is deposited in the fund. The total assessment amount to be collected must be allocated among plan No. 1

employers, plan No. 2 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses for the calendar year preceding the year in which the assessment is collected. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to be assessed against the state fund must separately identify the amount attributed to claims arising before July 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or renewed on and after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan No. 1 employers during the preceding calendar year.

(5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352, the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that is attributable to claims arising before July 1, 1990.

(6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

(7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner that the premium for the coverage is collected. The assessment premium surcharge must be excluded from the definition of premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium. If an employer fails to remit to an insurer the total amount due for the premium and

assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and the remaining amount applied to the premium due.

(8) (a) All assessments paid to the department must be deposited in the fund.

(b) Each plan No. 1 employer shall pay its assessment by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

(d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1, 1990, by July 1.

(e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the fund.

(9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must be compared each year to the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator provided for by subsection (6) for the following year's assessment premium surcharge.

(10) If the total assessment is less than $1 million for any year, the department may defer the assessment amount for that year and add that amount to the assessment amount for the subsequent year.

39-71-1050. Assessment for stay-at-work/return-to-work assistance fund — definition. (1) (a) The assistance fund must be maintained by assessing employers insured by plan No. 1, plan No. 2, and plan No. 3 an amount as provided in subsections (2) through (10).

(b) The board of investments shall invest the money in the assistance fund. The investment income must be deposited in the assistance fund.

(2) The assessment amount is the total amount paid by the assistance fund in the preceding fiscal year less other realized income that is deposited in the assistance fund. Allocation of the total assessment amount among employers insured by plan No. 1, plan No. 2, and plan No. 3 must be based on each plan's proportionate share of money expended from the assistance fund for the calendar year preceding the year in which the assessment is collected.

(3) On or before May 31 of each year, the department shall notify each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. On or before April 30 of each year, the department shall consult with the advisory organization designated under 33-16-1023 and notify plan No. 2 insurers and plan No. 3, the state fund, of the premium surcharge rate to be effective for policies written or renewed on or after July 1 in that year.

(4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is the amount actually expended by the assistance fund on behalf of injured workers employed by that plan No. 1 employer. A group of employers insured jointly under plan No. 1 is considered to be an individual employer for the purposes of this subsection.

(5) After subtracting plan No. 1 assessments from the total assessment, the department shall determine the surcharge rate for plan No. 2 insurers and plan No. 3, the state fund, by

dividing the remaining portion of the assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the previous calendar year. The numerator for the calculation must be adjusted as provided in subsection (9).

(6) Employers insured under plan No. 2 or plan No. 3 shall pay their portion of the assessment in a surcharge on premiums for policies written or renewed annually on or after July 1.

(7) (a) Each plan No. 2 insurer and plan No. 3, the state fund, shall collect from its policyholders the assessment premium surcharge provided for in subsection (5). When collected, the assessment premium surcharge may not constitute an element of loss for the purpose of establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer and must be identified as "workers' compensation stay-at-work/return-to-work assistance fund surcharge". Each assessment premium surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This assessment premium surcharge must be collected at the same time and in the same manner as the premium for the coverage. The assessment premium surcharge must be excluded from the definition of premium for all purposes, including computation of insurance producers' commissions or premium taxes, except that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.

(b) If an employer fails to remit to an insurer the total amount due for the premium and assessment premium surcharge, the amount received by the insurer must be applied to the assessment premium surcharge described in 39-71-201 first, then to the assessment premium surcharge described in 50-71-128, then to the assessment premium surcharge in this section, and then to the surcharge in 39-71-915, with any remaining amount applied to the premium due.

(8) (a) The department shall deposit all assessments due under this section into the assistance fund.

(b) Each plan No. 1 employer shall pay its assessment due under this section by July 1.

(c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment premium surcharges collected during a calendar quarter no later than 20 days following the end of the quarter.

(d) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the department the assessment or assessment premium surcharge under this section, the department may impose on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of $100 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must be deposited in the assistance fund.

(9) Each year, the department shall compare the amount of the assessment premium surcharge actually collected pursuant to subsection (5) with the amount assessed and upon which the premium surcharge was calculated. The amount undercollected or overcollected in any given year must be used as an adjustment to the numerator for the following year's assessment premium surcharge as provided in subsection (5).

(10) If the total assessment is less than $100,000 for any year, the department may defer the assessment for that year and add that amount to the assessment amount for the subsequent year.

(11) As used in this section, "money expended" means expenditures for stay-at-work/return-to-work assistance from the assistance fund.

39-71-2320. Property of state fund — investment required — exception. All premiums and other money paid to the state fund, all property and securities acquired through the use of money belonging to the state fund, and all interest and dividends earned upon money belonging to the state fund are the sole property of the state fund and must be used exclusively for the operations and obligations of the state fund. The money collected by the state fund for claims for injuries occurring on or after July 1, 1990, may not be used for any other purpose and may not be transferred by the legislature to other funds or used for other programs. However, state fund money must be invested by the board of investments provided for in 2-15-1808, and subject to the investment agreement with the board of investments, the earnings on investments are the sole property of the state fund as provided in this section.

52-7-105. Endowment for children. (1) There is within the permanent fund type an endowment for children. The endowment is not subject to appropriation. The purpose of the endowment is to provide a permanent source of funding to support the programs and services referred to in 52-7-101.

(2) The endowment may receive funds from:

(a) appropriations;

(b) gifts, grants, and donations, from public or private sources; and

(c) other money credited or transferred to the endowment from any other fund or source.

(3) The state treasurer must receive and shall deposit money in the endowment. The board of investments shall invest the money in the endowment. Only the interest generated by the endowment is available for expenditure by the board.

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.

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.

60-11-119. Authority to issue revenue bonds. The board may issue and sell essential freight rail revenue bonds to make loans to finance the cost of projects, to pay the costs of issuing the bonds, and to provide for reserves, upon recommendation of the department. The bonds must be issued under Title 17, chapter 5, part 15.

69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(2) "Board" means the board of investments created by 2-15-1808.

(3) "Carbon offset provider" means a qualified third-party entity that arranges for projects or actions that either reduce carbon dioxide emissions or increase the absorption of carbon dioxide.

