BUDGET BASICS

PURPOSE

This section provides an overview of the basic budget concepts, definitions of budget terms, and background and reference information pertinent to the 2003 biennium budget and legislative appropriations process.

TYPES OF LEGISLATIVE APPROPRIATIONS

Article VIII, Section 14, of the Montana Constitution reads:

> "Prohibited Payments: Except for interest on the public debt, no money shall be paid out of the treasury unless upon an appropriation made by law and a warrant drawn by the proper officer in pursuance thereof."

Appropriation power lies with the legislature. In 17-7-501, MCA, three types of appropriations fall within the meanings of "appropriation made by law" as used in Article VIII, Section 14, of the Montana Constitution.

<u>Temporary appropriations</u> – Most activities of state government are funded on a temporary basis, usually for two-year periods. Funding, therefore, must be reauthorized by each legislature. The main vehicle for the provision of temporary appropriations is HB 2 (the General Appropriations Act).

<u>Statutory appropriations</u> – Statutory appropriations are made directly in statute, and are automatically made until and unless the law is changed. Statutory appropriations are listed in 17-7-502, MCA.

<u>Budget amendments</u> – Various authorities (most often the Governor) can approve the addition of certain funds (primarily federal) during the interim if certain statutorily-defined conditions are met. General fund appropriations cannot be added without express legislative approval.

In limited cases, authorizations to expend funds can also be made through appropriation or under general laws and contracts. The great majority of state agency operations are funded through temporary appropriations.

FUND TYPES

Governmental accounting differs from private enterprise accounting in that funding is segregated and defined by the source and use of the funding. There are four main groups of funds in state government accounting.

Governmental funds consist of the following funds:

- **General fund** includes all financial resources except those that must be accounted for in another fund. The general fund collects most general taxes levied, including individual and corporate income tax, property tax, and investment income. Revenue from a number of other taxes is also deposited into the general fund.
- **Special revenue funds** consist of two funds. 1) *State special revenue* is money from state and other sources earmarked for the purpose of defraying particular costs of an agency, program, or function. The largest state special revenue accounts are the Highways State Special Revenue Account (HSSRA), which collects various fuel taxes and is used to support highway-related functions, and the general license account, which collects various hunting and fishing fees and is used to support functions in the Department of Fish, Wildlife, and Parks. 2) *Federal special revenue* is revenue from federal sources. Most state agencies receive some federal funds. The two major sources of federal funds are used to support highway-related functions and human services programs such as Medicaid.
- **Debt service funds** are used to account for the accumulation of resources for the payment of general long-term obligations, including principal and interest. Debt service funds are statutorily appropriated.
- **Capital projects funds** are financial resources used for the acquisition or construction of major fixed assets. These funds are appropriated through bills that fund capital projects.

Proprietary funds are used for operations that provide goods or services to the public on a user-charge basis (enterprise funds), or to other agencies or programs of state government (internal service funds).

Fiduciary funds provide for those assets held by state government in a trustee capacity, or as an agency for individuals, private organizations, other governmental entities, or other funds.

University funds are used to support the university system and are classified according to the College and University Business Association (CUBA) structure. The legislature appropriates a portion of the funds used to support the university system as governmental funds, which are then reclassified as university system funds.

With the exception of a small portion of proprietary funds, the legislature does not directly appropriate proprietary, fiduciary, or university funds. The legislature directly appropriates most governmental funds. Debt service funds are usually statutorily appropriated. Capital projects funds are appropriated in the bills that fund the capital projects. The great majority of general fund monies and special revenue funds are appropriated through temporary appropriations bills.

HB 2

The temporary spending bill through which over 83 percent of general fund monies and special revenue funds are appropriated is HB 2, the General Appropriations Act. The fiscal report on individual agencies contained in Volumes 3 and 4 of this report concentrates on the appropriations made in HB 2.

Statute requires that the legislature establish fees and charges for all internal services functions. Statute further restricts programs from increasing those fees and charges during the biennium. While only a small portion of proprietary funds are appropriated in HB 2, all rates approved by the legislature are listed in that bill.

Figure 1 shows all internal services rates reviewed and approved by the legislature. The 2001 legislature approved conversion of the funding for 3 additional programs in the 2003 biennium that had been funded through HB 2 appropriation: 1) the Personnel Unit; and 2) Statewide Accounting, Budgeting, and Human Resource Systems (SABHRS) vendor maintenance, both in the Department of Administration; and 3) the cook/chill function in the Department of Corrections. (The legislature also changed funding for the Advanced Driver Education Program in the Office of Public Instruction from state special revenue to a non-appropriated enterprise account. While the legislature reviews enterprise funds, it does not approve rates.) In addition, the legislature switched funding for Records Management and Administrative Rules from internal service to enterprise funds in the Office of the Secretary of State. The Customer Service Center in the Department of Revenue was changed from internal service to an appropriated fund for most functions.

Figure 1
Internal Services Functions
2003 Biennium

Agency/Program or Function
Transportation
Motor Pool
Equipment
Revenue
Customer Service Center - Accounts Receivable
Administration
Accounting/Management Support
Procurement and Printing
Information Services, including SABHRS Operations
General Services
Central Mail
Local Government Services
Professional Development Center
Payroll
Personnel Unit
State Employee Benefits
Risk Management/Tort Defense
Fish, Wildlife, and Parks
Administration and Finance
Capitol Grounds Maintenance
Aircraft and Vehicle Usage
Duplicating and Bindery
Environmental Quality
Central Management
Natural Resources and Conservation
Air Operations
Commerce
Board of Investments
Director/Management Services
Justice
Agency Legal Services
Corrections
Corrections Enterprises
Cook/Chill
Labor and Industry
Central Services Division
Professional and Occupational Licensing
Office of Public Instruction
Centralized Services
Montana University System
MUS Group Insurance

BUDGET TERMS

Budgets must, by statute, be submitted in three tiers to allow legislative scrutiny of all stages of budget development:

The base - defined as the resources for the operation of state government, and used to cover current biennium expenses of an ongoing and non-extraordinary nature. The base and how it is derived are discussed in more detail in the "Base Budget" portion of this narrative.

Present law - defined as that additional level of funding needed to maintain operations and services at the level authorized by the previous legislature. Present law includes but is not limited to legally-mandated workload, caseload, or enrollment changes; changes in funding requirements; inflationary or deflationary adjustments; and elimination of one-time appropriations.

New proposals - defined as requests to provide new non-mandated services, to change program services, to eliminate existing services, or to change sources of funding.

Changes to the budget are made individually through decision packages, which must be approved by the legislature. Decision packages can either change present law or add new proposals approved for funding.

BASE BUDGET

The legislature used actual fiscal 2000 expenditures as recorded on the Statewide Accounting, Budgeting and Human Resource System (SABHRS) as the base for determining a present law budget for the 2003 biennium. Certain items were then excluded in order to create a base that reflects only: 1) the cost of ongoing programs or functions approved by the last legislature; and 2) expenditures authorized by the legislature. The Office of Budget and Program Planning (OBPP) and LFD staff initially reached agreement on virtually all expenditures removed from the base.

