

1 SENATE BILL NO. 379

2 INTRODUCED BY M. WHEAT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS TO PROVIDE FOR CORPORATE
5 ACCOUNTABILITY; REQUIRING THE FILING OF A STATEMENT OF COMPLIANCE WITH THE FEDERAL
6 SARBANES-OXLEY ACT OF 2002; REQUIRING RETENTION OF AUDIT REPORTS AND FINANCIAL
7 STATEMENTS IN COMPLIANCE WITH THE FEDERAL SARBANES-OXLEY ACT OF 2002; PROVIDING FOR
8 ENFORCEMENT OF CORPORATE ACCOUNTABILITY LAWS; PROHIBITING THE STATE FROM INVESTING
9 IN OR CONTRACTING WITH A CORPORATION NOT IN COMPLIANCE WITH THE FEDERAL
10 SARBANES-OXLEY ACT OF 2002; AUTHORIZING THE BOARD OF PUBLIC ACCOUNTANTS TO ADOPT
11 RULES REQUIRING LICENSEES WHO AUDIT PUBLICLY TRADED CORPORATIONS TO MAINTAIN AUDIT
12 WORK PAPERS AND OTHER INFORMATION RELATED TO ANY AUDIT REPORT IN ACCORDANCE WITH
13 THE FEDERAL SARBANES-OXLEY ACT OF 2002; AMENDING SECTIONS 17-6-201 AND 37-50-203, MCA;
14 AND PROVIDING AN EFFECTIVE DATE."

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

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18 **NEW SECTION. Section 1. Corporate responsibility for verifying compliance with federal law.**
19 Each publicly traded corporation filing an annual report under 35-1-1104 shall at the same time file with the
20 secretary of state a written statement verifying its compliance with the reporting requirements of the federal
21 Sarbanes-Oxley Act of 2002, Public Law 107-204, and the regulations adopted pursuant to the federal act.

22
23 **NEW SECTION. Section 2. Retention of audit reports and financial statements.** Each publicly
24 traded corporation wishing to do business with the state of Montana shall maintain all audit reports and financial
25 statements in accordance with the federal Sarbanes-Oxley Act of 2002, Public Law 107-204, and the regulations
26 adopted pursuant to the federal act.

27
28 **NEW SECTION. Section 3. Enforcement.** If notified in writing that a publicly traded corporation has
29 failed to comply with the provisions of [sections 1 and 2], the state auditor may investigate and if necessary
30 require compliance with the provisions of [sections 1 and 2]. The state auditor may:

1 (1) issue subpoenas, compel testimony, and conduct hearings as provided in Title 2, chapter 4, parts
2 1 and 6;

3 (2) make public or private investigations or examinations within or outside this state that the state
4 auditor considers necessary to determine whether a publicly traded corporation has violated [section 1 or 2];

5 (3) require or permit a publicly traded corporation to file a statement in writing, under oath or otherwise
6 as the state auditor may determine, relating to the facts and circumstances concerning a matter to be
7 investigated;

8 (4) notify the secretary of state and any other appropriate state entity of the auditor's findings; and

9 (5) publish information concerning a violation of [section 1 or 2].
10

11 **Section 4.** Section 17-6-201, MCA, is amended to read:

12 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
13 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
14 administered by the board of investments in accordance with the prudent expert principle, which requires an
15 investment manager to:

16 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then
17 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters
18 exercises in the conduct of an enterprise of a like character with like aims;

19 (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss
20 and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and

21 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified
22 investment program.

23 (2) (a) Retirement funds may be invested in common stocks of any corporation.

24 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital
25 stock" means only the common stock of a corporation.

26 (3) (a) This section does not prevent investment in any business activity in Montana, including activities
27 that continue existing jobs or create new jobs in Montana.

28 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in
29 venture capital companies. Whenever possible, preference should be given to investments in those venture
30 capital companies that demonstrate an interest in making investments in Montana.

1 (c) In discharging its duties, the board shall consider the preservation of purchasing power of capital
2 during periods of high monetary inflation.

