

SENATE BILL NO. 468
INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE POWERS AND DUTIES OF THE BOARD OF INVESTMENTS; TRANSFERRING THE BOARD OF INVESTMENTS' DUTIES UNDER THE MONTANA ECONOMIC DEVELOPMENT BOND ACT OF 1983 AND DUTIES REGARDING FREIGHT RAIL REVENUE BONDS TO THE DEPARTMENT OF COMMERCE; REVISING THE BOARD OF INVESTMENTS' REPORTING AND FUND ADMINISTRATION REQUIREMENTS; AMENDING SECTIONS 2-15-1808, 17-5-1502, 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, 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, 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, 60-11-117, AND 60-11-119, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 2-15-1808, MCA, is amended to read:

"2-15-1808. Board of investments -- allocation -- composition -- quasi-judicial. (1) There is a board of investments within the department of commerce.

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

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

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

(b) seven members who will provide a balance of professional expertise and public interest and

accountability, who are informed and experienced in the subject of investments, and who are representative of:

- (i) the financial community;
- (ii) small business;
- (iii) agriculture; and
- (iv) labor.

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

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

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

(2) The legislature finds that:

- (a) a vigorous, diversified, and growing economy is the basic source of job opportunities;
- (b) protection against unemployment and its economic burdens and the spread of economic stagnation can best be provided by promoting, attracting, stimulating, and revitalizing a diversified economy with contributions from industry, manufacturing, commerce, natural resource development, agriculture, livestock, recreation, tourism, and health care facilities; and
- (c) the state of Montana has a responsibility to help create a favorable climate for new and improved job opportunities and a stable, growing, and healthy economy for its citizens by encouraging the development of business."

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

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

- (1) ~~"Board" means the board of investments created in 2-15-1808.~~
- (2)(1) "Bond" means any bond, note, debenture, interim certificate, or other evidence of financial indebtedness issued by the ~~board~~ department pursuant to this part.
- (3)(2) "Department" means the department of commerce provided for in 2-15-1801.
- (4)(3) "Finance" means to supply capital and, in the case of agricultural enterprises, to refinance a project

and project costs.

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

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

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

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

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

- (a) the actual cost of acquiring or improving real estate for any project;
- (b) the actual cost of construction of all or any part of a project, including architects' and engineers' fees;
- (c) all expenses in connection with the authorization, sale, and issuance of the bonds to finance such acquisition or improvement;
- (d) bond reserves and premiums for insurance or guaranty of loan payments or lease rentals pledged to pay the bonds;
- (e) the interest on ~~such~~ bonds for a reasonable time prior to construction, during construction, and not exceeding 6 months after completion of construction; and
- (f) working capital for agricultural enterprise projects for a period not to exceed 1 year."

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

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

- (1) sue and be sued;
- (2) have a seal;
- (3) adopt all procedural and substantive rules necessary for the administration of this part;
- (4) make contracts, agreements, and other instruments necessary or convenient for the exercise of its powers under this part;
- ~~(5) invest any funds not required for immediate use, as the board considers appropriate, subject to any agreements with its bondholders and noteholders;~~
- ~~(6)~~(5) arrange for lines of credit from and enter into participation agreements with any financial institution;
- ~~(7)~~(6) issue bonds for the purpose of defraying the cost of acquiring or improving any project or projects

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

~~(6)~~(7) enter into agreements or other transactions with and accept grants and the cooperation of any governmental agency in furtherance of this part;

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

~~(10)~~(9) accept services, appropriations, gifts, grants, bequests, and devises and utilize or dispose of them in carrying out this part;

~~(11)~~(10) enter into agreements or other transactions with a federal agency, an agency or instrumentality of the state, a municipality, a private organization, or any other entity or organization in carrying out this part;

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

(a) acquire real or personal property or any right, interest, or easement ~~therein~~ in property by gift, purchase, transfer, foreclosure, lease, or otherwise;

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

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

(d) release or relinquish any right, title, claim, interest, easement, or demand, however acquired, including any equity or right of redemption;

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

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

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

(h) operate, manage, lease, dispose of, and otherwise deal with such property in any manner necessary or desirable to protect its interests or the holders of its bonds or notes, provided ~~such the~~ the action is consistent with any agreement with ~~such the~~ the holders;

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

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

~~(15)~~(14) consent, whenever it considers necessary or desirable in fulfilling its purposes, to the modification of the rate of interest, time, and payment of any installment of principal, interest, security, or any other term of any contract, lease agreement, loan agreement, mortgage, mortgage loan, mortgage loan commitment, construction loan, advance contract, or agreement of any kind, subject to any agreement with bondholders and noteholders;

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

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

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

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

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

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

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

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

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

(2) The ~~board~~ department may not operate any project as a business or in any other manner except as the lessor ~~thereof~~ of the project or as may be necessary for a temporary period through the enforcement of its rights under a lease, loan agreement, or other security agreement."

