



***Board of Investments***  
**Governing Laws & Constitution**

*As of October 2017*

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# STATE CONSTITUTION INVESTMENT CRITERIA

## - - Article VIII - - REVENUE AND FINANCE

**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.

## BOARD OF INVESTMENTS AUTHORIZING 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**.

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

## OFFICERS AND EMPLOYEES EXCEPTED

**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 five 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**;
- (21) the following positions in the office of state public defender established in **2-15-1029**:
  - (a) the public defender division administrator appointed as provided in **47-1-105**;
  - (b) the deputy public defenders provided for in **47-1-201(3)(a)**, who are appointed by the public defender division administrator;
  - (c) the appellate defender division administrator appointed as provided in **47-1-105**;
  - (d) the conflict defender division administrator appointed as provided in **47-1-105**; and
  - (e) the director of the office of state public defender provided for in **2-15-1029**.

**History:** En. Sec. 2, Ch. 440, L. 1973; amd. Sec. 1, Ch. 256, L. 1974; amd. Sec. 1, Ch. 391, L. 1975; amd. Sec. 2, Ch. 488, L. 1977; amd. Sec. 1, Ch. 565, L. 1977; R.C.M. 1947, 59-904; amd. Sec. 2, Ch. 365, L. 1979; amd. Sec. 2, Ch. 412, L. 1979; amd. Sec. 2, Ch. 512, L. 1979; amd. Sec. 1, Ch. 176, L. 1983; amd. Sec. 11, Ch. 161, L. 1987; amd. Sec. 17, Ch. 581, L. 1987; amd. Sec. 21, Ch. 316, L. 1989; amd. Sec. 39, Ch. 613, L. 1989; amd. Sec. 2, Ch. 660, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 447, L. 1991; amd. Sec. 2, Ch. 507, L. 1991; amd. Sec. 2, Ch. 395, L. 1993; amd. Sec. 14, Ch. 630, L. 1993; amd. Sec. 3, Ch. 455, L. 1995; amd. Sec. 11, Ch. 545, L. 1995; amd. Sec. 24, Ch. 546, L. 1995; amd. Sec. 3, Ch. 339, L. 1997; amd. Sec. 3, Ch. 417, L. 1997; amd. Sec. 2, Ch. 549, L. 1997; amd. Sec. 32, Ch. 313, L. 2001; amd. Sec. 18, Ch. 483, L. 2001; amd. Sec. 16, Ch. 449, L. 2005; amd. Sec. 1, Ch. 24, L. 2011; amd. Sec. 3, Ch. 358, L. 2017.

## QUASI-JUDICIAL BOARDS

**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.

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

## OPEN MEETING LAWS

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

**Meeting defined.** As used in this part, "meeting" means the convening of a quorum of the constituent membership of a public agency or association described in **2-3-203**, whether corporal or by means of electronic equipment, to hear, discuss, or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

**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.

### **2-3-204 through 2-3-210 reserved**

**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.

**2-3-213. Voidability.** Any decision made in violation of **2-3-203** may be declared void by a district court having jurisdiction. A suit to void a decision must be commenced within 30 days of the date on which the plaintiff or petitioner learns, or reasonably should have learned, of the agency's decision.

**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.

**2-3-215 through 2-3-220 reserved.**

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



## DEPOSITS

**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; and

(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow.

**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.

## INVESTMENTS

**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**. The share of the income for this account shall be credited to the general fund.

(3) If, within the list in **17-6-203** of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata.

**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.

**17-6-206 reserved.**

**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.

**17-6-208 through 17-6-210 reserved.**

**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 redeemer. 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 through 17-6-220 reserved.**

**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.

**17-6-222. Repealed.** Sec. 1, Ch. 304, L. 1979.

**17-6-223 and 17-6-224 reserved.**

**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.

**17-6-226 through 16-6-229 reserved.**

**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.

## **SECURITIES LENDING PROGRAM**

**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.

## MONTANA IN STATE INVESTMENTS

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

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

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

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

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

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

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

**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 200 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 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**.

**17-6-306. Repealed.** Sec. 19, Ch. 589, L. 1991.

**17-6-307. Repealed.** Sec. 18, Ch. 581, L. 1987.

**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (7) 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 \$40 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) (a) Subject to subsections (6)(b) through (6)(d), 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 (6)(a) only to finance the everyday operations and required maintenance of a coal-fired generating unit of which an owner has a shared interest.

(c) Loans may not be provided to operate or maintain a coal-fired generating unit beyond July 1, 2022.

(d) The board may charge a working capital loan application fee of up to \$500.

(7) 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.

(8) 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.

(9) 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.