3 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion
4 of a loan originated by a financial institution is not considered a direct loan.

5 (4) The board has the primary authority to invest state funds. Another agency may not invest state funds
6 unless otherwise provided by law. The board shall direct the investment of state funds in accordance with the
7 laws and constitution of this state. The board has the power to veto investments made under its general
8 supervision.

9 (5) The board shall:

10 (a) assist agencies with public money to determine if, when, and how much surplus cash is available
11 for investment;

12 (b) determine the amount of surplus treasury cash to be invested;

13 (c) determine the type of investment to be made;

14 (d) prepare the claim to pay for the investment; and

15 (e) keep an account of the total of each investment fund and of all the investments belonging to the fund
16 and a record of the participation of each treasury fund account in each investment fund.

17 (6) The board may:

18 (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the
19 transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by
20 a qualified appraiser.

21 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and
22 17-6-105;

23 (c) direct the sale of securities in the program at their full and true value when found necessary to raise
24 money for payments due from the treasury funds for which the securities have been purchased.

25 (7) The board may not make an investment in an entity that is not in compliance with [section 1] or the
26 federal Sarbanes-Oxley Act of 2002, Public Law 107-204. This subsection may not be construed to require the
27 board to divest an existing investment to the detriment of the state's financial interests.

28 ~~(7)~~(8) The cost of administering and accounting for each investment fund must be deducted from the
29 income from each fund."
30

1 NEW SECTION. **Section 5. Contract restriction.** The state may not enter into a contract with a
2 publicly traded corporation that is not in compliance with [sections 1 and 2] or the federal Sarbanes-Oxley Act
3 of 2002, Public Law 107-204, and the regulations adopted pursuant to the federal act.

4

5 **Section 6.** Section 37-50-203, MCA, is amended to read:

6 "**37-50-203. Rules of the board.** (1) The board may adopt rules, consistent with the purposes of this
7 chapter, as it considers necessary.

8 (2) The board shall adopt:

9 (a) rules of professional conduct appropriate to establish and maintain a high standard of integrity,
10 dignity, and competency in the profession of public accounting, including competency in specific fields of public
11 accounting;

12 (b) rules of procedure governing the conduct of matters before the board;

13 (c) rules governing education requirements, as provided in 37-50-305, for issuance of the certificate of
14 a certified public accountant and the license for licensed public accountant;

15 (d) rules defining requirements for accounting experience, not exceeding 2 years, for issuance of the
16 initial permit; ~~and~~

17 (e) rules requiring licensees who audit publicly traded corporations to maintain audit work papers and
18 other information related to any audit report, in accordance with the federal Sarbanes-Oxley Act of 2002, Public
19 Law 107-204; and

20 ~~(e)~~(f) rules to enforce the provisions of this chapter. The purpose of the rules must be to provide for the
21 monitoring of the profession of public accounting and to maintain the quality of the accounting profession.

22 (3) The board may adopt rules:

23 (a) governing partnerships, corporations, and other types of entities practicing public accounting,
24 including but not limited to rules concerning style, name, title, and affiliation with other organizations;

25 (b) (i) establishing reasonable standards with respect to professional liability insurance and unimpaired
26 capital; and

27 (ii) prescribing joint and several liability for torts relating to professional services for shareholders of a
28 corporation or owners of other types of entities that fail to comply with standards established pursuant to
29 subsection (3)(b)(i); and

30 (c) establishing education and experience qualifications for out-of-state and foreign accountants seeking

1 authorization to practice in Montana."
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3 NEW SECTION. Section 7. Codification instruction. (1) [Sections 1 through 3] are intended to be
4 codified as an integral part of Title 35, chapter 1, and the provisions of Title 35, chapter 1, apply to [sections 1
5 through 3].

6 (2) [Section 5] is intended to be codified as an integral part of Title 18, chapter 1, part 1, and the
7 provisions of Title 18, chapter 1, part 1, apply to [section 5].
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9 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 2005.

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