

## 1 SENATE BILL NO. 468

2 INTRODUCED BY V. COCCHIARELLA

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE POWERS AND DUTIES OF THE  
5 BOARD OF INVESTMENTS; TRANSFERRING THE BOARD OF INVESTMENTS' DUTIES UNDER THE  
6 MONTANA ECONOMIC DEVELOPMENT BOND ACT OF 1983 AND DUTIES REGARDING FREIGHT RAIL  
7 REVENUE BONDS TO THE DEPARTMENT OF COMMERCE; REVISING THE BOARD OF INVESTMENTS'  
8 REPORTING AND FUND ADMINISTRATION REQUIREMENTS; AMENDING SECTIONS 2-15-1808, 17-5-1502,  
9 17-5-1503, 17-5-1504, 17-5-1505, 17-5-1506, 17-5-1507, 17-5-1508, 17-5-1509, 17-5-1510, 17-5-1511,  
10 17-5-1512, 17-5-1513, 17-5-1514, 17-5-1515, 17-5-1516, 17-5-1517, 17-5-1518, 17-5-1521, 17-5-1522,  
11 17-5-1523, 17-5-1524, 17-5-1525, 17-5-1526, 17-5-1527, 17-5-1528, 17-5-1529, 17-6-201, 17-6-308, 60-11-115,  
12 60-11-117, AND 60-11-119, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

15  
16 **Section 1.** Section 2-15-1808, MCA, is amended to read:  
17 **"2-15-1808. Board of investments -- allocation -- composition -- quasi-judicial.** (1) There is a board  
18 of investments within the department of commerce.

19 (2) Except as otherwise provided in this subsection, the board is allocated to the department for  
20 administrative purposes as prescribed in 2-15-121. The board may employ a chief investment officer and an  
21 executive director who have general responsibility for selection and management of the board's staff and for direct  
22 investment ~~and economic development activities~~ by board staff. The board shall prescribe the duties and annual  
23 salaries of the chief investment officer, executive director, and six professional staff positions. The chief  
24 investment officer, executive director, and six professional staff serve at the pleasure of the board.

25 (3) The board is composed of nine members appointed by the governor as prescribed in 2-15-124. The  
26 members are:

27 (a) one member from the public employees' retirement board, provided for in 2-15-1009, and one  
28 member from the teachers' retirement board provided for in 2-15-1010. If either member ceases to be a member  
29 of the retirement board, the position of that member on the board of investments is vacant, and the governor shall  
30 fill the vacancy in accordance with 2-15-124.

1 (b) seven members who will provide a balance of professional expertise and public interest and  
2 accountability, who are informed and experienced in the subject of investments, and who are representative of:

3 (i) the financial community;

4 (ii) small business;

5 (iii) agriculture; and

6 (iv) labor.

7 (4) The board is designated as a quasi-judicial board for the purposes of 2-15-124."  
8

9 **Section 2.** Section 17-5-1502, MCA, is amended to read:

10 **"17-5-1502. Legislative declaration.** (1) It is the policy of the state of Montana, in the interest of  
11 promoting the health, safety, and general welfare of all the people of the state, to increase job opportunities and  
12 to retain existing jobs by making available, through the ~~board of investments~~ department, funds for industrial,  
13 commercial, manufacturing, natural resource, agricultural, livestock, recreational, tourist, and health care  
14 development.

15 (2) The legislature finds that:

16 (a) a vigorous, diversified, and growing economy is the basic source of job opportunities;

17 (b) protection against unemployment and its economic burdens and the spread of economic stagnation  
18 can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with  
19 contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock,  
20 recreation, tourism, and health care facilities; and

21 (c) the state of Montana has a responsibility to help create a favorable climate for new and improved job  
22 opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of  
23 business."  
24

25 **Section 3.** Section 17-5-1503, MCA, is amended to read:

26 **"17-5-1503. Definitions.** As used in this part, unless the context requires otherwise, the following  
27 definitions apply:

28 ~~(1) "Board" means the board of investments created in 2-15-1808.~~

29 ~~(2)~~(1) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial  
30 indebtedness issued by the ~~board~~ department pursuant to this part.

1           ~~(3)~~(2) "Department" means the department of commerce provided for in 2-15-1801.

2           ~~(4)~~(3) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project  
3 and project costs.

4           ~~(5)~~(4) "Financial institution" means any bank, savings and loan association, credit union, development  
5 credit corporation, insurance company, investment company, trust company, savings institution, or other financial  
6 institution approved by the ~~board~~ department.

7           ~~(6)~~(5) "Local government" means the city in which the project is located, if the project is located within  
8 an incorporated municipality, or the county if the project is located within the county but outside the boundaries  
9 of an incorporated municipality.

10          ~~(7)~~(6) "Major project" means a project whose cost or appraised value exceeds \$800,000.

11          ~~(8)~~(7) "Project" means a project as defined in 90-5-101.