Following is an explanation of each type of expenditure category *excluded* from the base:

Appropriation Transfers

Section 17-7-301, MCA, allows the Governor to authorize the transfer of funds appropriated for the second year of the biennium to the first year, if the Governor finds that “due to an unforeseen or an unanticipated emergency” the amount appropriated for the first year of the biennium “will be insufficient for the operation and maintenance of the department.” Since such transfers do not result from legislative action and may be used for meeting one-time costs, these transfers are excluded from the base. However, if the transfer funds an ongoing cost, present law budgets for the next biennium are adjusted accordingly.

Budget Amendments

Budget amendments provide temporary authority allowing agencies to spend unanticipated non-general fund revenue received after the legislature has adjourned. This revenue can to be used to provide additional services. In accordance with 17-7-402, MCA, budget amendment authority terminates at the end of each biennium and can make no “ascertainable present or future significant commitment for increased general fund support.” Expenditures financed through budget amendments are excluded from the base. If an agency wishes to continue an activity financed with a budget amendment in the following biennium, the request must be presented as a new proposal.

One-Time Appropriations

In general, miscellaneous or “cat and dog” appropriations (appropriations made in bills other than the general appropriations act) are considered “one-time” and not continued in the base. The legislature may specify in appropriation acts that an appropriation is not intended to be ongoing and may not be included in the base.

Language Appropriations

In appropriation acts, the legislature may authorize expenditure of funds from a specific source without providing a specific dollar appropriation. Language appropriations are generally used when an agency knows that it will be receiving federal or state special revenue funds (that it is required by statute to spend) but is uncertain as to the amount of those funds. In order to be sanctioned by law as an appropriation, the language must, at least, fix a maximum amount that the appropriations may not exceed. Assuming that ongoing expenditures from these sources are one-time only in nature, the expenditures are excluded from the base.

Non-Budgeted Expenditures

Generally Accepted Accounting Principles (GAAP) require agencies to make accounting entries for depreciation, amortization, and other financial transactions that appear as expenditures, but don’t result in the actual expenditure of funds from the state treasury.

Statutory Appropriations
Section 17-7-501, MCA, provides that funds may be appropriated in permanent law rather than through appropriation bills, which are effective for one biennium only. In order for a statutory appropriation to be valid, the statute creating the appropriation must specifically state that it is a statutory appropriation. The statute must then be listed in Section 17-7-502, MCA. Examples of statutory appropriations include personal property reimbursements made to local governments and schools and motor fuel tax revenues distributed to counties. In the 2003 biennium, the legislature created a several new statutory appropriations, including local government reimbursements contained in HB 124.

Other Appropriations
This category includes administrative transfers created by OBPP, continuing appropriations from previous years, internal offset adjustments to appropriations, and miscellaneous appropriations.

ENTITLEMENT AND FORMULA-FUNDED PROGRAMS
Under current state and federal law, certain programs are “entitlement programs,” which means that if an individual meets the underlying criteria for qualification, services must be provided (i.e., the person is “entitled” to the service). Projected growth or declines in these programs are funded as part of the present law budget, rather than through new proposals. For example, the legislature has established statutory levels of state support for each child enrolled in Montana public schools. Similarly, federal and state laws require that persons eligible for Medicaid receive specified services or grants. The programs treated as entitlement include K-12 BASE aid, Medicaid, and foster care.

PERSONAL SERVICES “SNAPSHOT”
The personal services budget is based on a “snapshot” of actual salaries for authorized FTE, as they existed in the last pay period of fiscal 2000. The budget also includes annualization of the pay increases appropriated in fiscal 2000 and 2001.

Workers’ Compensation and Unemployment Insurance rates vary from agency to agency. Each agency has a different rate based upon experience.

VACANCY SAVINGS
Vacancy savings is the difference between the full-appropriated cost and the actual cost of authorized employee positions during a budget period. Since 1979, the legislature has periodically applied a vacancy savings factor to agency budgets in recognition of the fact that staff turnover and vacancies often result in personal services expenditures lower than the amounts appropriated.

During the 1997 biennium, the legislature included varying vacancy savings rates among selected agencies, and among programs within agencies, in order to fund the executive pay plan. A contingency fund containing $500,000 general fund and $1,000,000 in other funds was included for this purpose.

During the 1999 biennium, the legislature applied a uniform 3 percent vacancy savings rate against all positions in state government, with the exception of those positions in agencies with fewer than 20 FTE. The legislature also assumed that any new positions added via new proposals would not be hired at the very beginning of the fiscal year as a result of the need to recruit and to meet other requirements demanding the expenditure of time. Operating under the assumption that such positions would not be filled for the first three months of the fiscal year, the legislature applied a 25 percent vacancy savings rate in the first year. The legislature also provided $2.3 million general fund and $8.8 million in other funds for the biennium in support of a contingency pool for those agencies that could not meet their vacancy savings targets. A further discussion of the pay plan is on page 104 of this volume.

For the 2001 biennium, the legislature adopted a vacancy savings rate of 3 percent on all personal services except insurance. This rate was not applied to agencies with fewer than 20 FTE, elected officials, or to direct care workers within the Department of Corrections. The legislature funded a contingency pool of $700,000 from the general fund and $950,000 in other funding for the biennium.

For the 2003 biennium, the legislature established a 4 percent vacancy savings rate on all personal services, including insurance, for most agencies and programs. As in the 2001 biennium, agencies with fewer than 20 FTE (with the exception of the Board of Crime Control, which, due to a reorganization, was reduced to fewer than 20.0 FTE during the legislative session) as well as university system faculty are exempt. In addition, the legislature adopted lower rates on certain agencies and higher rates on other programs. For a full listing of the exceptions to the 4 percent vacancy savings, see the "Vacancy Savings" narrative in this volume on page 110.

The legislature also included a contingency fund of $1.3 million general fund and $3.0 million from other funds for the biennium to meet potential costs involved for those executive and judicial agencies that do not meet their vacancy savings targets, and a further $200,000 general fund to assist the Legislative Branch.

FIXED COSTS

Agencies are charged fees (called fixed costs) for a variety of services provided by other state agencies. The Executive Budget includes fixed costs for the following services: Department of Administration (DofA) insurance and bonds (62104), DofA warrant writing fees (62113), DofA payroll service fees (62114), Legislative Auditor audit fees (62122), SABHRS (Statewide Accounting, Budgeting, and Human Resources System) operating costs (62148), DofA network fees (62174), messenger services (62307), State Motor Pool leases (62510), DofA rent (62527), capitol complex grounds maintenance (62770), MTPRRIME (Montana Project to Reengineer the Revenue and Information Management Environment, the precursor to SABHRS) debt service costs (62875), and the state fund cost allocation plan (62895).

Figure 2 shows the total amounts included for fixed costs. Please note that these are total costs, including those funded with non-budgeted proprietary funds.

For an explanation of each fixed cost and how it is calculated, please refer to the "Appropriations by Agency and Program" narrative page 4, that begins both Volume 3 and Volume 4.

Figure 2
Fixed Costs*
2003 Biennium (in Millions)

Subcommittee/Agency	Function	Total
General Government		
Administration	Insurance & Bonds	$16.714
	Warrant Writing Fees	1.677
	Payroll Service Fees	0.727
	Data Network Services	18.836
	SABHRS Operating	8.351
	SABHRS Bonds	4.520
	Messenger Services	0.340
	Rent - Buildings	8.941
Transportation	Motor Pool Leases	5.875
Legislative Audit Division	Audit Fees	2.973
Natural Resources and Commerce		
Fish, Wildlife, & Parks	Grounds Maintenance	0.640
Various	State Fund Allocation Plan	1.291
Total		$70.885

*All funds, including non-budgeted proprietary funds.