(4) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(5) "Cost-effective carbon offsets" means any combination of certified actions that are taken to reduce carbon dioxide emissions or that increase the absorption of carbon dioxide, which collectively do not increase the cost of electricity produced annually on a per-megawatt-hour basis by more than 2.5%, including:

(a) actions undertaken by the applicant that reduce carbon dioxide emissions or that increase the absorption of carbon dioxide from a facility or equipment used to generate electricity; or

(b) actions by a carbon offset provider on behalf of the applicant.

(6) "Customer-generator" means a user of a net metering system.

(7) "Distribution facilities" means those facilities by and through which electricity is received from transmission facilities and distributed to a retail customer and that are controlled or operated by a utility.

(8) "Electricity supply costs" means the actual costs incurred in providing electricity supply service through power purchase agreements, demand-side management, and energy efficiency programs, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

(e) transmission costs, including congestion and losses;

(f) planning and administrative costs; and

(g) any other costs directly related to the purchase of electricity and the management and provision of power purchase agreements.

(9) "Electricity supply resource" means:

(a) contracts for electric capacity and generation;

(b) plants owned or leased by a utility or equipment used to generate electricity;

(c) customer load management and energy conservation programs; or

(d) other means of providing adequate, reliable service to customers, as determined by the commission.

(10) "Electricity supply service" means the provision of electricity supply and related services through power purchase agreements, the acquisition and operation of electrical generation facilities, demand-side management, and energy efficiency programs.

(11) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

(12) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and of acquiring transition property through a plan approved by the commission in the financing order, including the costs of issuing, servicing, and retiring transition bonds.

(b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery period is modified by the transactions approved in the financing order.

(13) "Generation assets cost of service" means a return on invested capital and all costs associated with the acquisition, construction, administration, operation, and maintenance of a plant or equipment owned or leased by a public utility and used for the production of electricity.

(14) "Interested person" means a retail electricity customer, the consumer counsel established in 5-15-201, the commission, or a utility.

(15) "Large customer" means, for universal system benefits programs purposes, a customer with an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for that individual load.

(16) "Local governing body" means a local board of trustees of a rural electric cooperative.

(17) "Low-income customer" means those energy consumer households and families with incomes at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

(18) "Net metering" means measuring the difference between the electricity distributed to and the electricity generated by a customer-generator that is fed back to the distribution system during the applicable billing period.

(19) "Net metering system" means a facility for the production of electrical energy that:

(a) uses as its fuel solar, wind, or hydropower;

(b) has a generating capacity of not more than 50 kilowatts;

(c) is located on the customer-generator's premises;

(d) operates in parallel with the utility's distribution facilities; and

(e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(20) "Nonbypassable rates or charges" means rates or charges that are approved by the commission and imposed on a customer to pay the customer's share of transition costs or universal system benefits programs costs even if the customer has physically bypassed either the utility's transmission or distribution facilities.

(21) "Public utility" has the meaning of a public utility regulated by the commission pursuant to Title 69, chapter 3, on May 2, 1997, including the public utility's successors or assignees.

(22) "Qualifying load" means, for payments and credits associated with universal system benefits programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory in which the customer qualifies as a large customer.

(23) "Retail customer" means a customer that purchases electricity for residential, commercial, or industrial end-use purposes and does not resell electricity to others.

(24) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents, and other entities acting for the benefit of that bondholder.

(25) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

(26) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of transition costs.

(27) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when a utility customer does not have any liability for payment of transition costs.

(28) "Transition costs" means:

(a) a public utility's net verifiable generation-related and electricity supply costs, including costs of capital, that become unrecoverable as a result of the implementation of federal law requiring retail open access or customer choice or of this chapter;

(b) those costs that include but are not limited to:

(i) regulatory assets and deferred charges that exist because of current regulatory practices and can be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan and conservation investments made prior to universal system benefits charge implementation;

(ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

(29) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

(30) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission and that are controlled or operated by a utility.

(31) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

(32) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

(33) "Utility" means any public utility or cooperative utility.

75-10-116. Penalties for failure to pay fee. A person who owns a solid waste disposal facility that is subject to the fees under 75-10-115 and who fails to pay the fee in the manner provided by department rule is subject to a fine of not more than $2,000 or imprisonment not to exceed 6 months, or both, and shall reimburse the department for the amount of the fee owed and interest calculated at a rate equal to the previous fiscal year's average rate of return on the board of investments' short-term investment pool.

75-10-743. Orphan share state special revenue account — reimbursement of claims — payment of department costs. (1) There is an orphan share account in the state special revenue fund established in 17-2-102 that is to be administered by the department. Money in the account is available to the department by appropriation and, except as provided in subsections (9), (10), and (11), must be used to reimburse remedial action costs claimed pursuant to 75-10-742 through 75-10-751, to provide funding for the department of justice for investigations pursuant to its natural resource damage program, to pay costs incurred by the department in defending the orphan share, and to pay remedial action costs incurred by the department pursuant to subsection (12). Any amounts provided for investigations must be returned to the account, with interest, from the settlement proceeds of a claim made under the natural resource damage program within 30 days of receiving settlement proceeds.

(2) There must be deposited in the orphan share account:

(a) all penalties assessed pursuant to 75-10-750(12);

(b) funds received from the distribution of oil and natural gas production taxes pursuant to 15-36-331;

(c) unencumbered funds remaining in the abandoned mines state special revenue account;

(d) interest income on the account;

(e) funds received from settlements pursuant to 75-10-719(7); and

(f) funds received from reimbursement of the department's orphan share defense costs pursuant to subsection (6).

(3) If the orphan share account contains sufficient money, valid claims must be reimbursed subsequently in the order in which they were received by the department. If the orphan share account does not contain sufficient money to reimburse claims for completed remedial actions, a reimbursement may not be made and the orphan share account, the department, and the state are not liable for making any reimbursement for the costs. The department and the state are not liable for any penalties if the orphan share account does not contain sufficient money to reimburse claims, and interest may not accrue on outstanding claims.

(4) Except as provided in subsections (6) and (7), claims may not be submitted and remedial action costs may not be reimbursed from the orphan share account until all remedial actions, except for operation and maintenance, are completed at a facility.

(5) Except as provided in subsection (6), reimbursement from the orphan share account must be limited to actual documented remedial action costs incurred after the date of a petition provided for in 75-10-745. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs.

(6) (a) The department's costs incurred in defending the orphan share must be paid by the persons participating in the allocation under 75-10-742 through 75-10-751 in proportion to their allocated shares. The orphan share account is responsible for a portion of the department's costs incurred in defending the orphan share in proportion to the orphan share's allocated share, as follows:

(i) If sufficient funds are available in the orphan share account, the department's costs incurred in defending the orphan share must be paid from the orphan share account in proportion to the share of liability allocated to the orphan share.