12          ~~(9)~~(8) "Project costs" means the costs of acquiring or improving any project, including the following:

13           (a) the actual cost of acquiring or improving real estate for any project;

14           (b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;

15           (c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such  
16 acquisition or improvement;

17           (d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged  
18 to pay the bonds;

19           (e) the interest on ~~such~~ bonds for a reasonable time prior to construction, during construction, and not  
20 exceeding 6 months after completion of construction; and

21           (f) working capital for agricultural enterprise projects for a period not to exceed 1 year."  
22

23          **Section 4.** Section 17-5-1504, MCA, is amended to read:

24          **"17-5-1504. Powers of the ~~board~~ department.** The ~~board~~ department may:

25           (1) sue and be sued;

26           (2) have a seal;

27           (3) adopt all procedural and substantive rules necessary for the administration of this part;

28           (4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its  
29 powers under this part;

30          ~~(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any~~

1 ~~agreements with its bondholders and noteholders;~~

2       ~~(6)~~(5) arrange for lines of credit from and enter into participation agreements with any financial institution;

3       ~~(7)~~(6) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects

4 and securing the payment of the bonds as provided in this part;

5       ~~(8)~~(7) enter into agreements or other transactions with and accept grants and the cooperation of any

6 governmental agency in furtherance of this part;

7       ~~(9)~~(8) sell, purchase, or insure loans to finance the costs of projects;

8       ~~(10)~~(9) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them

9 in carrying out this part;

10       ~~(11)~~(10) enter into agreements or other transactions with a federal agency, an agency or instrumentality

11 of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;

12       ~~(12)~~(11) with regard to property:

13       (a) acquire real or personal property or any right, interest, or easement ~~therein~~ in property by gift,

14 purchase, transfer, foreclosure, lease, or otherwise;

15       (b) hold, sell, assign, lease, encumber, mortgage, or otherwise dispose of ~~such~~ property;

16       (c) hold, sell, assign, or otherwise dispose of any lease, mortgage, or loan owned by it or in its control

17 or custody;

18       (d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired,

19 including any equity or right of redemption;

20       (e) make any disposition by public or private sale, with or without public bidding;

21       (f) commence any action to protect or enforce any right conferred upon it by any law, mortgage, contract,

22 or other agreement;

23       (g) bid for and purchase property at any foreclosure or other sale or acquire or take possession of it in

24 lieu of foreclosure;

25       (h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary

26 or desirable to protect its interests or the holders of its bonds or notes, provided ~~such~~ the action is consistent with

27 any agreement with ~~such~~ the holders;

28       ~~(13)~~(12) service, contract, and pay for the servicing of loans;

29       ~~(14)~~(13) provide financial analysis and technical assistance where considered appropriate;

30       ~~(15)~~(14) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the

1 modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any  
 2 other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan  
 3 commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with  
 4 bondholders and noteholders;

5 ~~(16)~~(15) collect reasonable interest, fees, and charges in connection with making and servicing its lease  
 6 agreements, loan agreements, mortgage loans, notes, bonds, commitments, and other evidences of  
 7 indebtedness. Interest, fees, and charges are limited to the amounts required to pay the costs of the ~~board~~  
 8 department, including operating and administrative expenses and reasonable allowances for losses that may be  
 9 incurred.

10 ~~(17)~~(16) procure insurance or guaranties in amounts and in the form the ~~board~~ department considers  
 11 desirable or necessary, from any party, including a governmental agency, against any loss in connection with its  
 12 lease agreements, loan agreements, mortgage loans, and other assets or property; and

13 ~~(18)~~(17) perform any other acts necessary and convenient to carry out the purposes of the ~~board~~  
 14 department and this part."

15

16 **Section 5.** Section 17-5-1505, MCA, is amended to read:

17 **"17-5-1505. Financing programs of the ~~board~~ department.** (1) The ~~board~~ department may:

18 (a) invest in, purchase or make commitments to purchase, and take assignment from financial institutions  
 19 of notes, mortgages, loan agreements, and other securities evidencing loans for the acquisition, construction,  
 20 reconstruction, or improvement of projects located in the state, under terms and conditions determined by the  
 21 ~~board~~ department;

22 (b) acquire, by construction, purchase, devise, gift, lease, or any combination of methods, from financial  
 23 institutions, projects located in the state and lease ~~such~~ the projects to others for ~~such~~ rentals and upon ~~such~~  
 24 terms and conditions as determined by the ~~board~~ department;

25 (c) make loans to financial institutions, under terms and conditions determined by the ~~board~~ department,  
 26 requiring the proceeds to be used by the financial institution for the purpose of financing the acquisition,  
 27 construction, reconstruction, or improvement of projects located in the state; or

28 (d) finance projects located in the state upon ~~such~~ terms and conditions as determined by the ~~board~~  
 29 department.

30 (2) The ~~board~~ department may not operate any project as a business or in any other manner except as

1 the lessor thereof of the project or as may be necessary for a temporary period through the enforcement of its  
 2 rights under a lease, loan agreement, or other security agreement."

3

4 **Section 6.** Section 17-5-1506, MCA, is amended to read:

5 **"17-5-1506. Bonds and notes for projects and major projects.** (1) The ~~board~~ department may by  
 6 ~~resolution~~ issue negotiable notes and bonds in a principal amount ~~as that~~ the ~~board~~ department determines  
 7 necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes  
 8 and bonds of the ~~board~~ department, establishment of reserves to secure the notes and bonds, including the  
 9 reserve funds created under 17-5-1515, and all other expenditures of the ~~board~~ department incident to and  
 10 necessary or convenient to carry out this part.