BUDGET COMPARISON METHODOLOGY

The legislature has traditionally used budget comparisons as a tool to assess budget performance and growth patterns in the state budget.

A great deal of interest, confusion, and controversy developed in recent years over the size of the state budget and methods of comparison. The state budget is complex, and the methods used to compute the comparisons can vary considerably.

In view of the confusion over comparisons, the 1997 legislature passed SB 35, sponsored by the Legislative Finance Committee (LFC), which established a statutory methodology (17-7-151, MCA) for calculating budget comparisons.

This section summarizes the major tenets of the statutory budget comparison. This methodology is intended for those comparisons that are made before, during, and immediately following legislative sessions to measure budget performance and growth. The major tenets of the methodology include:

1. The measure of budget performance will be total state expenditures of funds (projected) obtained from taxes, licenses, and certain fees. This includes federal funds.
2. The unit of measure for the comparisons will be actual expenditures in the first year plus appropriations in the second year of the current biennium, compared to appropriations in the next biennium.
3. The comparisons must be fair and balanced. That is, the same attributes are to be included on both sides of the comparison, and to be calculated using like methods.
4. The Legislative Fiscal Analyst and the Governor's Budget Director will work together to reach agreement on estimates to be included in the projections. Where there are irreconcilable differences, the LFD is to explain them as part of the budget analysis.
5. Both the Legislative Fiscal Analyst and the executive are required to use the statutory methodology for budget comparisons. This is to ensure consistency of application and to avoid manipulation of comparisons.

The methodology includes all appropriations and projected expenditures, as stated in item number 1 above. Statute lists the types of expenditures that must be included, but specifically excludes certain expenditures to eliminate duplicate costs, non-operational costs, transfers, enterprise operations, and fiduciary funds.

The following components (fund and appropriation type) are to be included in budget comparisons:

- General fund, state special revenue, and federal special revenue
- Proprietary funds that require an appropriation
- Cash appropriations for the Long Range Building Program
- Agency funds – only tax distributions to local governments

Certain components are excluded from the comparison for the following reasons:

?? Eliminate double counting
- ✍ Debt service funds
- ✍ Capital project funds (except cash appropriations)
- ✍ Internal service funds (proprietary)
- ✍ Administrative/agency transfer appropriations

?? Eliminate enterprise/corporate components
- ✍ Enterprise funds (proprietary)
- ✍ University funds – unrestricted
- ✍ University funds - other

?? Eliminate fiduciary funds
- ✍ Agency funds (except tax distributions)
- ✍ Expendable trust funds
- ✍ Non-expendable trust funds
- ✍ Pension trust funds

?? Non-budgeted items
- ✍ Non-cash accounting entries
- ✍ Private funds (state special revenue)

The Legislative Fiscal Division budget comparisons are presented on pages 60 and 61 of this volume, and were prepared using the prescribed methodology in 17-7-151, MCA.

TRUST FUNDS

TRUST FUND BALANCES

Montana has a number of constitutional and statutory trusts that provide interest income (over $85 million per year) to fund state government operations. While the legislature in recent years has spent the principal of the education trust and slowed the flow of revenue into the coal tax trust, parks acquisition trust, and the resource indemnity tax trust, substantial balances remain.

Figures 3 and 4 show the history of the ten major trusts since fiscal 1973. Forecasted amounts are shown for fiscal years 2001, 2002 and 2003, and are based on assumptions adopted by the legislature in House Joint Resolution 2 (HJR2). Following the tables is: 1) a summary of action taken by the last two legislatures regarding the trust funds; and 2) a description of each trust and the income it generates. Also shown are expected interest earnings from each trust in fiscal years 2001, 2002, and 2003.