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

"17-5-1506. Bonds and notes for projects and major projects. (1) The ~~board~~ department may by

~~resolution~~ issue negotiable notes and bonds in a principal amount ~~as that the board~~ department determines necessary to provide sufficient funds for achieving any of its purposes, including the payment of interest on notes and bonds of the board department, establishment of reserves to secure the notes and bonds, including the reserve funds created under 17-5-1515, and all other expenditures of the board department incident to and necessary or convenient to carry out this part.

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) the refunding of the notes from time to time, without further action by the ~~board department~~, unless

and until the ~~board~~ department revokes ~~such the~~ authority to refund; and

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

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

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

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

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

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

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

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

(5) limitations on the purpose for which the proceeds of the sale of notes or bonds may be applied and the pledge of the proceeds to secure the payment of the bonds or of any issue ~~thereof~~ of notes or bonds;

(6) limitations on the issuance of additional notes or bonds, the terms upon which additional notes or bonds may be issued and secured, and the refunding of outstanding notes or bonds;

(7) the procedure, if any, by which the terms of any contract with noteholders or bondholders may be amended or abrogated, the amount of notes or bonds the holders of which shall consent ~~thereto~~ to the terms, and the manner in which ~~such the~~ consent may be given;

(8) a commitment to employ adequate and competent personnel at reasonable compensation; ~~to set~~

salaries, fees, and charges as may be determined by the ~~board in conjunction with the department;~~ department, and to maintain suitable facilities and services for the purpose of carrying out ~~its~~ the department's programs;

(9) vesting in a trustee ~~such~~ the property, rights, powers, and duties in trust ~~as that~~ the ~~authority~~ department determines to be necessary;

(10) defining the acts or omissions that ~~shall~~ constitute a default in the obligations and duties of the ~~board~~ department to the holders of the notes or bonds and providing for the rights and remedies of the holders of the notes or bonds in the event of ~~such~~ default, including as a matter of right the appointment of a receiver; and

(11) any other matters of like or different character that in any way affect the security or protection of the holders of the notes or bonds."

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

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

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

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

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

(2) the redemption price applicable on the first date after the purchase on which the notes or bonds become subject to redemption, plus accrued interest to that date, if the notes or bonds are not then redeemable."

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

"17-5-1511. Trust indenture. (1) In the discretion of the ~~board~~ department, the bonds may be secured by a trust indenture between the ~~board~~ department and a corporate trustee, which may be a trust company or bank having the power of a trust company, either inside or outside the state. A trust indenture may contain provisions for protecting and enforcing bondholders' rights and remedies that are reasonable, proper, and not in violation of law, including covenants setting forth the duties of the ~~authority~~ department in relation to the exercise of its powers and the custody, safeguarding, and application of all money. The ~~authority~~ department may

provide by a trust indenture for the payment of the proceeds of the bonds and revenues to the trustee under the trust indenture of another depository and for the method of disbursement, with the safeguards and restrictions it considers necessary.

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

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

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

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

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

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

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

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

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

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

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

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

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

"17-5-1516. Maintenance of capital reserve account. (1) In order to ~~assure~~ ensure the maintenance of the capital reserve account, the ~~chairman~~ director of the ~~board~~ department shall, on or before September 1 in each year preceding the convening of the legislature, deliver to the governor a certificate stating the sum, if any, required to restore the capital reserve account to the minimum capital reserve requirement. The governor shall include in the executive budget submitted to the legislature the sum required to restore the capital reserve account to the sum of minimum capital reserve requirement. All sums appropriated by the legislature ~~shall~~ must be deposited in the capital reserve account.

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

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

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

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

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

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

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

- (a) procedures for soliciting and evaluating applications and for notifying the local government of the application for purposes of complying with 17-5-1526 and 17-5-1527; and
- (b) a system for evaluating applications, considering the following criteria:
 - (i) the applicant's net worth;
 - (ii) the applicant's training and experience in the industry involved in the proposed project;
 - (iii) the applicant's prospects for succeeding in the proposed project;
 - (iv) the degree to which the new or increased business resulting from the loan will meet the objectives of 17-5-1502; and
 - (v) any other factors the ~~board~~ department may prescribe.