11 (2) The ~~board~~ department may by ~~resolution~~, from time to time, issue notes to renew notes and bonds  
 12 or to pay notes, including interest, and whenever it considers refunding expedient, refund any bonds by the  
 13 issuance of new bonds, whether or not the bonds to be refunded have matured, or issue bonds partly to refund  
 14 bonds outstanding and partly for any of its other purposes.

15 (3) Except as otherwise expressly provided by ~~resolution~~ directive of the ~~board~~ department, every issue  
 16 of its bonds is an obligation of the ~~board~~ department payable out of any revenue, assets, or money of the ~~board~~  
 17 department, subject only to agreements with the holders of particular notes or bonds pledging particular revenues,  
 18 assets, or money.

19 (4) The notes and bonds must be authorized by ~~resolutions~~ of the ~~board~~ department, bear a date, and  
 20 mature at the times the ~~resolutions provide~~ department provides. A note may not mature more than 5 years from  
 21 the date of its issue. A bond may not mature more than 40 years from the date of its issue. The bonds may be  
 22 issued as serial bonds payable in annual installments, as term bonds, or as a combination thereof. The notes and  
 23 bonds must bear interest at a stated rate or rates or at a rate or rate determination as stated, be in denominations,  
 24 be in a form, either coupon or registered, carry registration privileges, be executed in a manner, be payable in  
 25 a medium of payment, at places inside or outside the state, and be subject to terms of redemption as provided  
 26 ~~in resolutions by the department~~. The notes and bonds of the ~~board~~ department may be sold at public or private  
 27 sale, at prices above or below par, as determined by the ~~board~~ department, and in a manner such that interest  
 28 on the bonds is either exempt from or subject to federal income tax.

29 (5) The bonds issued under this part are exempt from the Montana Securities Act, but copies of all  
 30 prospectus and disclosure documents must be deposited with the state securities commissioner for public

1 inspection.

2 (6) The total amount of bonds secured under 17-5-1515 outstanding at any one time, except bonds as  
3 to which the ~~board's~~ department's obligations have been satisfied and discharged by refunding or bonds for which  
4 reserves for payment or other means of payment have been provided, may not exceed \$100 million."

5

6 **Section 7.** Section 17-5-1507, MCA, is amended to read:

7 **"17-5-1507. Bond anticipation notes -- issuance -- payment of principal and interest.** (1) The ~~board~~  
8 department may, pending the issuance of bonds, issue temporary notes in anticipation of the proceeds to be  
9 derived from the sale of the bonds. The notes ~~shall~~ must be designated as "bond anticipation notes". The  
10 proceeds of the sale of the bond anticipation notes must be used only for the purpose for which the proceeds of  
11 the bonds could be used, including costs of issuance. If, prior to the issuance of the bonds, it becomes necessary  
12 to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes.  
13 ~~No~~ A renewal of any note may not be issued after the sale of bonds in anticipation of which the original notes  
14 were issued.

15 (2) Bond anticipation notes or other short-term evidences of indebtedness maturing not more than 3  
16 years after the date of issue may be issued from time to time as the proceeds ~~thereof~~ are needed. The notes must  
17 be authorized by the ~~board~~ department and must have ~~such~~ terms and details ~~as that~~ may be provided by  
18 ~~resolution or directive of the board department.~~ However, each ~~resolution directive~~ of the ~~board department~~  
19 ~~authorizing that authorizes~~ notes must:

20 (a) describe the need for the proceeds of the notes to be issued; and

21 (b) specify the principal amount of the notes or maximum principal amount of the notes ~~which that~~ may  
22 be outstanding at any one time, the rate or rates of interest or maximum rate of interest or interest rate formula,  
23 (to be determined in the manner specified in the ~~resolution directive~~ authorizing the notes to be incurred through  
24 the issuance of ~~such the~~ notes), and the maturity date or maximum maturity date of the notes.

25 (3) Subject to the limitations contained in this section and the standards and limitations prescribed in the  
26 authorizing ~~resolution directive~~, the ~~board department~~ in its discretion may provide for the notes described in  
27 subsection (2) to be issued and sold, in whole or in part, from time to time. The ~~board may delegate to the~~  
28 ~~administrator of the board the power to~~ department shall determine the time or times of sale, the manner of sale,  
29 the amounts, the maturities, the rate or rates of interest, and ~~such~~ other terms and details of the notes as  
30 considered appropriate by the ~~board or the administrator in the event of such delegation~~ department. The ~~board~~

1 department in its discretion but subject to the limitations contained in this section may also provide in the  
2 resolution directive authorizing the issuance of notes for:

3 (a) the employment of one or more persons or firms to assist the ~~board~~ department in the sale of the  
4 notes;

5 (b) the appointment of one or more banks or trust companies, either inside or outside the state of  
6 Montana, as depository for safekeeping and as agent for the delivery and payment of the notes;

7 (c) the refunding of the notes from time to time, without further action by the ~~board~~ department, unless  
8 and until the ~~board~~ department revokes ~~such~~ the authority to refund; and

9 (d) ~~such~~ other terms and conditions as that the ~~board~~ department considers appropriate.