Figure 3
Cumulative Balances of Trust Funds

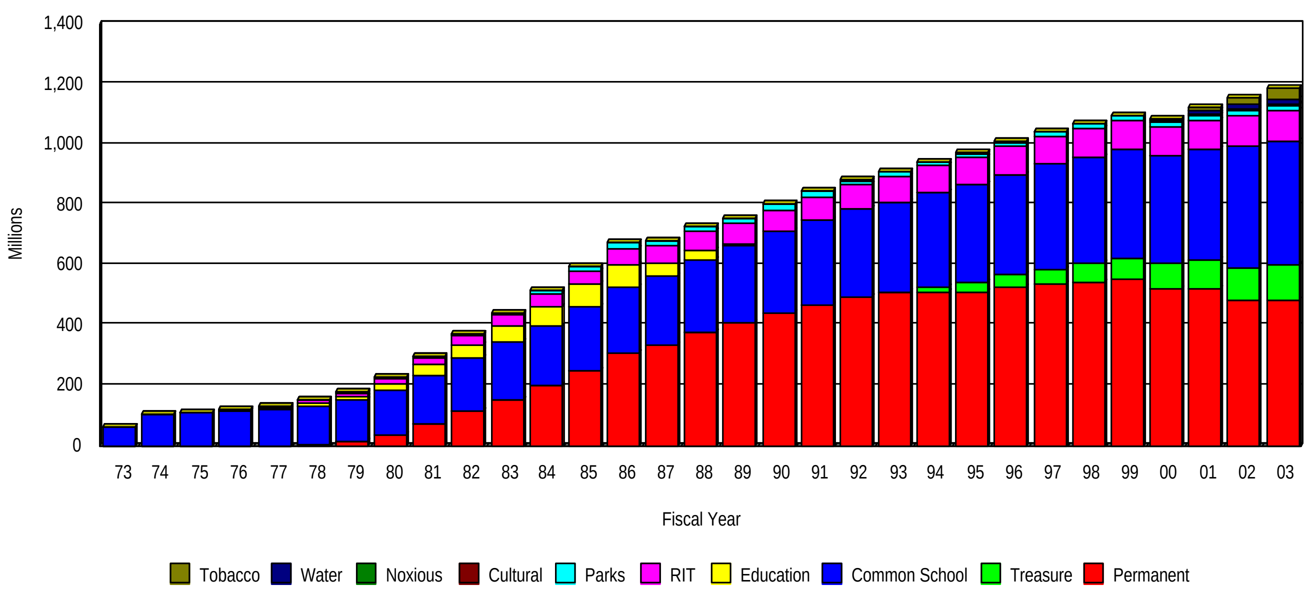

Figure 4
Selected Trust Fund Balances
Including Projected Investment Earnings

	Fiscal Year	Permanent Coal Tax Trust Fund	Treasure State Endowment Trust Fund	Common School Trust Fund	Education Trust Fund	Resource Indemnity Trust Fund	Parks Acquisition Trust Fund	Cultural Protection Trust Fund	Noxious Weed Trust Fund	Regional Water Trust Fund	Tobacco Trust Fund	Total Trust Funds
A	73	$0	$0	$64,223,773	$0	$0	$0	$0	$0	$0	$0	$64,223,773
A	74	0	0	108,998,870	0	1,141,385	0	0	0	0	0	110,140,255
A	75	0	0	113,064,188	0	3,287,456	0	0	0	0	0	116,351,644
A	76	0	0	117,849,628	2,227,793	5,552,291	278,725	0	0	0	0	125,908,437
A	77	0	0	123,281,528	6,039,530	8,232,247	758,308	0	0	0	0	138,311,613
A	78	6,268,262	0	129,949,247	8,983,763	10,646,851	1,174,356	0	0	0	0	157,022,479
A	79	16,940,538	0	137,716,735	12,339,549	12,574,209	1,475,732	0	0	0	0	181,046,763
A	80	39,964,765	0	147,527,943	23,905,146	16,204,531	3,565,371	0	0	0	0	231,167,756
A	81	75,187,459	0	163,163,556	33,624,170	21,165,464	5,325,746	0	0	0	0	298,466,395
A	82	118,336,314	0	176,467,865	44,338,477	28,328,946	7,480,418	0	0	0	0	374,952,020
A	83	158,358,806	0	189,390,417	52,665,410	36,181,889	9,481,542	0	0	0	0	446,078,064
A	84	202,936,358	0	201,319,109	60,925,268	42,986,128	11,565,460	0	0	0	0	519,732,323
A	85	252,420,524	0	214,764,544	70,500,922	47,396,179	13,859,181	0	0	0	0	598,941,350
A	86	309,384,250	0	217,677,906	79,761,708	53,039,675	16,222,131	0	443,184	0	0	676,528,854
A	87	339,883,180	0	227,687,073	44,091,429	56,861,627	16,613,608	0	824,550	0	0	685,961,467
A	88	381,180,287	0	239,553,633	33,671,110	61,750,961	16,581,042	0	1,070,972	0	0	733,808,005
A	89	411,838,993	0	254,128,428	8,651,477	66,665,000	16,608,706	0	1,320,720	0	0	759,213,324
A	90	446,511,416	0	268,496,362	0	72,811,618	17,936,701	0	1,688,370	0	0	807,444,467
A	91	470,322,655	0	280,326,496	0	77,324,921	18,882,548	0	2,121,973	0	0	848,978,593
A	92	496,465,569	0	291,753,603	0	82,489,898	12,588,366	7,051,506	2,584,254	0	0	892,933,196
A	93	511,474,640	0	300,782,863	0	86,890,369	12,538,119	6,863,579	2,534,844	0	0	921,084,414
A	94	511,754,471	20,520,830	310,735,129	0	89,316,268	12,538,119	7,025,290	2,518,875	0	0	954,408,982
A	95	515,470,287	31,793,125	321,265,835	0	91,614,674	12,538,119	7,296,373	2,544,390	0	0	982,522,803
A	96	530,144,251	42,262,548	331,630,225	0	93,152,864	12,998,633	7,518,157	2,502,197	0	0	1,020,208,875
A	97	538,223,210	52,210,048	347,298,490	0	94,584,643	13,483,000	3,846,000	2,527,953	0	0	1,052,173,344
A	98	545,789,038	61,800,580	355,329,490	0	95,582,249	14,005,728	3,852,201	2,537,621	0	0	1,078,896,907
A	99	555,204,609	68,334,808	365,188,709	0	94,991,658	14,399,076	3,852,202	2,471,388	0	0	1,104,442,450
A	00	525,869,144	81,347,120	359,661,156	0	98,042,810	14,834,592	4,050,384	3,635,000	4,433,724	0	1,087,440,206
Fund Balance Forecast												
F	01	525,869,000	93,528,000	366,166,000	0	99,613,000	15,258,000	4,260,000	4,788,163	8,494,000	10,474,000	1,109,482,163
F	02	488,439,000	105,894,000	405,520,000	0	101,065,000	15,688,000	4,473,000	4,817,172	12,616,000	23,195,000	1,125,896,172
F	03	488,439,000	118,264,000	407,812,000	0	100,000,000	16,117,000	4,686,000	4,847,062	16,739,000	36,158,000	1,140,165,062
Investment Earnings Forecast												
F	01	39,117,000	6,173,000	23,477,000	0	7,467,000	1,091,000	301,000	335,171	473,000	225,000	81,272,028
F	02	36,419,000	7,088,000	26,512,000	0	7,582,000	1,123,000	317,000	337,202	775,000	1,044,000	83,055,740
F	03	36,329,000	7,952,000	26,945,000	0	7,609,000	1,152,000	331,000	339,294	1,078,000	1,983,000	85,266,452

1999 LEGISLATURE

The Fifty-sixth Legislature in the 1999 session reduced the rate of growth in many of the trusts by passing legislation that redirected incoming revenues. The Fifty-sixth Legislature passed legislation that reduced the fiscal 2001 ending fund balance for all trusts combined by an estimated $26 million when compared with pre-session estimates. The reduction in revenue growth was the greatest for the Permanent Coal Tax Trust, the Treasure State Endowment, and the Common School Fund. The legislature substantially enhanced the revenue growth into the noxious weed trust and marginally increased revenue into the Resource Indemnity Trust.

2001 LEGISLATURE

The Fifty-seventh Legislature in the 2001 session enacted several measures impacting state trust funds.

1. House Bill 444 appropriated to the Department of Justice $990,000 for the 2003 biennium as a loan from the coal severance permanent fund. The purpose of the appropriation is to conduct the natural resource damage assessment and litigation and to pursue Montana’s remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. The resulting loss in transfers of trust interest earnings to the general fund is expected to be $17,573 in fiscal 2002 and $52,718 in fiscal 2003;
2. House Bill 610, beginning fiscal 2004, reduces the amount of total coal severance tax collections deposited in the treasure state endowment fund from 37.5 percent to 25.0 percent and increases the amount deposited to the permanent fund from 0 percent to 12.5 percent;
3. the passage of Senate Bill 495 could potentially change the balance of the common school trust due to the sale of its mineral production rights and the diversion of future royalties that would have been deposited in the trust. The fiscal note for Senate Bill 495 assumes a purchase price for the mineral production rights of $37.43 million; and
4. because the resource indemnity trust is estimated to reach $100 million in fiscal 2002, any amount in excess of $100 million can be used by the legislature. The legislature appropriated all the estimated $1.1 million excess in fiscal 2003, thus reducing the trust balance.

CONSTITUTIONAL TRUSTS

PERMANENT COAL TAX TRUST

Article IX, Section 5 of the Montana Constitution requires that at least 50 percent of all coal severance tax revenue be deposited in a permanent coal tax trust fund, and that the principal of the trust "shall forever remain inviolate unless appropriated by a vote of three-fourths of the members of each house of the legislature." By statute, interest earned on this trust that is not earmarked for other programs is distributed 100 percent to the general fund. As described below, some of the interest earned on the trust is earmarked for other programs.

The interest earned on the permanent coal tax trust fund is an important general fund revenue source. During the period of fiscal 1981 through fiscal 2000, $675.4 million in interest from this trust was deposited in the combined general fund/school equalization account (SEA). In fiscal 2000, permanent coal tax trust fund interest provided 3.4 percent of total revenue to the general fund.

Initiative 95, approved by voters in 1982, required that 25 percent of the revenue deposited in the permanent coal tax trust after June 30, 1983, be placed in the in-state investment trust fund for investment in the Montana economy "with special emphasis on investments in new or expanding locally owned enterprises." The 1991 legislature: 1) eliminated separate accounting for the in-state investment trust; and 2) instructed the Board of Investments to "endeavor to invest up to 25 percent of the permanent coal tax trust fund" in the Montana economy.

