



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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**Director**  
AMY CARLSON

DATE: May 30, 2018  
TO: Study of State Labs Interim Committee  
FROM: Cathy Duncan, Senior Fiscal Analyst  
RE: April 24 Meeting Questions

- Q Was the lease for the new DNRC building a lease-to-own contract and does it contain a balloon payment at the end of the 20 year contract?
- A According to the Department of Administration Lease Office, General Services Division (GSD), the DNRC lease is not a lease-to-own contract.
  - A Consequently, there is no balloon payment at the end of the lease since the state will not be assuming ownership.
  - A According to GSD, the state has only entered into one lease-to-own contract for the OPI building authorized by the two-thirds vote of the legislature in the 1990's, and that contract did have a balloon payment at the end of the lease.
- Q Can the state borrow from the Intercap Loan Program for the costs of a building?
- A Yes. According to the Board of Investments, a loan from the Intercap Program to a state agency for the purposes of a long-term loan to construct a state building would still require a two-thirds vote of each house of the legislature.
- Q Can an enterprise program construct a building without legislative approval?
- A No, but the approval of a loan for an enterprise program building would only require a simple majority vote per 17-5-1612 (1), MCA.
  - A While a state enterprise program is not explicitly defined in law, 17-2-102 defines the "the enterprise fund type". Additionally, 17-5-1612 (2) states that if a loan would be secured by (repaid from) a general fund revenue source or any tax or fee imposed by the legislature, the loan must be approved by a two-thirds vote of each house of the legislature.

### Relevant Statutes:

**17-2-102. Fund structure.** ...(2) the proprietary fund category, which includes:

- (a) the enterprise fund type, which accounts for operations:
  - (i) that are financed and operated in a manner similar to private business enterprises whenever the intent of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general public on a continuing basis are to be financed or recovered primarily through user charges; or
  - (ii) whenever the legislature has decided that periodic determination of revenue earned, expenses incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability, or other purposes;

**17-5-1612. Specific loan authorization.** The legislature intends that individual state agencies may borrow from the program established in this part, as specifically authorized by the legislature under the following conditions:

(1) A loan for which the security is an enterprise or internal service fund source may be approved by a simple majority vote of the legislature.

(2) A loan for which the security is a general fund appropriation, a general fund revenue source, or any type of tax or fee imposed by the legislature must be approved by a two-thirds vote of the members of each house of the legislature and must include language authorizing the creation of a state debt under Article VIII, section 8, of the Montana constitution.