10 (4) In connection with the issuance and sale of notes as provided in this section, the ~~board~~ department  
11 may arrange for lines of credit with any bank, firm, or person for the purpose of providing an additional source  
12 of repayment for notes issued pursuant to this section. Amounts drawn on ~~such~~ lines of credit may be evidenced  
13 by negotiable or nonnegotiable notes or other evidences of indebtedness, containing ~~such~~ terms and conditions  
14 as that the ~~board~~ department may authorize in the resolution directive approving the ~~same~~ notes or other  
15 evidences of indebtedness."

16

17 **Section 8.** Section 17-5-1508, MCA, is amended to read:

18 **"17-5-1508. Provisions of bond resolutions authorization directives.** A ~~resolution~~ department  
19 directive authorizing notes or bonds or any issue ~~thereof~~ of notes or bonds may contain provisions, which must  
20 be a part of the contract or contracts with the holders ~~thereof~~ of the notes or bonds, as to govern:

21 (1) pledging all or any part of the revenue or property of the ~~board~~ department to secure the payment  
22 of the notes or bonds or of any issue ~~thereof~~ of notes or bonds, subject to existing agreements with noteholders  
23 or bondholders;

24 (2) pledging all or any part of the assets of the ~~board~~ department, including lease agreements, loan  
25 agreements, mortgages, and obligations securing them, to secure the payment of the notes or bonds or of any  
26 issue ~~thereof~~ of notes or bonds, subject to existing agreements with noteholders or bondholders;

27 (3) the use and disposition of the gross income from lease agreements, loan agreements, and mortgages  
28 owned by the ~~board~~ department, and the payment of the principal of mortgages owned by the ~~board~~ department;

29 (4) the setting aside of reserves for debt service funds in the hands of trustees, paying agents, and other  
30 depositories and the regulation and disposition ~~thereof~~ of the reserves;



- 1 (5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and  
 2 the pledge of the proceeds to secure the payment of the bonds or of any issue ~~thereof~~ of notes or bonds;
- 3 (6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or  
 4 bonds may be issued and secured, and the refunding of outstanding notes or bonds;
- 5 (7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be  
 6 amended or abrogated, the amount of notes or bonds the holders of which shall consent ~~thereto~~ to the terms, and  
 7 the manner in which ~~such~~ the consent may be given;
- 8 (8) a commitment to employ adequate and competent personnel at reasonable compensation; ~~to set~~  
 9 salaries, fees, and charges as may be determined by the ~~board in conjunction with the department;~~ department,  
 10 and to maintain suitable facilities and services for the purpose of carrying out ~~its~~ the department's programs;
- 11 (9) vesting in a trustee ~~such~~ the property, rights, powers, and duties in trust ~~as that~~ the ~~authority~~  
 12 department determines to be necessary;
- 13 (10) defining the acts or omissions that ~~shall~~ constitute a default in the obligations and duties of the ~~board~~  
 14 department to the holders of the notes or bonds and providing for the rights and remedies of the holders of the  
 15 notes or bonds in the event of ~~such~~ default, including as a matter of right the appointment of a receiver; and
- 16 (11) any other matters of like or different character that in any way affect the security or protection of the  
 17 holders of the notes or bonds."

18

19 **Section 9.** Section 17-5-1509, MCA, is amended to read:

20 "**17-5-1509. Personal liability.** ~~The board and employees~~ Employees of the department are not  
 21 personally liable or accountable by reason of the issuance of or on any bond or note issued by the ~~board~~  
 22 department."

23

24 **Section 10.** Section 17-5-1510, MCA, is amended to read:

25 "**17-5-1510. Purchase of notes and bonds -- cancellation.** The ~~board~~ department may, subject to  
 26 existing agreements with noteholders or bondholders and out of any funds available for that purpose, purchase  
 27 notes or bonds of the ~~board~~ department, which ~~shall~~ must then be canceled, at a price not exceeding:

28 (1) the current redemption price plus accrued interest to the next interest payment if the notes or bonds  
 29 are then redeemable; or

30 (2) the redemption price applicable on the first date after the purchase on which the notes or bonds

1 become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable."

2

3 **Section 11.** Section 17-5-1511, MCA, is amended to read:

4 **"17-5-1511. Trust indenture.** (1) In the discretion of the ~~board~~ department, the bonds may be secured  
5 by a trust indenture between the ~~board~~ department and a corporate trustee, which may be a trust company or  
6 bank having the power of a trust company, either inside or outside the state. A trust indenture may contain  
7 provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not  
8 in violation of law, including covenants setting forth the duties of the ~~authority~~ department in relation to the  
9 exercise of its powers and the custody, safeguarding, and application of all money. The ~~authority~~ department may  
10 provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the  
11 trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions  
12 it considers necessary.

13 (2) All expenditures incurred in carrying out a trust indenture may be treated as part of the operating  
14 expenses of the ~~board~~ department."

15

16 **Section 12.** Section 17-5-1512, MCA, is amended to read:

17 **"17-5-1512. Negotiability of bonds.** Notes and bonds issued by the ~~board~~ department are negotiable  
18 instruments under the Uniform Commercial Code, subject only to the provisions for registration of notes and  
19 bonds."