The 1989 and 1991 legislatures gave authority to the Montana Science and Technology Alliance (MSTA) for the use of $12.5 million from the in-state investment fund for investment in new and expanding technology-based Montana businesses and for research and development project loans.

The 1993 legislature authorized MSTA to invest an additional $11.0 million from the in-state investment program.

The payback of principal from MSTA loans returns to the trust. Before July 1, 1993, the interest from MSTA loans was distributed in the same manner as other interest earned on the permanent coal tax trust fund. House Bill 394, enacted by the 1993 legislature, created a special revenue account into which all interest earned from MSTA loans is deposited and from which MSTA expenses will be paid, with the balance returning to the trust.

The 1991 legislature also appropriated $3.25 million from the permanent coal tax trust fund for the Microbusiness Development Act. These funds provided capital to microbusiness development corporations that provide loans and technical assistance to qualified small businesses. Interest earnings and loan repayments were retained by the program to finance administrative costs and future loans.

During the January 1992 special session, the legislature authorized the creation of a school bond contingency loan fund within the permanent coal tax trust fund. The contingency fund provided up to $25.0 million in loan guarantees for school district bonds certified by the Department of Administration as meeting certification standards, but for which subsequent litigation prevents collection of property taxes levied for debt service. School districts are required to repay any guarantee funds used. Interest on the contingency fund is distributed in the same manner as all other interest earned on the permanent coal tax trust fund. This legislation expired on January 1, 1993. House Bill 667, passed during the 1993 legislative session, provides Guaranteed Tax Base (GTB) aid to certain schools with bonds outstanding or bond issues contemplated. The source of funding for GTB aid was the school equalization account (SEA). The contingency fund will continue to exist until calendar 2012 when the bonds will be retired.

In the June 1992 election, voters approved a referendum to create the treasure state endowment fund (TSEF) within the permanent coal tax trust fund. The fund received a $10.0 million grant from the trust principal in fiscal 1994 and will receive half the funds deposited in the trust during fiscal 1995 through fiscal 2013. Interest earned on the TSEF is used to finance local infrastructure projects, as prioritized by the Departments of Commerce and Natural Resources and Conservation and authorized by the legislature.

During the November 1993 special session, the legislature authorized SB 4 that required the cash balance in the coal tax bond fund as of July 1, 1993 be deposited in the permanent coal tax trust fund. The total amount transferred was $31.1 million. SB 4 also changed the distribution mechanism by requiring the 50 percent coal severance tax revenue allocation be deposited in the TSEF and the permanent coal tax trust fund on an equal basis. Prior to SB 4, coal severance tax revenue earned on production taking place beginning July 1, 1993, was to have been deposited in TSEF. In the following fiscal year, one-half of the previous year's inflow was to have been deposited in the permanent coal tax trust fund, and the TSEF was to retain the rest. Without SB 4, the permanent coal tax trust fund would not have received any coal severance tax revenue during fiscal 1994.

The 1993 legislature passed HB 401, which authorized a loan to the Department of Environmental Quality (DEQ), (formerly the Department of Health and Environmental Sciences) from the permanent coal tax trust fund for technical, litigation, and administrative expenses associated with the natural resource damage litigation suit against the Atlantic Richfield Company in the Clark Fork River Basin.

The amount of the loan was $2.6 million for the 1995 biennium and $5.2 million to repay principal and interest to the general fund for litigation costs incurred in the 1993 biennium. As of December 1994, $6.3 million had been withdrawn from the permanent coal tax trust to pay for litigation expenses. Since then, the case has been settled and money returned to the permanent trust (see the write-up of HB 110 enacted by the 1997 legislature).

1995 Legislative Action

HB 305 authorized a loan to the Department of Justice from the permanent coal tax trust for the purpose of conducting the litigation and natural resource claims against the Atlantic Richfield Company in the Clark Fork River Basin. The amount of the loan was $2.4 million for the 1997 biennium. The bill also extended loans made for the same purpose during the 1995 biennium. As of May 1998, $9.8 million had been withdrawn from the permanent coal tax trust to pay litigation expenses.

HB 354 expanded appropriations for the Microbusiness Financing Act, which provides loans to businesses employing less than ten employees and generating less than $500,000 in gross revenue annually. The expansion of this program doubled the previous appropriation to $3.25 million of investable coal tax trust funds made available to the Microbusiness Finance Program in the Department of Commerce. Beginning July 1, 1995, HB 354 also increased maximum loan amounts per individual loan from $20,000 to $35,000. The program provides financing for working capital assets and fixed asset acquisition with more flexible repayment terms than those offered by commercial institutions. Payback of interest and principal of the loan amounts are used for administrative purposes and for financing new microbusiness loans.

SB 38 authorized the Job Investment Act under which the Department of Commerce may loan a portion of the permanent coal tax trust to businesses to create and retain jobs in Montana. A loan to a qualified business may not exceed $500,000, and the department is to report annually to the Revenue and Taxation Committee. The legislation also reduced the amount of permanent coal tax trust funds that the Board of Investments allows the Montana Board of Science and Technology Development to invest in seed capital loans and mezzanine loans from $15.5 million to $12.5 million. The bill also increased the amount of permanent coal tax trust funds available for research and development projects from $8.1 million to $11.1 million. In the past, these funds were used primarily as loans to the University System. Under SB 38, these funds were granted to the University System for research and development projects. As of October 1, 1998, $25.7 million had been loaned or granted to Montana businesses and the university system.

SB 83 abolished the distribution of coal trust interest to the SEA. Under previous law, 15 percent of coal trust interest earnings were deposited in the SEA and 85 percent in the general fund. As a result of SB 83, 100 percent of coal trust interest earnings are deposited in the general fund in fiscal 1996 and beyond.

1997 Legislative Action

HB 110 appropriated to the Department of Justice $2.5 million in state special revenue to be used for continuing litigation expenses associated with the Atlantic Richfield case. The appropriation was for expenses incurred during the 1999 biennium, and, upon settlement of the case, the amount used plus interest was to be returned to the general fund. The case was settled in June of 1998 for $215 million. On June 24, 1998, $15 million was deposited into the Short-Term Investment Pool (STIP) for payment to the permanent trust and the general fund. In October 1998, $12.2 million was transferred to the permanent trust, including $9.8 million in principal and $2.4 million in interest. In November 1998, $1.9

million was transferred to the general fund. This transfer was made up of principal ($1.4 million) and interest ($0.5 million) and constituted repayment of general fund loans going back to fiscal 1983 when the case began.

The legislature amended the allocation of coal severance taxes under 15-35-108, MCA. In HB 14, the 1997 legislature authorized the issuance of general obligation bonds to fund the purchase of Virginia City and Nevada City properties. In HB 5, the legislature allocated 1.3 percent of coal severance tax revenue to pay the debt service on the bonds, which have a term of ten years. Coal tax revenue will be distributed to the Long-Range Building Program (LRBP) debt service account for fiscal 1998 through 2007. This allocation diverts coal severance tax revenue that would otherwise be deposited in the general fund. Based on revenue estimates in HJR 2, this change in allocation resulted in a loss to the general fund of $0.5 million in fiscal 1998 and 1999. Once the ten-year period has expired, the 1.3 percent allocation will revert to the general fund.