(ii) If sufficient funds are not available in the orphan share account, persons participating in the allocation under 75-10-742 through 75-10-751 shall pay all the orphan share's allocated

share of the department's costs incurred in defending the orphan share in proportion to each person's allocated share of liability.

(b) A person who pays the orphan share's proportional share of costs has a claim against the orphan share account and must be reimbursed as provided in subsection (3).

(c) A state agency that is liable for remedial action costs incurred has a claim against the orphan share account and must be reimbursed as provided in subsection (3). The agency may submit a claim before or after remedial action is complete. Reimbursement may not be made for attorney fees, legal costs, or operation and maintenance costs. The agency may be reimbursed only after:

(i) its liability has been determined pursuant to 75-10-742 through 75-10-751 or by a court of competent jurisdiction;

(ii) it has received a notice letter pursuant to 75-10-711; and

(iii) the department has approved the costs.

(7) (a) If the lead liable person under 75-10-746 presents evidence to the department that the person cannot complete the remedial actions without partial reimbursement and that a delay in reimbursement will cause undue financial hardship on the person, the department may allow the submission of claims and may reimburse the claims prior to the completion of all remedial actions. A person is not eligible for early reimbursement unless the person is in substantial compliance with all department-approved remedial action plans.

(b) The department may reimburse claims from a lead liable person upon completion and department approval of a report evaluating the nature and extent of contamination and a report formulating and evaluating final remediation alternatives. This early reimbursement is limited to those eligible costs incurred by the lead liable person for the preparation of the reports.

(8) A person participating in the allocation process who received funds under the mixed funding pilot program provided for in sections 14 through 20, Chapter 584, Laws of 1995, may not claim or receive reimbursement from the orphan share account for the amount of funds received under the mixed funding pilot program that are later attributed to the orphan share under the allocation process.

(9) (a) For the biennium beginning July 1, 2005, up to $1.25 million may be used by the department to pay the costs incurred by the department in contracting for evaluating the extent of contamination and formulating final remediation alternatives for releases at the Kalispell pole and timber, reliance refinery company, and Yale oil corporation facility complex. If the department spends less than $1.25 million for those purposes, the remaining funds must be spent for remediation of the facility complex. The department may not seek recovery of the $1.25 million from potentially liable persons.

(b) The money spent pursuant to subsection (9)(a) must be credited against the amount owed by the state agency in a judgment or settlement agreement for payment of the remedial action costs at the facility for which the money was spent.

(10) (a) The department shall transfer from the orphan share account to the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 $1.2 million in each fiscal year until the board of investments makes the certification pursuant to subsection (10)(b) of this section.

(b) (i) The board of investments shall monitor the long-term or perpetual water treatment permanent trust fund provided for in 82-4-367 to determine when the amount of money in the

long-term or perpetual water treatment permanent trust fund will be sufficient, with future earnings, to provide a fund balance of $19.3 million on January 1, 2018.

(ii) When the board of investments makes the determination pursuant to subsection (10)(b)(i), the board of investments shall notify the department and certify to the department the amount of money, if any, that must be transferred during the fiscal year in which the board of investments makes its determination pursuant to subsection (10)(b)(i) in order to provide a fund balance of $19.3 million on January 1, 2018.

(iii) In the fiscal year that the board of investments makes its determination and notifies the department, the department shall transfer only the amount certified by the board of investments, if any, and may not make additional transfers during subsequent fiscal years.

(c) After July 1, 2018, the department shall transfer $1.2 million in each fiscal year from the orphan share state special revenue account to the environmental quality protection fund provided in 75-10-704.

(11) The orphan share account is subject to legislative fund transfers.

(12) Except as provided in subsection (13), the department may use the orphan share account to:

(a) take remedial action at a facility where there has been a release or there is a substantial threat of a release into the environment that may present an imminent and substantial endangerment to the public health, safety, or welfare or to the environment and there is no readily apparent person who is financially viable and potentially liable under 75-10-715 to conduct the remedial action; or

(b) fund the administration of data collection, the monitoring of the performance of remedial action, and the initial assessment of a facility to determine whether that facility may be closed or delisted.

(13) The department may not use for data collection, initial assessments, or monitoring pursuant to subsection (12)(b) more than 20% of the funds appropriated from the orphan share account for the bienniums beginning July 1, 2015, and ending June 30, 2025. For the bienniums beginning July 1, 2025, no more than 15% of the funds appropriated from the orphan share account may be used for data collection, initial assessments, or monitoring pursuant to subsection (12)(b).

(14) The department shall report annually to the environmental quality council in accordance with 5-11-210 the amount of funds from the orphan share account used pursuant to subsection (12), the type of expenditures made, and the identity and location of facilities addressed. (Subsection (10)(c) terminates June 30, 2027—sec. 5, Ch. 387, L. 2015.)

75-10-1603. Libby asbestos cleanup trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of cleanup and long-term operation and maintenance at the Libby asbestos superfund site.

(2) The fund is financed with:

(a) 20% of the funds allocated for the cleanup and long-term operation and maintenance costs pursuant to 75-10-704;

(b) any funds remaining at the end of each fiscal year in the Libby asbestos cleanup operation and maintenance account provided for in 75-10-1604; and

(c) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2028.

(4) The annual earnings on the fund for the year 2029 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may be made only for payment of the costs of cleanup and long-term operation and maintenance costs.

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.

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.

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.

76-15-904. Coal bed methane protection account — use. (1) There is a coal bed methane protection account in the state special revenue fund.

(2) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(3) Subject to the conditions of subsections (4) and (5), money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

(4) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.

(5) Subject to legislative fund transfers, money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905.

77-1-101. Definitions. Unless the context requires otherwise and except for the definition of state land in 77-1-701, in this title, the following definitions apply:

(1) "Board" means the board of land commissioners provided for in Article X, section 4, of the Montana constitution.

(2) "Commercial or concentrated recreational use" means any recreational use that is organized, developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use includes all outfitting activity and all activities not included within the definition of general recreational use.