20

21 **Section 13.** Section 17-5-1513, MCA, is amended to read:

22 **"17-5-1513. Signatures of board members Signature of department director.** ~~If board members the~~  
23 ~~department director~~ whose ~~signatures appear~~ signature appears on notes, bonds, or coupons ~~cease to be~~  
24 ~~members ceases to be the director~~ before the delivery of the notes or bonds, ~~their signatures shall nevertheless~~  
25 ~~be the director's signature is~~ valid and sufficient for all purposes ~~the same~~ as if the ~~members~~ director had  
26 remained in office until delivery."

27

28 **Section 14.** Section 17-5-1514, MCA, is amended to read:

29 **"17-5-1514. Accounts.** The ~~board~~ department may create funds and accounts necessary to implement  
30 this part. The funds and accounts may include:

- 1 (1) a fund into which bond proceeds are deposited;
- 2 (2) a common bond fund consisting of:
- 3 (a) a common debt service account;
- 4 (b) a capital reserve account as provided in 17-5-1515; and
- 5 (c) an operating account for defraying the operational costs of the ~~board~~ department; and
- 6 (3) other funds or accounts."

7

8 **Section 15.** Section 17-5-1515, MCA, is amended to read:

9 **"17-5-1515. Reserve funds and appropriations.** (1) The ~~board~~ department may establish a capital  
10 reserve account and pay into it any:

- 11 (a) funds appropriated and made available by the state for the purpose of the account;
- 12 (b) proceeds of the sale of notes or bonds to the extent provided in the ~~resolutions or indentures of the~~  
13 ~~board~~ directive of the department authorizing their issuance; and
- 14 (c) other funds ~~which~~ that may be available to the ~~board~~ department from any other source for the  
15 purpose of the account.

16 (2) All funds held in the capital reserve account must be used solely for the payment of the principal of  
17 or interest on the bonds secured in whole or in part by the account or the debt service fund payments with respect  
18 to the bonds, the purchase or redemption of the bonds, the payment of interest on the bonds, or the payment of  
19 any redemption premium required to be paid when the bonds are redeemed prior to maturity. Funds in the  
20 account may not be withdrawn at any time in an amount that reduces the account to an amount less than the sum  
21 of minimum capital reserve requirements established in the ~~resolutions or indentures~~ directives of the ~~board~~  
22 department for the account except, with respect to bonds secured in whole or in part by the account, for the  
23 purpose of making payment, when due, of principal, interest, redemption premiums, and debt service fund  
24 payments for the payment of which other money pledged is not available. Any income or interest earned by or  
25 incremental to the capital reserve account due to its investment may be transferred to other accounts of the ~~board~~  
26 department to an extent that does not reduce the amount of the capital reserve account below the sum of  
27 minimum capital reserve requirements for the account."

28

29 **Section 16.** Section 17-5-1516, MCA, is amended to read:

30 **"17-5-1516. Maintenance of capital reserve account.** (1) In order to ~~assure~~ ensure the maintenance

1 of the capital reserve account, the ~~chairman~~ director of the ~~board~~ department shall, on or before September 1  
 2 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any,  
 3 required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall  
 4 include in the executive budget submitted to the legislature the sum required to restore the capital reserve  
 5 account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature ~~shall~~ must  
 6 be deposited in the capital reserve account.

7 (2) All amounts appropriated to the ~~board~~ department under this section constitute advances to the ~~board~~  
 8 department and, subject to the rights of the holders of any bonds or notes of the ~~board~~ department, must be  
 9 repaid to the state general fund without interest from available operating revenues of the ~~board~~ department in  
 10 excess of amounts required for the payment of bonds, notes, or other obligations of the ~~board~~ department, for  
 11 maintenance of the capital reserve account, and for operating expenses."  
 12

13 **Section 17.** Section 17-5-1517, MCA, is amended to read:

14 **"17-5-1517. Refunding obligations.** The ~~board~~ department may provide for the issuance of refunding  
 15 obligations for refunding any obligations then outstanding that have been issued under this part, including the  
 16 payment of any redemption of the obligations. The issuance of obligations, the maturities and other details, the  
 17 rights of the holders, and the rights, duties, and obligations of the ~~authority~~ department are governed by the  
 18 appropriate provisions of this part that relate to the issuance of obligations. The proceeds of refunding obligations  
 19 may be applied to the purchase, redemption, or payment of outstanding obligations. Pending the application of  
 20 the proceeds of refunding obligations and other available funds to the payment of principal, accrued interests,  
 21 and any redemption premium on the obligations being refunded and, if permitted in the ~~resolution~~ directive  
 22 authorizing the issuance of the refunding obligations or in the trust agreement securing them, to the payment of  
 23 interest on refunding obligations and expenses in connection with refunding, the proceeds may be invested in  
 24 ~~such securities as that~~ the ~~board~~ department considers appropriate."  
 25

26 **Section 18.** Section 17-5-1518, MCA, is amended to read:

27 **"17-5-1518. Tax exemption of bonds.** Bonds, notes, or other obligations issued by the ~~board~~  
 28 department under this part and their transfer and income, ~~(including any profits made on their sale),~~ are free from  
 29 taxation by the state or any political subdivision or other instrumentality of the state, except for estate taxes. The  
 30 ~~board~~ department is not required to pay recording or transfer fees or taxes on instruments recorded by it."