HB 5 also eliminated the 0.63 percent distribution of coal severance tax to the cultural and aesthetic (C&A) trust during the 1999 biennium only. The legislature appropriated $3.9 million from the cultural trust for the immediate purchase of Virginia City and Nevada City. This appropriation resulted in a loss of trust interest revenue that otherwise would have been used to fund C&A projects during the 1999 biennium. In order to compensate for the lost interest, the legislature allocated 0.87 percent of coal severance tax revenue to the C&A projects account and eliminated the 0.63 percent of coal severance tax revenue that had been deposited in the cultural trust. The remaining 0.24 percent of coal taxes allocated to the C&A project account was previously part of the flow into the general fund. Based on revenue estimates in HJR 2, this part of HB 5 resulted in a loss to the general fund of $91,736 and $93,195 for fiscal 1998 and 1999, respectively. After the 1999 biennium, similar amounts of coal severance tax revenue were diverted from the C&A projects account and again flowed to the general fund.

HB 578 abolished the Montana Board of Science and Technology beginning July 1, 1999. The amount of money committed for research and development ($11.1 million) and for seed capital loans ($12.5 million) was allowed to be disbursed until July 1, 1999. Any money under these caps that has not been committed, except for $915,000, was returned to the coal tax trust. The Board continued to provide seed capital loans of up to $700,000 to existing seed capital companies until July 1, 1999 or until an amount of $915,000 was reached; however, up to $75,000 could have been used for administrative expenses. Beginning April 1, 1997, the proceeds from seed capital loans must be deposited in the coal tax trust. However, during fiscal 1998, $250,000 of seed capital income, as well as $150,000 of job investment loan income, must be used to fund the judges' retirement system. Also beginning April 1, 1997, and ending July 1, 1999, up to $2.0 million in income and interest from research and development loans at Montana public universities may be granted to research and development (R&D) projects at the universities. After July 1, 1999, all repayment proceeds from both seed capital loans and R&D loans in excess of $4.4 million must be deposited in the coal severance tax permanent fund. The amount of $4.4 million presumably may continue to be loaned out by the Department of Commerce under a business investment strategy plan, which must be reported to the Fifty-sixth Legislature.

1999 Legislative Action

Beginning July 1, 1999, HB 260 imposed a new coal license tax on the contract sales price of coal and reduced the coal severance tax liability for coal producers by allowing a credit against the coal severance tax in the amount of 101.5 percent of coal license tax liability. Thus, coal producers would realize a reduction of 1.5 percent in tax liability on coal production. The total reduction in coal severance tax collections was expected to be $20.7 million in fiscal 2000 and $19.6 million in fiscal 2001. The new coal license tax was expected to generate $20.4 million in fiscal 2000 and $19.3 million in fiscal 2001. The legislation, in combination with HB 69 and SB 220, provided a new distribution of coal severance taxes and specified a distribution for the new coal license tax. Under the new distribution, none of the coal severance revenue would have been distributed to the permanent trust. Instead, 37.5 percent of the reduced coal severance tax revenue stream would have been deposited in the treasure state endowment trust fund, and 12.5 percent would have been deposited in a new TSEF regional water system account (SB 220). The remaining distribution of the coal severance tax would be deposited as under previous law, except that the amount (1.3 percent) to long range building program debt service would have been directly deposited in the general fund as per HB 69. Coal severance tax revenue deposited in the permanent fund would be reduced by $8.3 million in fiscal 2000 and by $7.9 million in fiscal 2001. None of the new coal license tax would have been allocated to the permanent fund. Coal severance tax revenue deposited in the TSEF would have been reduced by $3.6 million in fiscal 2000 and $3.4 million in fiscal 2001. The revenue diversions in the each trust, as well as some of the revenue from the new coal license tax, would have been deposited into spendable accounts used for ongoing projects and payments associated with infrastructure loans and grants, agricultural seed capital, and research and commercialization loans and grants.

However, on January 20, 2000, the Montana Supreme Court found that HB 260 violated Article IX, Section 5, of the Montana Constitution and enjoined enforcement of the new coal producer's license tax. This rendered most of the legislation and appropriations meaningless. The decision did not affect the establishment of the research and commercialization expendable trust. Coordination with SB 220 also was not affected, allowing the establishment of the treasure state endowment regional water system trust and the distribution of coal severance tax to the trust and the TSEF remain intact.

HB 69 eliminated the distribution of coal severance tax revenue to the long range building debt service account that was used to pay bonds issued for the purchase of Virginia City and Nevada City property. Beginning July 1, 1999, the revenue is deposited in the general fund and the bond service payments are made by the general fund.

Beginning July 1, 1999, SB 220 created a new treasure state endowment regional water system fund into which is deposited 25 percent of one-half of all coal severance receipts. The other 75 percent of one-half of coal severance receipts flows into TSEF.

2001 Legislative Action

The Fifty-seventh Legislature in the 2001 session enacted HB 444 that appropriated $990,000 for the 2003 biennium to the Department of Justice as a loan from the coal severance permanent fund. The purpose of the appropriation is to conduct the natural resource damage assessment and litigation and to pursue Montana's remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. The resulting loss in transfers of trust interest earnings to the general fund is expected to be $17,573 in fiscal 2002 and $52,718 in fiscal 2003. Any reimbursements received must be deposited in the coal severance tax permanent fund. The legislation required a three-quarters vote of each house of the legislature.

Beginning fiscal 2004, HB 610 reduces the amount of total coal severance tax collections deposited in the treasure state endowment fund from 37.5 percent to percent 25.0 percent and increases the amount of total collections deposited to the permanent fund from 0 percent to 12.5 percent. These changes will result in greater interest earnings for the general fund and lower interest earnings for the Treasure State Endowment Program beginning fiscal 2004.

In conjunction with HB 41, SB 495 changes the portion of school funding provided by the common school trust. The main points of the legislation are:

1. interest and income from the common school trust are deposited to a subfund of the general fund called the guarantee account;
2. the Department of Natural Resources and Conservation is authorized to purchase the mineral production rights from the common school trust;
3. a loan of up to $75 million from the coal severance trust permanent fund will be used to purchase the mineral production rights and deposited in the common school trust;
4. any mineral royalties from the purchased rights are deposited to the guarantee account;
5. after principal and interest payments on the loan used to purchase the mineral production rights are paid, the remaining money in the guarantee account is available for distribution to school districts; and
6. upon electorate approval of a constitutional amendment (contained in SB 493), the public school trust may be invested in private corporate capital stock.

Although it is estimated that the cost of the mineral production rights will be $37.4 million, the legislature appropriated $75 million from the coal severance permanent fund to be loaned for this purpose. Based on a $37.4 million loan from the coal severance permanent fund, the loss of interest earnings that would have been deposited to the general fund is estimated to be $2.7 million in each year of the 2003 biennium. The legislation required a three-quarters vote of each house of the legislature.

Coal tax revenue flowing into the permanent coal tax trust fund is also used to secure state bonds issued to finance water resource development projects and activities. From 1981 (when the legislature authorized this bonding program) to the end of fiscal 2001, $147.3 million in water development projects throughout the state have been authorized with revenue from these bonds.

Coal tax revenue is first deposited into the school bond contingency loan fund within the permanent coal tax trust fund. The contingency fund provides up to $25.0 million in loan guarantees for school district bonds certified by the Department of Administration as meeting certification standards, but for which subsequent litigation prevents collection of property taxes levied for debt service. The contingency fund has provided backing for $24.6 million in school bonds for 16 schools. The average balance in the contingency fund has been slightly more than $2.0 million.