(3) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(4) "Distributable revenue" applies to all land trusts managed by the board, except property held 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, and includes:

(a) 95% of all revenue from the management of school trust lands and the common school permanent fund, except for mineral royalties or land sale proceeds that are deposited directly in the permanent fund;

(b) the interest and income described in 20-9-341, less any unrealized gains or losses;

(c) the interest and income received from the leasing, licensing, or other use of state trust lands; and

(d) subject to 17-3-1003, the proceeds and income from the sale of timber from capitol building land grant and university system lands.

(5) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing, and other activities determined by the board to be compatible with the use of state lands.

(b) The term does not include the use of streams and rivers by the public under the stream access laws provided in Title 23, chapter 2, part 3.

(6) "Legally accessible state lands" means state lands that can be accessed by:

(a) dedicated public road, right-of-way, or easement;

(b) public waters;

(c) adjacent federal, state, county, or municipal land if the land is open to public use; or

(d) adjacent contiguous private land if permission to cross the land has been secured from the landowner. The granting of permission by a private landowner to cross private property in a particular instance does not subject the state land that is accessed to general recreational use by members of the public, other than those granted permission.

(7) "Noxious weeds" or "weeds" means any exotic plant species established or that may be introduced in the state that may render land unfit for agriculture, forestry, livestock, wildlife, or other beneficial uses or that may harm native plant communities and that is designated:

(a) as a statewide noxious weed by rule of the department of agriculture; or

(b) as a district noxious weed by a district weed board organized under 7-22-2103.

(8) (a) "State land" or "lands" means:

(i) lands granted to the state by the United States for any purpose, either directly or through exchange for other lands;

(ii) lands deeded or devised to the state from any person; and

(iii) lands that are the property of the state through the operation of law.

(b) The term does not include:

(i) lands that the state conveys through the issuance of patent;

(ii) lands that are used for building sites, campus grounds, or experimental purposes by a state institution and that are the property of that institution;

(iii) lands that the board of regents of higher education has authority to dispose of pursuant to 20-25-307; or

(iv) lands acquired through investments under the provisions of 17-6-201.

(9) "State trust land" means lands or property interests held in trust by the state:

(a) under Article X, sections 2 and 11, of the Montana constitution;

(b) through The Enabling Act of Congress (approved February 22, 1889, 25 Stat. 676), as amended; and

(c) through the operation of law for specified trust beneficiaries.

(10) "Weed management" or "control" has the meaning provided in 7-22-2101.

77-1-108. Trust land administration account — administrative costs — appropriation. (1) There is a trust land administration account in the state special revenue fund. Money in the account is available to the department by appropriation and must be used to pay the costs of administering state trust lands. This includes the cost of managing assets, including but not limited to real property and monetary assets.

(2) Appropriations from the account for each fiscal year may not exceed an amount equal to 25% of the distributable revenue, as defined in 77-1-101, generated in the fiscal year completed prior to the legislative session that will appropriate money for the next biennium. This excludes revenue generated by the forest improvement fee provided for in 77-5-204.

(3) (a) Pursuant to subsection (1), the administrative costs must be determined for each land trust. The department may adopt rules regarding the calculation of administrative costs as necessary.

(b) Each fiscal year, the department shall compare administrative costs for each land trust to the amount of revenue that land trust generates for the account. If the amount of revenue

deposited pursuant to 77-1-109(2) exceeds the administrative costs for a specific land trust, the excess revenue must be distributed as provided in subsection (4) of this section.

(c) If revenue deposited from a specific land trust is insufficient to defray the administrative costs associated with managing that land trust and the money held for that trust in the earnings reserve account established in 77-1-132 is also insufficient, the board may receive a general fund loan pursuant to 17-2-107 to offset the difference. A general fund loan made pursuant to this subsection (3)(c) must be repaid within 5 years and must bear interest at a rate of return equal to that earned by the board of investments' short-term investment pool during that period.

(4) (a) Except as provided in subsections (4)(b) and (5), up to one-third of the unreserved distributable revenue remaining in the account at the end of a fiscal year may be transferred to the earnings reserve account provided for in 77-1-132 and accounted for by trust. The remaining unreserved revenue must be transferred to each of the permanent funds in proportionate shares to each fund's contribution to the account.

(b) At the end of the fiscal year, unreserved funds received pursuant to 77-1-109(2)(a)(ii) and (2)(a)(iii) must be transferred to each of the permanent funds or to the appropriate trust or distributed to the beneficiary in proportionate shares to each fund's contribution to the account.

(5) (a) The amount of $80,000 each biennium is transferred from the state general fund to an account in the state special revenue fund. The account is statutorily appropriated, as provided in 17-7-502, to the department for the purposes of administering the 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. Any unexpended portion of the statutory appropriation may be retained in the account and used for the administration of the Morrill Act land.

(b) At the end of each fiscal year, the department shall pay from the appropriation in subsection (5)(a) to the trust containing proceeds 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 amount calculated to be the cost of administering the investment of the fund derived from that trust. The payment must be based upon the percentage that the Morrill Act fund constitutes of the total fund derived from all trust lands. If the appropriation in subsection (5)(a) is insufficient to pay the calculated administrative cost, a general fund loan may be used pursuant to 17-2-107 to offset the difference.

77-1-701. Definitions. When used in this part, unless a different meaning clearly appears from the context, the following definitions apply:

(1) "Ownership record" means the original deed, abstract, and any other instrument signifying state ownership or other interest in real property.

(2) "State agency" means any board, bureau, department, commission, or officer of the state.

(3) "State land" means land held, possessed, or administered by the state by virtue of fee simple title, grant, or deed. This term does not include:

(a) land acquired through investments under the provisions of 17-6-201;

(b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

(c) land used for easements and rights-of-way.

77-1-905. Rental provisions for commercial leasing — payments and credits — administration — lease options. (1) The first year's annual rental payment for state trust land leased for commercial purposes must be paid by cashier's check or electronic funds transfer, as defined in 32-6-103, and payment is due upon execution of the lease. The department may require the lessee of state trust land for commercial purposes to pay the department's cost of the request for proposals process, including publication and other reasonable expenses. Failure to make the first year's rental payment at the time of lease execution must result in the cancellation of the lease and forfeiture of all money paid. In the event of cancellation or in the event that the successful proposer is offered and does not accept the lease, the board may enter into negotiations with other persons who submitted a proposal for commercial purposes in response to the department request for proposals on that tract.