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

- (a) organization, approval, standards, and regulation of project applicants;
- (b) approval, standards, and regulation of financial institutions under this part;
- (c) assessment, collection, and payment of all fees and charges in connection with making, purchasing, and servicing of its bonds and notes, mortgage lending, construction lending, temporary lending, and guaranty programs; and
- (d) ~~such~~ other matters ~~as~~ that the ~~board~~ department considers necessary or desirable."

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

"17-5-1522. Pledge of the state. In accordance with the constitutions of the United States and the state of Montana, the state pledges that it will not in any way impair the obligations of any agreement between the ~~board~~ department and the holders of notes and bonds issued by the ~~board~~ department, including but not limited to an agreement to administer a loan program financed by the issuance of bonds and to employ a staff sufficient and competent for this purpose."

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

"17-5-1523. Credit of state not pledged. Obligations issued under the provisions of this part do not constitute a debt, liability, obligation, or pledge of the faith and credit of the state but are payable solely from the revenues or assets of the ~~board~~ department. An obligation issued under this part must contain on the face ~~thereof~~ of the obligation a statement to the effect that the state of Montana is not liable on the obligation, the obligation is not a debt of the state, and neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or interest on the obligation."

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

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

(2) When personal property owned by the ~~board~~ department is taxed under this section and ~~such~~ the personal property taxes are delinquent, a levy by warrant for distraint for collection of ~~such~~ the delinquent taxes

may be made only on personal property against which ~~such~~ the taxes were levied."

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

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

- (a) public officers and public bodies of the state and its political subdivisions;
- (b) insurance companies;
- (c) credit unions, building and loan associations, investment companies, savings banks, banking associations, and trust companies;
- (d) executors, administrators, trustees, and other fiduciaries; and
- (e) pension, profit-sharing, and retirement funds.

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

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

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

- (a) the financing is in the public interest and is consistent with the legislative purposes and findings set forth in 17-5-1502;
- (b) the financing to be provided by the ~~board~~ department for a project does not exceed either \$800,000 or 90% of the cost or appraised value of the project, whichever is less;
- (c) a financial institution will participate in financing the project, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the ~~board~~ department;
- (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;
- (e) an applicant has submitted a statement indicating any contracts to construct the projects will require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents;

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

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

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

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

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

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

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

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

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

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

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

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

- (a) the financing is in the public interest and is consistent with legislative purposes and findings;
- (b) the financing to be provided by the ~~board~~ department for a project does not exceed either \$50 million or 90% of the cost or appraised value of the project, whichever is less;
- (c) a financial institution will participate in financing the project if the cost or appraised value is less than \$1 million, either directly or through a letter of credit, to the extent of at least 10% of the financing to be provided by the ~~board~~ department, and provided, ~~however~~, that participation by a financial institution in projects of over \$1 million is at the discretion of the ~~board~~ department;
- (d) the financing for the project is insured or guaranteed in whole or in part by a private or governmental insurer or guarantor;
- (e) any contracts to construct the projects require all contractors to give preference to the employment of bona fide Montana residents, as defined in 18-2-401, in the performance of the work on the projects if their qualifications are substantially equal to those of nonresidents; ~~"substantially equal qualifications".~~ "Substantially equal" means the qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons; ~~;~~
- (f) adequate provision is made in the loan agreement, lease, or other credit arrangement regarding a project or projects being financed to provide for payment of debt service on bonds of the ~~board~~ department issued to finance the project or projects, to create and maintain reserves for payment of the debt service, and to meet all costs and expenses of issuing and servicing the bonds; and
- (g) an applicant has submitted a statement that indicates that any contract let for a project costing more than \$25,000 and financed from the proceeds of bonds issued under this part ~~on or after July 1, 1993~~, will contain a provision that requires the contractor to pay the standard prevailing wage rate in effect and applicable to the district in which the work is being performed unless the contractor performing the work has entered into a collective bargaining agreement covering the work to be performed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) The board shall:

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

investment;

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

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

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

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

(6) The board may:

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

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

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

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

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

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

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

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

(3) The board shall manage the seed capital and research and development loan portfolios created by the former Montana board of science and technology development. The board shall establish an appropriate

repayment schedule for all outstanding research and development loans made to the university system. The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana board of science and technology development as part of the seed capital and research and development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science and technology development are repaid, the board shall deposit the proceeds or loans made from the coal severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7% interest.

(4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90, chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan amounts may not exceed 10% of the amount administered under this subsection.

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

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

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

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

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

(3) Funds in the account that are deposited pursuant to former 49 U.S.C. 1654 must continue to be

managed as local rail freight assistance program funds. Any additional federal funds received for local rail freight assistance programs or for railroad projects must be deposited in the account.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- END -