COMMON SCHOOL TRUST

Article X, Sections 2 and 3 of the Montana Constitution require that all royalties and other proceeds received from school lands granted to the state under the federal enabling act must be deposited in the common school trust fund and "shall forever remain inviolate, guaranteed by the state against loss or diversion." Article X, Section 5 requires that 95 percent of the interest from this trust be used for school equalization, with the remaining 5 percent reinvested in the trust. In addition, 95 percent of all rents, royalties, and other income received from leasing of school lands is to be used for public schools with the remaining 5 percent invested in the trust.

During the January 1992 special session, the legislature passed HB 3, which provided that 95 percent of the revenue from state timber sales (approximately $4.9 million) be deposited in the SEA during the 1993 biennium, with the remaining 5 percent deposited in the trust.

The 1993 legislature passed HB 652, which continued the practice of diverting 95 percent of timber revenue to the SEA during the 1995 biennium. The loss in revenue to the common school trust during the 1995 biennium was approximately $9.1 million. HB 667, also passed during the 1993 legislative session, continued this practice indefinitely. The loss of revenue to the common school trust during the 1997 biennium was approximately $9.7 million.

1995 Legislative Action

HB 50 made permanent certain provisions regarding the sale of timber on state lands. HB 50 was expected to result in additional sales of timber during the 1997 biennium. However, additional costs associated with the sale of timber were also expected to be incurred. These costs were deducted from timber sale revenues.

HB 201, passed by the 1995 legislature, required the state to increase timber sales from state lands consistent with an annual sustainable yield of 45 million board feet to 55 million board feet, contingent on a study to determine the appropriate level of annual sustainable yield. HB 201 capped the amount of timber sale revenue deposited in the general fund (formerly the school equalization account, which was abolished in SB 83) from the common school trust at an average annual sale value of 18 million board feet. Any excess timber sale revenue from the common school trust is to be deposited in the general fund, but "earmarked" for deposit in school districts' newly established technology acquisition fund to buy technological equipment and provide technical training for school district personnel.

HB 201 also affected timber sale revenue because it diverted timber sale revenue before it was deposited in the general fund to pay for costs associated with increasing timber sales. The total revenue effect was expected to be a loss of $1.1 million to the general fund during the 1997 biennium.

HB 274, passed by the 1995 legislature, granted the Department of State Lands broader discretion to expedite sales of state timber in emergency situations and limited access situations. Effective in fiscal 1996, as a result of the natural resources reorganization bill (SB 234), the forestry function was transferred from the Department of State Lands to the Department of Natural Resources and Conservation.

SB 83 de-earmarked all interest from the common school trust and income earned on common school lands. Henceforth, these revenues flow into the general fund.

1997 Legislative Action

The 1997 legislature passed legislation that impacted the flow of timber revenue into the common school trust by appropriating timber revenue for use by the DNRC to enhance timber sales during the 1999 biennium. The amounts appropriated, $1.2 million and $1.3 million in respective years of the biennium, were diverted from the revenue stream before the allocation of 5 percent of revenue to the trust.

House Bill 2 appropriated anticipated timber sale revenue in excess of that associated with 18 million board feet for deposition in schools' technology acquisition funds. The purpose of the fund is to allow each district to buy technological equipment and provide technical training for school district personnel. The amounts appropriated were $1.5 million in fiscal 1998 and $2.8 million in fiscal 1999, or the amount of "excess" revenue in each year, whichever is less. However, no payment was made in fiscal 1999, but $3.4 million is expected to be spent during the 2001 biennium.

1999 Legislative Action

SB 48 made significant changes in funding the Trust Land Management Division in the Department of Natural Resources and Conservation. The legislation diverted a portion of the following money (previously deposited into the corpus of the land trust funds) from ten land trusts administered by the department: 1) mineral royalties; 2) the proceeds or income from the sale of easements and timber (except timber from public school lands); and 3) 5 percent of the interest and income previously credited annually to the public school fund. The money was diverted to a state special revenue account to pay costs of administering state trust lands. The legislation provided limitations on the amount of diverted revenue and the amount of the appropriations: 1) the diverted revenue was limited to 1-1/8 percent of the book value balance in each of the nine nonexpendable trust funds on the first day of January preceding the new biennium and 10 percent of the previous fiscal year revenue deposited into the capitol building land grant trust fund; and 2) appropriations of the money were limited to 1-1/8 percent of the book value balance in the nine nonexpendable trust funds on the first day of January preceding the new biennium and 10 percent of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium. In HB 2, the legislature replaced $7.1 million of general fund appropriations with state special revenue provided by this legislation. Therefore, deposits to land trusts (primarily the Common School Trust) were reduced by $7.1 million over the biennium, approximately $3.5 million per year.

2001 Legislative Action

Although SB 495 potentially could increase the balance of the common school trust by $75 million due to the sale of its mineral production rights, the increase depends on the amount of rights purchased by DNRC and the sale price. The fiscal note for SB 495 assumed that the purchase price of the mineral production rights would be $37.3 million. Since future royalties from any sold mineral production rights would no longer be deposited in the common school trust, the potential exists for a reduction in deposits from this revenue source.

RESOURCE INDEMNITY TRUST

Article IX, Section 2 of the Montana Constitution and Title 35, Chapter 38, MCA, require that certain resource extraction taxes be placed in a trust. The principal of the resource indemnity trust "shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion." Once the principal of the trust reaches $100 million, any additional tax revenue may be appropriated.

During the July 1992 special session, the legislature imposed a one-year surtax on resource indemnity tax liability and allocated collections from the surtax to the general fund. During the 1993 legislative session, the legislature passed HB 608 which decreased the amount of resource indemnity and groundwater assessment (RIGWA) tax proceeds deposited in the trust during the 1995 biennium from 85.9 percent per year to 55.9 percent, or approximately $5.0 million. The bill further reduced the amount of RIGWA tax revenue deposited in the trust to 45.9 percent beginning July 1, 1995. During the 1995 session, the legislature replaced a portion of RIGWA tax proceeds with oil and gas tax proceeds due to a bill to simplify oil and gas taxes (SB 412). Also, the legislature diverted for other purposes the metal mines license tax proceeds that previously were deposited to the trust.

1997 Legislative Action

SB 377 reduced the growth rate in the ending fund balance of the RIT trust by diverting $200,000 per year from RIGWA tax inflows and 8.5 percent from metalliferous mines license tax revenue to a newly created orphan share account. The reduction of inflow into the trust in each year of the biennium as a result of these diversions was $674,000 and $743,000. The orphan share account is used to: 1) fund remedial actions on the portion of hazardous waste sites for which there is no responsible party; and 2) pay for DEQ transaction costs associated with defending the orphan share proportions.

1999 Legislative Action

SB 49 and SB 492 increased the allocation of the RIGWA tax and the RIT share of the oil and gas production tax to the RIT. The ending fund balance at the end of the 2001 biennium is expected to increase by $162,000 as a result of the legislation. The legislation also eliminated the allocation of RIGWA tax revenue to the RIT beginning July 1 of the first year following the date that the governor by executive order certifies to the Secretary of State that the RIT balance has reached $100 million.