(2) The annual rental payment is full market value and may not be less than the product of the land value multiplied by a rate that is 2 percentage points a year less than the rate of return of the unified investment program administered by the board of investments pursuant to 17-6-201. The rate of return from the unified investment program used in this subsection must be determined no less than 30 days prior to the execution of the competitive bid. A commercial lease may include a rental adjustment formula established by the board that periodically adjusts the annual rental payment provided for in the lease at frequencies specified in the lease. The board may allow a credit against the annual rental payment for payments made by the lessee on behalf of the state of Montana for construction of structures and improvements, special improvement district assessments, annexation fees, or other city or county fees attributable to the state's property interest in land leased for commercial purposes. The board may accept as lawful consideration in-kind payments of services or materials equal to the full market rental value calculated for any commercial lease. A lease issued under this part may include an amortization schedule to be used to determine the value to the lessee of improvements when the lease is terminated.

(3) The department may use funds appropriated from the trust land administration account provided for in 77-1-108 to contract with realtors, property managers, surveyors, legal counsel, or lease administrators to administer the commercial lease, either singly or in common with other leases, or to provide assistance to the department in the administration of commercial leases.

(4) In anticipation of entering into a commercial lease, the board may issue an option to lease at a rental rate that the board determines to be appropriate. An option to lease may not be construed to grant a right of immediate possession or control over the land but may only preserve the optionholder's exclusive right to obtain a commercial lease on the land in the future.

80-2-222. Board to establish amount of rates — disposition of funds. (1) The board of hail insurance may, when it considers it advisable, establish as many districts as it considers advisable and may maintain maximum rates in various parts of the state. The rates must be commensurate with the risk incurred as nearly as it can determine from past experiences or from any records available.

(2) Notice of the various rates established for any year must be plainly printed on the application for hail insurance, and the rates for the year must be determined and imposed by the board of hail insurance for each of the various districts as established, in proportions that will in the board's judgment be fair and equitable.

(3) The department may accept and expend all funds received by it, including amounts repaid as principal and interest on investments. The funds are statutorily appropriated, as provided in 17-7-502, to the board of hail insurance for the purposes of this chapter. Expenditures for actual and necessary expenses required for the efficient administration of this part must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(4) In establishing the rates provided in this section, the board of hail insurance shall provide for:

(a) the payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year that are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used in any 1 year for the purpose of paying the costs of administration, interest on the warrants, and losses as settled and adjusted by the board, including the losses sustained in any prior year or years under the hail insurance law that have not been paid.

(5) If at the end of any hail insurance season the board determines that more funds are accumulating from the current year's rates than were estimated when the rates were established and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund the excess to the persons insured for the year on a pro rata or percentage basis.

(6) The board of hail insurance may direct the board of investments to invest funds from the enterprise fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the board of hail insurance account in the enterprise fund.

80-4-721. Fees for inspection, testing, and weighing agricultural commodities — disposition — investment. (1) The department shall by rule fix the fees for inspection, testing, and weighing of agricultural commodities.

(2) All fees and other charges fixed by rule, including fees for the inspection, grading, weighing, and protein testing of agricultural commodities, must reflect as nearly as possible the actual cost of the services.

(3) All fees and charges must be paid to the department and deposited with the state treasurer. The state treasurer shall place all money in the state special revenue fund. Fees deposited in the state special revenue fund must be used to pay approved claims for expenses incurred in inspecting, grading, weighing, and protein testing of agricultural commodities.

(4) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the proper department account in the state special revenue fund.

(5) All fees collected under this part must be expended for the purposes of this part as provided in Article XII, section 1, of the Montana constitution.

80-6-315. State special revenue account — source of funds. (1) There is an apiary account in the state special revenue fund established in 17-2-102. All funds received by the department under parts 1 through 3 must be deposited in the apiary account.

(2) The department may direct the board of investments to invest the funds collected under subsection (1), pursuant to the provisions of 17-6-201. The interest and income from the investments must be credited to the account provided for in subsection (1).

80-6-1109. Fees to be set by rule — account established. (1) Fees authorized to be charged by this part must be set by committee rule. The fees must be designed, when combined with other revenue sources available to the committee, to reimburse the committee for costs incurred in providing services and carrying out its duties under this part.

(2) There is an account in the state special revenue fund known as the leaf-cutting bee account for use by the committee. The account is made up of:

(a) fees collected under this part;

(b) money collected as part of the alfalfa seed assessment provided for in 80-11-307 and allocated to the account by the committee; and

(c) any grants, donations, or gifts made to the committee and designated by the committee for the purposes of this part.

(3) The committee may direct the board of investments to invest money from the account pursuant to the provisions of the unified investment program. The income from investments must be credited to the leaf-cutting bee account.

80-7-816. Account — deposit — investment. (1) There is a noxious weed account in the state special revenue fund established in 17-2-102. The interest from the noxious weed management trust fund and the funds directed to be deposited as provided in 80-7-823, excluding unrealized gains and losses, must be deposited in the account and must be expended as provided in 80-7-705 and 80-7-814.

(2) The department may direct the board of investments to invest the funds collected under subsection (1) pursuant to the provisions of 17-6-201. The income from the investments must be credited to the account in the state special revenue fund.

80-7-1016. Invasive species trust fund. (1) There is an invasive species trust fund. The board of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

(2) The principal of the invasive species trust fund shall forever remain inviolate in an amount of $100 million unless appropriated by a vote of three-fourths of the members of each house of the legislature.

(3) Except as provided in 80-7-1013 and subsection (2) of this section, money deposited in the invasive species trust fund may not be appropriated until the principal reaches $100 million.

(4) On July 1 of each fiscal year, the principal of the invasive species trust fund in excess of $100 million and the interest and income generated from the trust fund, excluding unrealized gains and losses, must be deposited in the invasive species account established in 80-7-1004.

80-8-116. Pesticide management account — deposit of fees and penalties — investment. (1) There is a pesticide management account within the state special revenue fund established in 17-2-102.

(2) All licensing, permit, registration, and devices and blending plant fees collected under parts 1 and 2 of this chapter must be deposited in the pesticide management account for the purpose of administering this chapter, including but not limited to:

(a) the cost of equipment and facilities;

(b) the cost of inspecting, investigating, analyzing, and examining:

(i) pesticide products;

(ii) applicators, operators, and other users of pesticides;

(iii) dealers and retailers selling pesticides;

(iv) pesticide equipment, storage, disposal, and operational facilities; and

(c) related pest and pesticide activities authorized by Title 80, chapter 7, part 5, and 80-7-711 through 80-7-714 and 80-7-720.

