



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2015 Biennium

Bill # HB0482

Title: Generally revise laws related to the board of investments to create a state bank

Primary Sponsor: McCarthy, Kelly

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2014 Difference</u>	<u>FY 2015 Difference</u>	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>
Expenditures:				
General Fund	-----	Unable to Determine	-----	-----
State Special Revenue	-----	Unable to Determine	-----	-----
Federal Special Revenue	-----	Unable to Determine	-----	-----
Other	-----	Unable to Determine	-----	-----
Revenue:				
General Fund	-----	Unable to Determine	-----	-----
State Special Revenue	-----	Unable to Determine	-----	-----
Federal Special Revenue	-----	Unable to Determine	-----	-----
Other	-----	Unable to Determine	-----	-----
Net Impact-General Fund Balance:	-----	Unable to Determine	-----	-----

Description of fiscal impact: HB 482 creates the Montana Partnership Bank which is to be governed by the Board of Investments. The bill establishes the Montana Partnership Bank revolving loan account which allows the Board of Investments to invest short-term investments, public employees' retirement funds, and a portion of the permanent coal tax trust fund in the Montana Partnership Bank for either capitalization or loan making purposes, and exempts certain bank officers from the state pay plan. The bill also provides for a statutory appropriation, extends rulemaking authority, and amends sections.

FISCAL ANALYSIS

Assumptions:

Department of Commerce (DOC)

1. The Department of Commerce and the Board of Investments are unable to determine the potential fiscal impacts of creating a new state owned commercial bank in the time allowed to prepare a fiscal note; but they are thought to be significant.
- 2.

17-1-508, MCA requires analysis of the statutory appropriation relative to the guidance in 17-1-508(2), MCA, to be published in the fiscal note. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines.

	<u>YES</u>	<u>NO</u>
a. The fund or use requires an appropriation.	X	
b. The money is not from a continuing, reliable, and estimable source.		X
c. The use of the appropriation or the expenditure occurrence is not predictable and reliable.	X	
d. The authority does not exist elsewhere.	X	
e. An alternative appropriation method is not available, practical, or effective.		X
f. Other than for emergency purposes, it does not appropriate money from the state general fund.	X	
g. The money is dedicated for a specific use.	X	
h. The legislature wishes the activity to be funded on a continual basis.	X	
i. When feasible, an expenditure cap and sunset date are included.		X

Technical Concerns:

1. The bill allocates \$15 million of permanent coal tax trust fund which would be used in part in ‘covering any loan loss’ (see Sec. 4). This appears to be a loan loss guarantee account. If so, the Board of Investments (indirectly affected as the successor to the former Science and Technology Alliance the former Montana Economic Development Board) was precluded twice in implementing such a guarantee fund by the Supreme Court (See the *White* and the *Hollow* decisions).
2. The Board of Investments is charged with managing all of its fiduciary assets under its current prudent expert principle. The bill authorizes the board if necessary to make a no-interest loan to cover loan losses. Forcing the board to determine which fund would bear a non-interest loan and give up the opportunity cost of investment earnings would ordinarily be outside the scope of prudent investment management. If faced with this circumstance, staff will recommend that the Treasurer’s fund be used, as it most closely aligns with the bill’s requirement for the board to seek an appropriation for monies to recover any such loss, likely general fund money and therefore the Treasurer’s fund.
3. The bill identifies that there will be a ‘capitalization’ requirement (See Sec. 4). It is not specified if there is any expectation of a return on such capitalization or its use just as a source of loans or loan guarantees.

4. The bill allocates \$10 million in ‘retirement’ funds to the bank for ‘bank capitalization’. The board may be unable to reconcile its fiduciary duties to manage pension monies for appropriate risk/return and offer competitive loan monies through such a capitalization. The board’s current mortgage rate offered for pension fund investment is currently uncompetitive.
5. New Section 1 provides that certain provisions of the Bank Act (Title 32) are to apply to the Montana partnership bank, including provisions requiring examination by the Division of Banking and Financial Institutions. However, the bill gives the Board of Investments (who is also the Board of Directors of the “bank”) the authority to determine which provisions of Title 4 (governing operation and regulation) the Montana partnership bank will comply with and which it will not rather than leaving this determination within the appropriate purview of the Legislature. Allowing the Board of Investments (aka the Board of Directors) to determine the rules the bank must abide by will significantly change the examination process.
6. Section 3 part 3 provides that the Montana partnership bank may not create a state debt; however, in part 4, it is contemplated that a loan loss could exceed collateral and bank equity and result in a no-interest loan from the Board of Investments which would result in an appropriation during the next legislative session. This may run counter to constitutional principles addressed in *Hollow v. State*, 222 Mont. 478 (Mt. 1986).

Sponsor’s Initials

Date

Budget Director’s Initials

Date