2001 Legislative Action

Revenue estimates adopted by the legislature in HJR 2 show the RIT balance is expected to reach the $100 million amount in fiscal 2002. Therefore, there will be no additional revenue deposited in the trust beginning fiscal 2003. The revenue estimates also show that there will be an estimated $101.1 million in the trust balance by the end of fiscal 2003. Since any additional tax deposits over the $100 million may be appropriated by the legislature, the 2001 legislature enacted the following legislation that uses all of the excess revenue: 1) SB 326 authorizes the transfer of $500,000 to the noxious weed state special revenue account for distribution to counties (the money is appropriated in HB 2); 2) HB 2 transfers and appropriates $540,000 to purchase securities for water treatment at the former Zortman and Landusky mines; and 3) HB 2 transfers and appropriates $120,000 for the Clark Fork River task force (established in HB 397). Therefore, it is likely that the trust balance at the end of fiscal 2003 will be $100 million.

TOBACCO SETTLEMENT TRUST

Due to passage of Montana Constitutional Amendment 35 in November 2000, the legislature is required to dedicate not less than 40 percent of tobacco settlement money to a permanent trust fund. The remainder of the money is deposited into the general fund. Since the legislature did not pass legislation establishing the exact percentage to be deposited to the trust fund, the revenue estimate assumes 40 percent. Interest earnings from the trust fund are to be distributed: 1) 90 percent for appropriation by the legislature for tobacco related disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana; and 2) 10 percent to the trust. Money in the trust fund can be spent if approved by two-thirds of each house of the legislature. Appropriations of principal, income, or interest from the trust fund cannot be used to replace state or federal money used to fund tobacco disease prevention programs that existed on December 31, 1999.

Montana receives revenue as a settling party to a Master Settlement Agreement with four original tobacco companies and 24 subsequent companies to end a four-year legal battle with 46 states, Puerto Rico, American Samoa, the U.S. Virgin Islands, the North Mariana Island, Guam and the District of Columbia (52 total settling entities). Montana is eligible for four types of payments: 1) reimbursement for legal costs (received December 1999); 2) five initial payments (Two were received in fiscal 2000. One each year is expected in fiscal 2001, 2002, and 2003); 3) on-going annual payments; and 4) strategic contribution payments (from fiscal 2008 through 2017). The Master Settlement Agreement places no restrictions on how the money is to be spent.

The total amount of tobacco settlement funds available to Montana may be affected by a number of adjustments, but the two most important ones are the adjustments for inflation and volume of cigarettes shipped nationally. The amount of Montana's share will increase if inflation is positive, but will decrease if the number of cigarettes shipped nationally decreases.

The 2001 legislature enacted SB 129 that established a Montana tobacco settlement non-expendable trust fund to implement Article XII, Section 4, of the Montana Constitution. The legislation also provided criteria to govern the purposes for which the interest, income, and principal of the trust may be appropriated. It did not establish a statutory percentage of the tobacco settlement dedicated for deposit in the trust fund.

STATUTORY TRUSTS

EDUCATION TRUST

From fiscal years 1976 through 1986, a portion of the revenue from the coal severance tax was allocated to an education trust for the support of education. The legislature appropriated the corpus of this trust to the school equalization account during the period of fiscal 1987 through 1990. Since fiscal 1990, the education trust has not received revenue from any source and its balance is zero.

PARKS ACQUISITION/ARTS PROTECTION TRUST

During most of the last 20 years, a portion of the coal severance tax has been earmarked for the parks acquisition trust. During the late 1980s, the flow of revenue into this account was diverted to the general fund. However, the principal began to increase again in fiscal 1990. Prior to fiscal 1992, two-thirds of the interest from this trust was statutorily allocated for acquisition and operation of state parks, and one-third was allocated for protection of works of art in the state capitol and other cultural and aesthetics projects.

The 1991 legislature split the principal of this trust into two separate trusts: a parks acquisition trust and an arts protection trust. During the 1993 biennium, the coal tax revenue that would have flowed into the parks acquisition trust (1.267 percent) was spent for maintenance of parks and historic sites, along with the interest from the trust. HB 687, passed during the 1993 legislative session, continued this practice for the 1995 biennium, allocating $1.6 million from the trust to current operations. In the 1997 biennium, the coal tax revenue allocation was again deposited in the trust. SB 27, passed by the 1995 legislature, increased the allocation to the parks acquisition trust from 1.267 percent to 1.270 percent.

In fiscal 1992, 0.633 percent of coal severance tax revenues was deposited in the arts protection trust, with the trust interest continuing to be used for protection of works of art and for cultural and aesthetics projects. During the January 1992 special session, the legislature diverted a portion of the revenue that would have flowed into the arts protection trust in fiscal 1993 to fund the operations of the Montana Arts Council. Beginning in fiscal 1994, these revenues were again deposited in the trust. SB 27, passed by the 1995 legislature, decreased the allocation to the arts trust from 0.633 percent to 0.630 percent.

1997 Legislative Action

The 1997 legislature amended the allocation of coal severance taxes under Section 15-35-108, MCA. HB 5 eliminated the 0.63 percent distribution of coal severance tax to the cultural and aesthetic trust during the 1999 biennium only. The legislature appropriated $3.9 million from the cultural trust for the immediate purchase of the Virginia City and Nevada City. This appropriation resulted in a loss of trust interest revenue that otherwise would be used to fund C&A projects in the state during the 1999 biennium. In order to compensate for the lost interest, the legislature allocated 0.87 percent of coal severance tax revenue to the C&A projects account, and eliminated the 0.63 percent of coal severance tax revenue that had been deposited in the cultural trust. The remaining 0.24 percent of coal taxes allocated to the C&A project account was previously part of the flow into the general fund. After the 1999 biennium, similar amounts of coal severance tax revenue were diverted from the C&A projects account and again flowed to the general fund.

1999 Legislative Action
HB 260, HB 69, and SB 220 reduced coal severance tax revenue and replaced it with coal license tax revenue. The aim of the legislation was to hold the revenue flow into the arts and parks trusts as under current law. However, the arts and parks trusts lost around $25,000 over the biennium.

However, the January 20, 2000 decision of the Montana Supreme Court that found HB 260 violated Article IX, Section 5, of the Montana Constitution rendered the above changes meaningless.

NOXIOUS WEED MANAGEMENT TRUST

During the period fiscal 1986 through 1992, at least one-half of the collections from a 1 percent surcharge on the retail sale of herbicides was deposited in the noxious weed management trust fund. The remaining collections were spent for weed control grants. The interest earned on the trust is retained in the trust. After the principal of the trust reached $2.5 million in fiscal 1992, all herbicide surcharge collections and the interest earned on the trust became available for weed control grants.

1995 Legislative Action
SB 321, passed by the 1995 Legislature, increased the amount of the gasoline tax revenue allocated to the snowmobile account from 23/64 of one percent to 15/28 of one percent. Beginning in fiscal 1996, one percent of the amount deposited in the snowmobile account is deposited in the Montana noxious weed control trust administered by the Department of Agriculture.

1999 Legislative Action
For the 2001 biennium, SB 164 transferred $1.125 million per year to the noxious weed trust from the highway non-restricted account in 15-70-125, MCA. As a result, the ending fund balance in the trust will almost double by June 30, 2002.

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