(3) The department may direct the board of investments to invest the funds collected under this section, pursuant to the provisions of 17-6-201. The income from the investments must be credited to the pesticide management account within the state special revenue fund.

80-9-207. Deposit of fees. (1) All fees collected for licenses, registration, and inspection must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods and means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the state special revenue fund pursuant to the provisions of the unified investment program for state funds. The income from those investments must be credited to the proper department account in the state special revenue fund.

(3) The account in subsection (1) may receive funds from any source, including but not limited to gifts, grants, cost-share funds, or other funds designated for purposes consistent with this chapter.

(4) Any administrative civil penalties collected under 80-9-303 must be deposited in the Montana state university-Bozeman agricultural experiment station research account and may be used only for feed and animal nutrition research and education.

80-10-207. Fees. (1) (a) Each in-state manufacturer or out-of-state supplier shall pay to the department fees on all commercial fertilizer distributed in this state, except specialty fertilizers and unmanipulated animal or vegetable manures. Sales to manufacturers or exchanges between manufacturers are exempt. The fees are as follows:

(i) The department may by rule adjust the inspection fee to maintain adequate funding for the administration of this part. The fee may not be less than 20 cents per ton or more than 25 cents per ton. A change in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers of nonexempt products must be given notice of a change in fees before the effective date.

(ii) The department may by rule adjust the anhydrous ammonia inspection fee to maintain adequate funding for the administration and enforcement of part 5 of this chapter. The fee may not be less than 65 cents per ton or more than $1.30 per ton. A change in fee becomes effective on the first day of a reporting period. All in-state manufacturers and out-of-state suppliers of

anhydrous ammonia must be given notice of a change in fees before the effective date of the fee adjustment.

(iii) The assessment fee prescribed in 80-10-103 must be used to fund educational and experimental programs as provided in 80-10-103 through 80-10-106.

(b) If fertilizer material or soil amendment is added to fertilizer for which a fee has been paid under subsection (1)(a), a fee is due only on the fertilizer material or soil amendment for which a fee has not been paid.

(c) Fees must be paid only if they total more than $5 in a reporting period.

(2) There must be paid to the department on all soil amendments distributed in this state an inspection fee of 10 cents per ton subject to the following provisions:

(a) sales to manufacturers or exchanges between them are exempt; and

(b) when less than 50 tons of a registered soil amendment is sold in a reporting period, no payment is due.

(3) (a) (i) Each licensee who distributes a soil amendment or commercial fertilizer, except specialty fertilizer and unmanipulated animal or vegetable manures, to an unlicensed person in this state shall file with the department on forms approved by the department a semiannual tonnage statement for the reporting periods ending June 30 and December 31. This tonnage statement must indicate the number of net tons of each commercial fertilizer and soil amendment distributed in this state during the 6-month period. The tonnage statement is due on or before the 30th day of the month following the close of each period 30 days after the last day of the reporting period. There are no fees associated with the semiannual tonnage statement.

(ii) Each in-state manufacturer and out-of-state supplier who distributes a soil amendment or commercial fertilizer in this state to a person regardless of license status, except specialty fertilizer and unmanipulated animal or vegetable manures, shall file with the department on forms approved by the department an inspection fee statement for each of the reporting periods ending June 30 and December 31. The inspection fee statement must indicate the number of net tons of each commercial fertilizer and soil amendment distributed in this state during the reporting period and to whom it was distributed. The report is due 30 days after the last day of the reporting period. The in-state manufacturer or out-of-state supplier shall pay the fees set forth in subsection (1) at that time.

(b) If the inspection fee statement required by subsection (3)(a) is not filed and the payment of fees is not made within 30 days after the end of the reporting period, a late fee of 10% on the amount due but not less than $25 must be assessed against the in-state manufacturer or out-of-state supplier. The amount of fees due constitutes a debt and becomes the basis of a judgment against the in-state manufacturer or out-of-state supplier.

(4) Except as provided in subsection (5), all fees collected for licenses, registration, and inspection and money collected as penalties must be deposited in the state treasury to the credit of the state special revenue fund for the purpose of administering this chapter, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial fertilizer and soil amendments manufactured or distributed in this state. Reserve funds may be invested by the department with interest credited to the state special revenue fund.

(5) All fees collected under subsection (1)(a)(ii) must be deposited in the state treasury to the credit of the state special revenue fund, anhydrous ammonia account, for the administration and enforcement of part 5 of this chapter and the rules adopted under part 5. The department may direct the board of investments to invest the funds collected under subsection (1)(a)(ii)

pursuant to the provisions of 17-6-201. The income from the investment must be deposited in the anhydrous ammonia account in the state special revenue fund.

80-11-210. Wheat and barley account — sources — use — expenditures. (1) There shall be an account in the state special revenue fund known as the wheat and barley account. The following shall be placed in the account:

(a) the proceeds of all millage levies collected under this part; and

(b) the proceeds from all gifts, grants, or donations to the department for research authorized under this part.

(2) The account shall be maintained for the purposes of this part and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat and barley account.

80-11-518. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund into which must be placed:

(a) the proceeds of all commodity assessments and penalties collected under this part; and

(b) the proceeds from all gifts, grants, and donations to the department for commodity research and market development received under 80-11-517.

(2) Funds deposited in the account for a specific commodity research and market development program may be expended only for the purposes of that program.

(3) Money deposited in the account is statutorily appropriated, as provided in 17-7-502, to the department for purposes of this part.

(4) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. Income from the investments must be credited to the account.

(5) The department may assess costs for the services that it provides to each commodity research and market development program. However, the costs assessed must be commensurate to the cost of the services provided.

80-11-602. Account established — sources — use — expenditures. (1) There is an account in the state special revenue fund. The following must be placed in the account:

(a) the proceeds from all gifts, grants, or donations to the department for development and administration of the state organic certification plan and program authorized under 80-11-601;

(b) proceeds of assessments, penalties, and other money collected pursuant to a state organic certification program when implemented pursuant to 80-11-601.

(2) The account must be maintained for the purposes of 80-11-601 and must be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from those investments must be credited to the account established in this section.

80-11-1006. Pulse crop account — sources — use — expenditures. (1) There is a pulse crop account in the state special revenue fund to the credit of the department for use as provided in this section.

(2) The account consists of:

(a) proceeds from assessments collected pursuant to 80-11-1004; and

(b) gifts, grants, and donations to the department for research authorized under this part.