1

2       **Section 19.** Section 17-5-1521, MCA, is amended to read:

3       **"17-5-1521. Adoption of rules.** (1) The ~~board~~ department shall adopt rules to establish:

4       (a) procedures for soliciting and evaluating applications and for notifying the local government of the

5 application for purposes of complying with 17-5-1526 and 17-5-1527; and

6       (b) a system for evaluating applications, considering the following criteria:

7       (i) the applicant's net worth;

8       (ii) the applicant's training and experience in the industry involved in the proposed project;

9       (iii) the applicant's prospects for succeeding in the proposed project;

10       (iv) the degree to which the new or increased business resulting from the loan will meet the objectives

11 of 17-5-1502; and

12       (v) any other factors the ~~board~~ department may prescribe.

13       (2) The ~~board~~ department shall adopt rules for the:

14       (a) organization, approval, standards, and regulation of project applicants;

15       (b) approval, standards, and regulation of financial institutions under this part;

16       (c) assessment, collection, and payment of all fees and charges in connection with making, purchasing,

17 and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty

18 programs; and

19       (d) ~~such other matters as that~~ the ~~board~~ department considers necessary or desirable."

20

21       **Section 20.** Section 17-5-1522, MCA, is amended to read:

22       **"17-5-1522. Pledge of the state.** In accordance with the constitutions of the United States and the state

23 of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the

24 ~~board~~ department and the holders of notes and bonds issued by the ~~board~~ department, including but not limited

25 to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient

26 and competent for this purpose."

27

28       **Section 21.** Section 17-5-1523, MCA, is amended to read:

29       **"17-5-1523. Credit of state not pledged.** Obligations issued under the provisions of this part do not

30 constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the

1 revenues or assets of the ~~board~~ department. An obligation issued under this part must contain on the face  
 2 ~~thereof of the obligation~~ a statement to the effect that the state of Montana is not liable on the obligation, the  
 3 obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged  
 4 to the payment of the principal or interest on the obligation."

5

6 **Section 22.** Section 17-5-1524, MCA, is amended to read:

7 **"17-5-1524. Taxation of projects.** (1) Notwithstanding the fact that title to a project may be ~~in~~ held by  
 8 the ~~board~~ department, ~~such the~~ projects are subject to taxation to the same extent, in the same manner, and  
 9 under the same procedures as privately owned property in similar circumstances if ~~such the~~ projects are leased  
 10 to or held by private interests on both the assessment date and the date the levy is made in that year. ~~Such The~~  
 11 projects are not subject to taxation in any year if they are not leased to or held by private interests on both the  
 12 assessment date and the date the levy is made in that year.

13 (2) When personal property owned by the ~~board~~ department is taxed under this section and ~~such the~~  
 14 personal property taxes are delinquent, a levy by warrant for distraint for collection of ~~such the~~ delinquent taxes  
 15 may be made only on personal property against which ~~such the~~ taxes were levied."

16

17 **Section 23.** Section 17-5-1525, MCA, is amended to read:

18 **"17-5-1525. Bonds as legal investment.** (1) Bonds issued by the ~~board~~ department under the  
 19 provisions of this part are securities in which all funds may be legally and properly invested, including capital in  
 20 the control of or belonging to:

21 (a) public officers and public bodies of the state and its political subdivisions;

22 (b) insurance companies;

23 (c) credit unions, building and loan associations, investment companies, savings banks, banking  
 24 associations, and trust companies;

25 (d) executors, administrators, trustees, and other fiduciaries; and

26 (e) pension, profit-sharing, and retirement funds.

27 (2) Bonds issued under 17-5-1505 through 17-5-1518 and 17-5-1521 through 17-5-1529 are securities  
 28 that may properly and legally be deposited with and received by any state or municipal officer or any agency or  
 29 municipality of the state for any purpose for which the deposit of bonds or obligations of the state is now or may  
 30 ~~hereafter~~ be authorized by law."

1

2 **Section 24.** Section 17-5-1526, MCA, is amended to read:

3 **"17-5-1526. Procedure prior to financing projects.** (1) The ~~board~~ department may finance projects,  
4 other than major projects, under this part only when ~~it~~ the department finds that:

5 (a) the financing is in the public interest and is consistent with the legislative purposes and findings set  
6 forth in 17-5-1502;

7 (b) the financing to be provided by the ~~board~~ department for a project does not exceed either \$800,000  
8 or 90% of the cost or appraised value of the project, whichever is less;

9 (c) a financial institution will participate in financing the project, either directly or through a letter of credit,  
10 to the extent of at least 10% of the financing to be provided by the ~~board~~ department;

11 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental  
12 insurer or guarantor;

13 (e) an applicant has submitted a statement indicating any contracts to construct the projects will require  
14 all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in  
15 the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents;  
16 ~~"substantially equal qualifications"~~. "Substantially equal" means the qualifications of two or more persons among  
17 whom the employer cannot make a reasonable determination that the qualifications held by one person are  
18 significantly better suited for the position than the qualifications held by the other persons;.

