

## 1 SENATE BILL NO. 279

2 INTRODUCED BY W. MCNUTT, SLITER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING A 4 PERCENT LOAN RATE FOR THE FIRST 5  
 5 YEARS FOR A LOAN TO A BUSINESS CREATING OR RETAINING 10 TO 14 JOBS UNDER THE  
 6 VALUE-ADDED LOAN PROGRAM; ESTABLISHING THE BOARD OF INVESTMENTS' POSTED RATE AS THE  
 7 RATE OF INTEREST FOR THE THIRD 5-YEAR PERIOD ON A LOAN; PROVIDING THAT THE RATE OF  
 8 INTEREST ON A LOAN IS THE BOARD'S POSTED RATE UNTIL JOB CERTIFICATION REQUIREMENTS  
 9 HAVE BEEN MET; PROVIDING A MATHEMATICAL NUMERICAL THRESHOLD FOR DETERMINING LOAN  
 10 PROGRAM ELIGIBILITY; AMENDING SECTION 17-6-317, MCA; AND PROVIDING AN IMMEDIATE  
 11 EFFECTIVE DATE."

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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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15 **Section 1.** Section 17-6-317, MCA, is amended to read:16 **"17-6-317. Participation by private financial institutions -- rulemaking.** (1) (a) The board may  
 17 jointly participate with private financial institutions in making loans to a business enterprise if the loan will:18 (i) result in the creation of a business estimated to employ at least ~~45~~ 10 people in Montana on  
 19 a permanent, full-time basis; ~~or~~20 (ii) result in the expansion of a business estimated to employ at least an additional ~~45~~ 10 people  
 21 in Montana on a permanent, full-time basis; OR22 (iii) PREVENT THE ELIMINATION OF THE JOBS OF AT LEAST 10 MONTANA RESIDENTS WHO ARE PERMANENT,  
 23 FULL-TIME EMPLOYEES OF THE BUSINESS.24 (b) Loans under this section may be made only to business enterprises that are producing or will  
 25 produce value-added products or commodities.26 (c) ~~a~~ A loan made pursuant to this section does not qualify for a job credit interest rate reduction  
 27 under 17-6-318.28 (2) A loan made pursuant to this section may not exceed 1% of the coal severance tax permanent  
 29 fund and must comply with each of the following requirements:

30 (a) (i) The business enterprise seeking a loan must have a cash equity position equal to at least

1 25% of the total loan amount.

2 (ii) A participating private financial institution may not require: THE BUSINESS TO HAVE AN EQUITY  
3 POSITION GREATER THAN 50% OF THE TOTAL LOAN AMOUNT.

4 ~~—— (A) the business enterprise to have an equity position greater than 25% of the total loan amount;~~  
5 ~~or~~

6 ~~—— (B) additional security or guarantees to cover its exposure, but this does not preclude federal~~  
7 ~~guarantees.~~

8 (ii) IF ADDITIONAL SECURITY OR GUARANTEES, EXCLUSIVE OF FEDERAL GUARANTEES, ARE REQUIRED TO COVER  
9 A PARTICIPATING PRIVATE FINANCIAL INSTITUTION, THEN THE ADDITIONAL SECURITY OR GUARANTEES MUST BE  
10 PROPORTIONAL TO THE AMOUNT LOANED BY ALL PARTICIPANTS, INCLUDING THE BOARD OF INVESTMENTS.

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

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

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

14 (i) ~~2% a year~~ for the first 5 years if 15 or more jobs are created OR RETAINED;

15 (ii) 4% for the first 5 years if 10 to 14 jobs are created OR RETAINED;

16 ~~(ii)(iii)~~ 6% a year for the second 5 years; and

17 ~~(iii)(iv)~~ the board's posted interest rate for the third 5 years, ~~an amount equal to the national prime~~  
18 ~~interest rate, adjusted annually on January 1 of each year,~~ but not to exceed 10% a year.

19 (e) (i) The interest rates in subsections (2)(d)(i) and (2)(d)(ii) become effective when the board  
20 receives certification that the required number of jobs has been created OR AS PROVIDED IN SUBSECTION  
21 (2)(E)(ii). If the board disburses loan proceeds prior to creation of the required jobs, the loan must bear  
22 interest at the board's posted rate.

23 (ii) IN ESTABLISHING INTEREST RATES UNDER SUBSECTIONS (2)(D)(I) AND (2)(D)(II) FOR PREVENTING THE  
24 ELIMINATION OF JOBS, THE BOARD SHALL REQUIRE THE SUBMISSION OF FINANCIAL DATA THAT ALLOWS THE BOARD TO  
25 DETERMINE IF THE LOAN AND INTEREST RATE WILL IN FACT PREVENT THE ELIMINATION OF JOBS.

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

29 (g) For purposes of calculating job creation OR RETENTION requirements, the board shall use the  
30 average weekly salary, as defined in 39-71-116, multiplied by the number of jobs required. This calculated

1 number is the minimum aggregate salary threshold that is required to be eligible for a reduced interest rate.  
 2 If individual jobs created pay less than the average weekly salary, the borrower shall create more jobs to  
 3 meet the minimum aggregate salary threshold. If fewer jobs are created OR RETAINED than required in  
 4 subsection (2)(d)(i) or (2)(d)(ii) but aggregate salaries meet the minimum aggregate salary threshold, the  
 5 borrower is eligible for the reduced interest rate. A job paying less than the minimum wage, provided for  
 6 in 39-3-409, may not be included in the required number of jobs.

7 ~~(e)~~(h) (i) A participating private financial institution may charge interest in an amount equal to the  
 8 national prime interest rate, adjusted on January 1 of each year, but the interest rate may not be less than  
 9 6% or greater than 12%.

10 (ii) AT THE BORROWER'S DISCRETION, THE BORROWER MAY REQUEST THE LEAD LENDER TO CHANGE THIS PRIME  
 11 RATE TO AN ADJUSTABLE OR FIXED RATE ON TERMS ACCEPTABLE TO THE BORROWER AND LENDER.

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

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

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

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

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

23 (5) A business enterprise receiving a loan under the provisions of this section may not pay bonuses  
 24 or dividends to investors until the loan has been paid off, except that incentives may be paid to employees  
 25 for achieving performance standards or goals.

26 (6) The board may adopt rules that it considers necessary to implement this section."  
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28 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.  
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