(3) Money in the account must be used for the purposes of this part and is separate from all other accounts of the department.

(4) Money in the account is statutorily appropriated, as provided in 17-7-502, to the department of agriculture for use by the Montana pulse crop committee for the purposes of this part. Expenditures for administrative costs allowed under 80-11-1003(2) must be made from temporary appropriations, as described in 17-7-501(1) or (2), made for that purpose.

(5) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from the investments must be credited to the pulse crop account.

80-15-302. Special funding. (1) A fee of $95 is assessed for the registration of pesticides in addition to the fee imposed by 80-8-201.

(2) The money collected from the registration fee established by subsection (1) must be deposited in the state special revenue fund as follows:

(a) Each of the following state agencies must be credited $15,000 for purposes of administering or assisting the department in administering this chapter:

(i) department of environmental quality; and

(ii) Montana state university-Bozeman extension service.

(b) The department must be credited with the remainder of the registration fee money to use in administering this chapter.

(3) A fee of $10 is assessed for the registration of fertilizers in addition to the fees imposed by 80-10-201(1)(a)(i) and (1)(a)(ii). The additional fee must be used for the ground water protection responsibilities of the department relating to fertilizers. Revenues collected from this fee must be credited to the commercial fertilizer agricultural chemical ground water account within the state special revenue fund for the administration of this chapter.

(4) The department may direct the board of investments to invest the portion of the money collected under this section that is credited to the department pursuant to the provisions of 17-6-201. The income from the investments must be deposited in the state special revenue fund and credited to the department.

81-1-104. Investment of state special revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from state special revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the state special revenue account of the department from which the investment is made.

82-4-367. Long-term or perpetual water treatment permanent trust fund. (1) There is established a fund of the permanent fund type to pay exclusively for the cost to the state of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

(2) The fund is financed with:

(a) funds transferred from the orphan share account pursuant to 75-10-743; and

(b) other sources of funding that the legislature or congress may from time to time provide.

(3) The fund must be invested by the board of investments pursuant to Title 17, chapter 6, part 2, and the earnings from the investment must be credited to the principal of the fund until the year 2018.

(4) The annual earnings on the fund for the year 2018 and for each succeeding year may be appropriated for the purposes of subsection (1).

(5) The principal of the fund must remain inviolate unless appropriated by a vote of two-thirds of the members of each house of the legislature. An appropriation of the principal may only be made for payment of the costs of long-term or perpetual water treatment at the Zortman and Landusky mine sites.

87-1-615. Investment of fish and wildlife mitigation trust fund. The fish and wildlife mitigation trust fund must be invested and managed by the board of investments as part of the unified investment program in a separate investment fund

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.

90-6-141. Short title. Sections 90-6-141 through 90-6-149 may be cited as the "Montana Community Reinvestment Plan Act".

90-6-142. Purpose. The legislature finds and declares the purpose of the Montana Community Reinvestment Plan Act is to begin to address housing needs and offer a regional, community-based solution to creating affordable, attainable workforce housing infrastructure in the state.

90-6-143. Definitions. As used in 90-6-141 through 90-6-149, the following definitions apply:

(1) "Attainable workforce housing" means housing of a cost that an eligible household would spend no more than 30% of gross monthly income for a mortgage payment, property taxes, and insurance.

(2) "Community reinvestment organization" means the regional entity or entities established in 90-6-146 or a certified regional development corporation, a certified development corporation, a community housing development organization, an economic development association, or a community development financial institution.

(3) "Community reinvestment organization revolving account" or "CRO revolving account" means a restricted account established by each community reinvestment organization.

(4) "Eligible household" means a household earning between 60% and 140% of median household income for the county in which the person resides or the state, whichever is less.

(5) "Montana community reinvestment plan account" means the account in the state special revenue fund and any subaccounts established pursuant to 90-6-145.

(6) "Program" means the Montana community reinvestment plan.

90-6-144. Montana community reinvestment plan. There is a Montana community reinvestment plan that enables regional community reinvestment organizations to reduce the cost of housing to an affordable range for Montana's workforce. The program creates a deed-restricted housing inventory that becomes attainable workforce housing infrastructure for employers, employees, and entire communities by distributing money to community reinvestment organizations that invest the funds by buying down the costs of mortgages for eligible households.

90-6-145. Montana community reinvestment plan account. (1) There is an account in the state special revenue fund established by 17-2-102 known as the Montana community reinvestment plan account. The purpose of the account is to fund the establishment of affordable, attainable workforce housing infrastructure in the state.

(2) Money in the account must be distributed by the governor's office of economic development to community reinvestment organizations based on the percentage of the combined county gross domestic product within the regional boundaries of the organization to that of the state gross domestic product.

90-6-146. Community reinvestment organizations. (1) A community reinvestment organization meeting the requirements of 90-6-147 may be established no later than December 31, 2024.

(2) There may be a maximum of 16 community reinvestment organizations in the state.

(3) The geographic boundaries of each community reinvestment organization must be similar to the boundaries determined by the department of commerce for certified regional development corporations provided for in 90-1-116. Regions not included in the described boundaries may establish community reinvestment organizations up to the maximum number allowed in subsection (2). The certified regional development corporation may choose to create and manage a region's community reinvestment organization but is not required to serve as that region's community reinvestment organization.

(4) Counties that are not within the boundaries of an existing certified regional development corporation region may participate in a neighboring community reinvestment organization or create a community reinvestment organization that includes one or more counties not within an existing certified regional development corporation subject to the limit provided in subsection (2).

(5) Each county wishing to participate in the program shall make an affirmative decision to participate by joining a community reinvestment organization. Counties that do not join a community reinvestment organization are ineligible to participate in the program. A county may only participate in one community reinvestment organization.

(6) A participating county is encouraged to enact local ordinances that provide for an expedited development and construction review process with priority for attainable workforce housing.

(7) To be certified by the chief economic development officer provided for in 2-15-219, a community reinvestment organization shall provide the information required by the chief economic development officer and 90-6-147 by January 15, 2025.

90-6-147. Community reinvestment organization requirements. (1) A community reinvestment organization shall meet the requirements of this section.

(2) A community reinvestment organization must be established as a federally recognized charitable organization under 26 U.S.C. 501(c)(3), (c)(4), or (c)(6).

(3) (a) Each community reinvestment organization shall create a CRO revolving account for the deposit and distribution of funds to participating counties within the community reinvestment organization's region.