19 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a  
20 project or projects being financed to provide for payment of debt service on bonds of the ~~board~~ department issued  
21 to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet  
22 all costs and expenses of issuing and servicing the bonds; and

23 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more  
24 than \$25,000 and financed from the proceeds of bonds issued under this part ~~on or after July 1, 1993~~, will contain  
25 a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the  
26 district in which the work is being performed unless the contractor performing the work has entered into a  
27 collective bargaining agreement covering the work to be performed.

28 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the  
29 following manner:

30 (a) the city or county in which the project will be located must be notified; and ~~the city and county shall~~,

1 within 14 days after receipt of the notice; shall notify the board department if it elects to conduct the hearing; or

2 (b) if a request for a local hearing is not received, the board department may hold the hearing at a time  
3 and place it prescribes.

4 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of  
5 the local government shall notify the board department of its determination of whether the project is in the public  
6 interest within 14 days of the completion of the public hearing.

7 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a  
8 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the  
9 city or county where the hearing will be held. The notice must include the time and place of the hearing; the  
10 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost  
11 of the project.

12 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by  
13 the capital reserve account authorized by 17-5-1515.

14 (6) The hearing requirements of subsections (2) through (4) do not apply to projects financed with bonds  
15 the interest on which is subject to federal income taxes."  
16

17 **Section 25.** Section 17-5-1527, MCA, is amended to read:

18 **"17-5-1527. Procedure prior to financing major projects.** (1) The board department may finance  
19 major projects under this part only when it finds that:

20 (a) the financing is in the public interest and is consistent with legislative purposes and findings;

21 (b) the financing to be provided by the board department for a project does not exceed either \$50 million  
22 or 90% of the cost or appraised value of the project, whichever is less;

23 (c) a financial institution will participate in financing the project if the cost or appraised value is less than  
24 \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided  
25 by the board department, and provided, ~~however~~, that participation by a financial institution in projects of over \$1  
26 million is at the discretion of the board department;

27 (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental  
28 insurer or guarantor;

29 (e) any contracts to construct the projects require all contractors to give preference to the employment  
30 of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their



1 qualifications are substantially equal to those of nonresidents; ~~"substantially equal qualifications"~~. "Substantially  
 2 equal" means the qualifications of two or more persons among whom the employer cannot make a reasonable  
 3 determination that the qualifications held by one person are significantly better suited for the position than the  
 4 qualifications held by the other persons; ~~;~~

5 (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a  
 6 project or projects being financed to provide for payment of debt service on bonds of the ~~board~~ department issued  
 7 to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet  
 8 all costs and expenses of issuing and servicing the bonds; and

9 (g) an applicant has submitted a statement that indicates that any contract let for a project costing more  
 10 than \$25,000 and financed from the proceeds of bonds issued under this part ~~on or after July 1, 1993~~, will contain  
 11 a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the  
 12 district in which the work is being performed unless the contractor performing the work has entered into a  
 13 collective bargaining agreement covering the work to be performed.

14 (2) In order to make the findings as described in subsection (1)(a), a hearing must be conducted in the  
 15 following manner:

16 (a) the city or county in which the project will be located must be notified; and within 14 days after receipt  
 17 of the notice shall advise the ~~board~~ department if it elects to conduct the hearing; or

18 (b) if a request for a local hearing is not received, the ~~board~~ department may hold the hearing at a time  
 19 and place it prescribes.

20 (3) If the hearing required by subsection (2) is conducted by a local government, the governing body of  
 21 the local government shall notify the ~~board~~ department of its determination of whether the project is in the public  
 22 interest within 14 days of the completion of the public hearing.

23 (4) When a hearing is required either locally or at the state level, notice must be given, at least once a  
 24 week for 2 weeks prior to the date set for the hearing, by publication in a newspaper of general circulation in the  
 25 city or county where the hearing will be held. The notice must include the time and place of the hearing; ~~;~~ the  
 26 general nature of the project; the name of the lessee, borrower, or user of the project; and the estimated cost  
 27 of the project.

28 (5) The requirements of subsections (1)(b) through (1)(d) do not apply to bonds that are not secured by  
 29 the capital reserve account authorized by 17-5-1515.

30 (6) The hearing requirements of subsections (2) through (4) do not apply to major projects financed with

1 bonds the interest on which is subject to federal income taxes.

2 (7) The ~~board~~ department is encouraged to consider applications for project financing related to  
3 infrastructure and facilities necessary for the development of the state-owned coal assets."

4

5 **Section 26.** Section 17-5-1528, MCA, is amended to read:

6 **"17-5-1528. Validity of pledge.** Any pledge made by the ~~board~~ department is valid and binding from  
7 the time the pledge is made. Revenue, money, or property pledged and received by the ~~board~~ department is  
8 immediately subject to the lien of the pledge without any physical delivery or further act. The lien of any pledge  
9 is valid and binding against all parties having claims of any kind, whether in tort, contract, or otherwise, against  
10 the ~~board~~ department, irrespective of whether ~~such~~ the parties have notice ~~thereof~~ of the lien. ~~Neither the~~  
11 ~~resolution nor any other~~ The instrument by which a pledge is created is not required to be recorded."