**17-6-310. Repealed.** Sec. 3, Ch. 46, L. 1993.

**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 \$10 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**.

**17-6-315. Repealed.** Sec. 19, Ch. 589, L. 1991.



**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 that will create the necessary infrastructure. The infrastructure may serve as collateral for the loan. The local 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 to provide for the continued operation and maintenance of a coal-fired generating unit until July 1, 2022.

(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 subsection (5)(b), 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.

(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**.

**17-6-323. Repealed.** Sec. 3, Ch. 94, L. 1989.

**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.

**17-6-326 through 17-6-330 reserved.**

**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**.

**17-6-332 through 17-6-339 reserved.**

**17-6-340. Repealed. Sec. 10, Ch. 17, L. 2013.**

**17-6-341 through 17-6-344 reserved.**

**17-6-345. Intermediary relending program.** (1) The board may set aside an amount, not to exceed \$5 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 a seasoned or mature loan from a local economic development organization's revolving loan program.

## COAL SEVERANCE TAX TRUST

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

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

(b) a treasure state endowment fund;

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

(d) a coal severance tax permanent fund;

(e) a coal severance tax income fund;

(f) a big sky economic development fund; and

(g) a school facilities fund.

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

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

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

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

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

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

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

(b) The state treasurer shall monthly transfer from the big sky economic development fund to the economic development special revenue account, provided for in **90-1-205**, the amount of earnings, excluding unrealized gains and losses, required to meet the obligations of the state that

are payable from the account in accordance with **90-1-204**. Earnings not transferred to the economic development special revenue account must be retained in the big sky economic development fund.

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

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

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

(b) a treasure state endowment fund;

(c) a coal severance tax permanent fund;

(d) a coal severance tax income fund;

(e) a big sky economic development fund; and

(f) a school facilities fund.

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

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

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

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

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

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

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

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



## ECONOMIC DEVELOPMENT BONDS

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

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

**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.

**17-5-1519. Repealed. Sec. 19, Ch. 589, L. 1991.**

**17-5-1520. Repealed. Sec. 19, Ch. 589, L. 1991.**

**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.

## MUNICIPAL FINANCE CONSOLIDATION ACT

**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) for the purposes of Title 90, chapter 4, part 12, only, an Indian tribal government.

(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.

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

- (1) A loan for which the security is an enterprise or internal service fund source may be approved by a simple majority vote of the legislature.
- (2) A loan for which the security is a general fund appropriation, a general fund revenue source, or any type of tax or fee imposed by the legislature must be approved by a two-thirds vote of the members of each house of the legislature and must include language authorizing the creation of a state debt under Article VIII, section 8, of the Montana constitution.

**17-5-1613 through 17-5-1620 reserved.**

**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.

17-5-1632 through 17-5-1640 reserved.

**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.

## PROCUREMENT OF VEHICLES AND EQUIPMENT THROUGH INTERCAP

**17-5-2001.** *(Subsection (3) effective January 1, 2018, or on occurrence of contingency)* **Loans to state agencies.** (1) An agency responsible for the procurement and provision of vehicles, automated systems, and equipment using an enterprise fund or an internal service fund, as described in **17-2-102**, is authorized to enter into contracts, loan agreements, or other forms of indebtedness payable over a term not to exceed 7 years for the purpose of financing the cost of the vehicles and equipment and to pledge to the repayment of the indebtedness the revenue of the enterprise fund or internal service fund if:

(a) the term of the indebtedness does not exceed the useful life of the items being financed; and

(b) at the time that the indebtedness is incurred, the projected revenue of the fund, based on the fees and charges approved by the legislature and other available fund revenue, will be sufficient to repay the indebtedness over the proposed term and to maintain the operation of the enterprise.

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

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

(3) The department of justice is authorized to enter into contracts, loan agreements, or other forms of indebtedness with the board of investments for an amount not to exceed \$4.6 million, payable over a term not to exceed 10 years, for financing the cost of an information technology system, and other associated costs, for the implementation of the REAL ID Act of 2005. Loans are payable from the state special revenue fund provided for in **61-5-129(4)(b)**. *(Subsection (3) void or effective date delayed on occurrence of contingency--secs. 8, 9, Ch. 443, L. 2017.)*

## ISSUANCE OF OBLIGATIONS – AUTHORIZATION – CONDITIONS

**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, issue and sell to the board of investments 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 (4), including the payment of settlements of legal claims and judgments; and

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

(2) 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.

(3) (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)**.

(4) 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 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.

(5) 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**.

(6) Except as provided in subsection (3)(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.

(7) An obligation issued is payable from any legally available fund of the district and constitutes a general obligation of the district.

(8) The obligation may bear interest at a fixed or variable rate and may be sold to the board of investments 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.

(9) 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**.