(b) Community reinvestment organizations shall deposit into the CRO revolving account an equal amount of funds as those deposited from the Montana community reinvestment plan account prior to any plan dollars being used to buy down attainable workforce housing. Community reinvestment organization matching fund options include but are not limited to the use of the employer pool, local government investments, and the utilization of volume cap bonds.

(4) (a) Money in a CRO revolving account must be used as follows:

(i) 95% or more must be distributed to participating counties to be used to assist eligible households in purchasing attainable workforce housing as provided in this section; and

(ii) 5% or less must be dedicated to startup and administrative costs of the community reinvestment organization and may be used to create a foreclosure mitigation set-aside fund.

(b) Money in a CRO revolving account may not be used for preconstruction, development, or construction-related purposes.

(c) If a county elects not to participate in the program under 90-6-141 through 90-6-149, the money allocated to that county must be distributed proportionally to the remaining counties participating in the program within the same region as the nonparticipating county.

(5) An incorporated city, consolidated city-county, or county may contribute funds to its regional CRO revolving account as an optional local government investment.

(6) Money used from the CRO revolving account to assist an eligible household may not exceed 30% of the total purchase price.

(7) Housing purchased using money from the CRO revolving account must have a deed limitation restricting the equitable value to the eligible household. The rate of appreciation on the deed-restricted home may not be greater than 1% a year.

(8) A community reinvestment organization must coordinate local employer participation in a statewide employer pool.

(9) A community reinvestment organization is encouraged to develop policies to support homeowners buying out the deed restriction so the revolving account can be utilized to buy down the cost of additional homes for other eligible households.

90-6-148. State workforce housing incentive to community reinvestment organizations. (1) A community reinvestment organization established in 90-6-146 that contains communities in the county that have a population of 15,000 or less and are located within a 30-mile radius of a state-owned facility that houses at least 100 state inmates or behavioral health patients is eligible to apply for funds from the appropriation provided for in section 20, Chapter 774, Laws of 2023.

(2) (a) The governor's office of economic development shall allocate funds to applying and qualifying counties within community reinvestment organizations proportionally to the average number of state inmates or behavioral health patients in that state-owned facility in the fiscal year beginning July 1, 2021, and the number of employees in that county that work in the state-owned facilities that serve those inmates or patients.

(b) The department of commerce and the board of investments shall assist the governor's office of economic development in the distribution of funds pursuant to this section.

(3) Each community reinvestment organization that receives state workforce housing incentive funds shall create a state workforce housing CRO revolving account for the deposit and distribution of funds to qualifying and participating counties within the community reinvestment organization's region.

(4) (a) Money in a state workforce housing CRO revolving account must be used as follows:

(i) 95% or more must be distributed to qualifying and participating counties to be used to assist eligible households in purchasing attainable workforce housing as provided in this section; and

(ii) 5% or less must be dedicated to startup and administrative costs of the community reinvestment organization and may be used to create a foreclosure mitigation set-aside fund to be held locally.

(b) Money in a state workforce housing CRO revolving account may not be used for preconstruction, development, or construction-related purposes.

(c) If a county elects not to participate in the program under 90-6-141 through 90-6-149, the money allocated to that county must be distributed proportionally to the remaining counties qualifying and participating in the program within the same region as the nonparticipating county.

(5) An incorporated city, consolidated city-county, or county may contribute funds to its state workforce housing CRO revolving account as an optional local government investment or may receive matching funds from the workforce housing appropriation in section 15, Chapter 774, Laws of 2023.

(6) Money used from the state workforce housing CRO revolving account to assist an eligible household may not exceed 30% of the total purchase price.

(7) (a) Housing purchased using money from the state workforce housing CRO revolving account must have a deed limitation restricting the equitable value to the eligible household. The rate of appreciation on the deed-restricted home may not be greater than 1% a year.

(b) Housing purchased using money from the state workforce housing CRO revolving account must have a deed limitation restriction to ensure that a resident of the housing is employed at a state-owned facility that, on an annual average, houses at least 100 state inmates or behavioral health patients and the state-owned facility is located in a county that has a population that does not exceed 15,000 inhabitants.

(8) A community reinvestment organization is encouraged to develop policies to support homeowners buying out the deed restriction so the revolving account can be utilized to buy down the cost of additional homes for other eligible households.

90-6-149. Use of state trust lands for attainable housing. Where state trust lands are in close proximity to cities, towns, or communities:

(1) the department of natural resources and conservation shall undertake an evaluation of whether the lands could be made available for use as land for potential development of attainable workforce housing as a part of the Montana community reinvestment plan; and

(2) each community reinvestment organization shall consider the use of state lands to support critical public employee services, including attainable workforce housing as part of the Montana community reinvestment plan.

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.

90-6-701. Montana coal endowment program created — definitions. (1) (a) There is a Montana coal endowment program that consists of:

(i) the Montana coal endowment fund established in 17-5-703;

(ii) the infrastructure portion of the coal severance tax bond program provided for in 17-5-701(2).

(b) The Montana coal endowment program may borrow from the board of investments to provide additional financial assistance for local government infrastructure projects under this part, provided that no part of the loan may be made from retirement funds.

(2) Interest from the Montana coal endowment fund and from proceeds of the sale of bonds under 17-5-701(2) may be used to provide financial assistance for local government infrastructure projects under this part, to provide funding to the department of commerce for the administrative costs of the Montana coal endowment program, and to repay loans from the board of investments.

(3) As used in this part, the following definitions apply:

(a) "Infrastructure projects" means:

(i) drinking water systems;

(ii) wastewater treatment;

(iii) sanitary sewer or storm sewer systems;

(iv) solid waste disposal and separation systems, including site acquisition, preparation, or monitoring; or

(v) bridges.

(b) "Local government" means an incorporated city or town, a county, a consolidated local government, a tribal government, a county or multicounty water, sewer, or solid waste district, or an authority as defined in 75-6-304.

(c) "Montana coal endowment fund" means the coal severance tax infrastructure endowment fund established in 17-5-703(1)(b).

(d) "Montana coal endowment program" means the local government infrastructure investment program established in subsection (1).

(e) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

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.

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.

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.

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.

8.97.313 CONFIDENTIALITY OF INFORMATION (1 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) Confidential information 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.

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.

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.

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.

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 final 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.

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.

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.

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.

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.

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.

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.

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.

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 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.

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.

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 qualify 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.