12

13 **Section 27.** Section 17-5-1529, MCA, is amended to read:

14 **"17-5-1529. Annual audits.** The ~~board's~~ department's books and records related to economic  
15 development bonds must be audited at least once each fiscal year by or at the direction of the legislative auditor.  
16 The actual costs of the audit must be paid from the ~~board's~~ department's funds."

17

18 **Section 28.** Section 17-6-201, MCA, is amended to read:

19 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program  
20 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be  
21 administered by the board of investments in accordance with the prudent expert principle, which requires an  
22 investment manager to:

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

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

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

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

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

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

5 (b) The board is urged under the prudent expert principle to ~~invest up to 3% of retirement funds in~~  
6 ~~venture capital companies. Whenever possible, preference should be given to investments in those venture~~  
7 ~~capital companies that demonstrate an interest in making investments in Montana~~ maximize returns after  
8 management fees by managing assets internally instead of hiring professional investment management  
9 companies.

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

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

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

18 (5) The board shall:

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

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

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

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

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

26 (6) The board may:

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

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

1 17-6-105;

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

4 (7) (a) The cost of administering and accounting for each investment fund must be deducted from the  
5 income from each fund.

6 (b) In its annual report, the board shall report the income from each fund before as well as after  
7 deducting administration and accounting costs from the income of the fund."

8

9 **Section 29.** Section 17-6-308, MCA, is amended to read:

10 **"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through (4) and subject  
11 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules  
12 adopted by the board.

13 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve account  
14 created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree  
15 in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must  
16 be on terms and conditions determined by the board and must be repaid from revenue realized ~~from the exercise~~  
17 ~~of the board's powers under~~ by the department pursuant to 17-5-1501 through 17-5-1518 and 17-5-1521 through  
18 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

19 (3) The board shall manage the seed capital and research and development loan portfolios created by  
20 the former Montana board of science and technology development. The board shall establish an appropriate  
21 repayment schedule for all outstanding research and development loans made to the university system. The  
22 board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by  
23 the Montana board of science and technology development as part of the seed capital and research and  
24 development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal  
25 tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other  
26 instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science  
27 and technology development are repaid, the board shall deposit the proceeds or loans made from the coal  
28 severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7%  
29 interest.

30 (4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent

1 coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90,  
 2 chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of  
 3 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest  
 4 payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest  
 5 have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan  
 6 amounts may not exceed 10% of the amount administered under this subsection.

7 (5) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The  
 8 rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit  
 9 corporations.

10 (6) All repayments of proceeds pursuant to subsection (3) of investments made from the coal severance  
 11 tax trust fund must be deposited in the coal severance tax permanent fund."

12

13 **Section 30.** Section 60-11-115, MCA, is amended to read:

14 **"60-11-115. Revolving loan account -- statutory appropriation -- rulemaking.** (1) There is a revolving  
 15 loan account to be administered by the department. Any interest or income that is earned by the account and loan  
 16 repayments must be deposited into the revolving loan account unless revenue bonds are issued to fund a loan,  
 17 in which case the loan repayments must be deposited in the debt service account. The department may request  
 18 the ~~board of investments~~ department of commerce to issue revenue bonds, as provided in 60-11-117 through  
 19 60-11-119, for the purpose of providing funds for a loan.

20 (2) The department may make loans from the account pursuant to 60-11-120.

21 (3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be  
 22 managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight  
 23 assistance programs or for railroad projects must be deposited in the account.

24 (4) There is statutorily appropriated, as provided in 17-7-502, to the department up to \$2 million annually  
 25 for the purposes of making loans pursuant to 60-11-120.

26 (5) Loans may not be made if the loan would cause the balance in the account to be less than \$500,000.

27 (6) The department may adopt rules to implement 60-11-113 through 60-11-116."

28

29 **Section 31.** Section 60-11-117, MCA, is amended to read:

30 **"60-11-117. Definitions.** As used in 60-11-117 through 60-11-119, the following definitions apply:

1           ~~(1)~~ "Board" means the board of investments established in 2-15-1808.

2           ~~(2)~~(1) "Bonds" means bonds, notes, or other evidences of indebtedness issued pursuant to 60-11-117  
3 through 60-11-119 as essential freight rail revenue bonds.

4           ~~(3)~~(2) "Cost", as applied to any project, means any cost of any part of the project pursuant to 60-11-120.

5           ~~(4)~~(3) "Projects" means the acquisition, construction, reconstruction, maintenance, and repair of rail lines.

6           ~~(5)~~(4) "Revenue" means the revenue from the operation of a rail line loan repayments and any  
7 delinquency charges on loan repayments."

8

9           **Section 32.** Section 60-11-119, MCA, is amended to read:

10           **"60-11-119. Authority to issue revenue bonds.** The ~~board~~ department of commerce may issue and  
11 sell essential freight rail revenue bonds to make loans to finance the cost of projects, to pay the costs of issuing  
12 the bonds, and to provide for reserves, upon recommendation of the department. The bonds must be issued  
13 under Title 17, chapter 5, part 15."

14

15           NEW SECTION. **Section 33. Saving clause.** [This act] does not affect rights and duties that matured,  
16 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

17

18           NEW SECTION. **Section 34. Applicability.** [This act] applies to bonds and notes issued and  
19 investments made after [the effective date of this act].

20

- END -