

HOUSE BILL NO. 431

INTRODUCED BY GRADY, BLAYLOCK, MAZUREK, STORY,  
SIMON, PATTERSON, MERCER, QUILICI, HARPER

IN THE HOUSE

JANUARY 25, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
JANUARY 26, 1989	FIRST READING.
FEBRUARY 7, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 8, 1989	PRINTING REPORT.
FEBRUARY 11, 1989	SECOND READING, DO PASS.
FEBRUARY 13, 1989	ENGROSSING REPORT.
FEBRUARY 14, 1989	THIRD READING, PASSED. AYES, 90; NOES, 6.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 15, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON STATE ADMINISTRATION.
	FIRST READING.
FEBRUARY 27, 1989	ON MOTION, REREFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 3, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 4, 1989	SECOND READING, CONCURRED IN.
MARCH 7, 1989	THIRD READING, CONCURRED IN. AYES, 47; NOES, 3.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 9, 1989

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 10, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *431*  
 2 INTRODUCED BY *Donny Dayish*  
 3 *Stacy Simon* *Patricia Mercer* *William Hagan*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING LOCAL  
 5 GOVERNMENTS AND THE BOARD OF INVESTMENTS TO INVEST PUBLIC  
 6 FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE  
 7 FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN  
 8 INVESTMENT COMPANIES OR INVESTMENT TRUSTS; PERMITTING  
 9 SECURITIES OF OR OTHER INTERESTS IN THESE COMPANIES OR  
 10 TRUSTS TO BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS; AND  
 11 AMENDING SECTIONS 7-6-202, 17-6-103, AND 17-6-201, MCA."  
 12  
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 14 **Section 1.** Section 7-6-202, MCA, is amended to read:  
 15 "7-6-202. Investment of public money in direct  
 16 obligations of the United States. (1) Said A local governing  
 17 body is--hereby--authorized-to may invest such public money  
 18 not necessary for immediate use by such the county, city, or  
 19 town in direct obligations of the United States government  
 20 and securities issued by agencies of the United States.  
 21 (2) The local governing body may invest in these  
 22 obligations either directly or in the form of securities of  
 23 or other interests in an open-end or closed-end management  
 24 type investment company or investment trust registered under  
 25 the Investment Company Act of 1940 (15 U.S.C. 80a-1 through

1 80a-64), as amended, if:

2 (a) the portfolio of the investment company or  
 3 investment trust is limited to United States government  
 4 obligations and repurchase agreements fully collateralized  
 5 by United States government obligations; and  
 6 (b) the investment company or investment trust takes  
 7 delivery of the collateral for any repurchase agreement,  
 8 either directly or through an authorized custodian."

9 **Section 2.** Section 17-6-103, MCA, is amended to read:

10 "17-6-103. Security for deposits of public funds. The  
 11 following kinds of securities may be pledged or guarantees  
 12 may be issued to secure deposits of public funds:  
 13 (1) direct obligations of the United States;  
 14 (2) securities as to which the payment of principal  
 15 and interest is guaranteed by the United States;  
 16 (3) securities issued or fully guaranteed by the  
 17 following agencies of the United States or their successors,  
 18 whether or not guaranteed by the United States:

- 19 (a) commodity credit corporation;  
 20 (b) federal intermediate credit banks;  
 21 (c) federal land bank;  
 22 (d) bank for cooperatives;  
 23 (e) federal home loan banks;  
 24 (f) federal national mortgage association;  
 25 (g) government national mortgage association;

(h) small business administration;

(i) federal housing administration; and

(j) federal home loan mortgage corporation;

(4) securities of or other interests in an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 through 80a-64), as amended, if:

(a) the portfolio of the investment company or investment trust is limited to United States government obligations and repurchase agreements fully collateralized by United States government obligations; and

(b) the investment company or investment trust takes delivery of the collateral for any repurchase agreement, either directly or through an authorized custodian;

†4†(5) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

†5†(6) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such the subdivision or when the revenues pledged to the payment of the bonds are derived from a water or sewer system and the issuer has covenanted to establish and maintain rates and charges for the system in an amount sufficient to produce revenues equal to at least 125% of the average annual principal and interest due

on all bonds payable for-such from the revenues during the outstanding term of such the bonds;

†6†(7) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

†7†(8) obligations of housing authorities of the state secured by a pledge of annual contributions or by a loan agreement made by the United States or any agency thereof providing for contributions or a loan sufficient with other funds pledged to pay the principal of and interest on the obligations when due. Subject to rules prescribed by the department of commerce, the bonds and other obligations made eligible for investment in 32-1-424(3) and 7-15-4505 may be used as security for all deposits of public funds or obligations for which depository bonds or any kind of bonds or other securities are required or may by law be deposited as security.

†8†(9) general obligation bonds of other states and of municipalities, counties, and school districts of other states;

†9†(10) undertaking or guarantees issued by a surety

company authorized to do business in the state;

~~{10}~~(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

~~{11}~~(12) bonds issued pursuant to Title 7, chapter 12, parts 21, 41, and 42;

~~{12}~~(13) bonds issued pursuant to Title 90, chapter 6, part 1;

~~{13}~~(14) revenue bonds issued by any unit of the university system of the state of Montana;

~~{14}~~(15) advance refunded bonds secured by direct obligations of the United States treasury held in irrevocable escrow; and

~~{15}~~(16) linked deposit loan obligations incurred under 80-14-203. (Subsection ~~{15}~~ (16) terminates June 30, 1989--sec. 6, Ch. 57, L. 1987.)"

**Section 3.** 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 1972 Montana constitution to be provided for public funds ~~shall~~ must be administered

by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

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

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may be made at any time ~~which that~~ would cause the book value of ~~such~~ the investments in any retirement fund to exceed 50% of the book value of ~~such~~ the fund or would cause the stock of one corporation to exceed 2% of the book value of ~~such~~ the retirement fund.

(3) (a) Nothing contained in this section prevents the investment in any business activity in Montana, including activities that continue existing jobs or create

1 new jobs in Montana.

2 (b) The board is urged under the prudent expert  
3 principle to invest up to 3% of retirement funds in venture  
4 capital companies. Whenever possible, preference should be  
5 given to investments in those venture capital companies  
6 which that demonstrate an interest in making investments in  
7 Montana.

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

11 (4) The board has the sole authority to invest state  
12 funds. No other agency may invest such state funds. The  
13 board shall direct the investment of state funds in  
14 accordance with the laws and constitution of this state. The  
15 board has the power to veto any investments made under its  
16 general supervision.

17 (5) The board shall:

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

20 (b) determine the amount of surplus treasury cash to  
21 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  
25 fund and of all the investments belonging to such the fund

1 and a record of the participation of each treasury fund  
2 account therein.

3 (6) The board may:

4 (a) execute deeds of conveyance transferring all real  
5 property obtained through foreclosure of any investments  
6 purchased under the provisions of 17-6-211 when full payment  
7 has been received therefor;

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

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

14 (d) invest in United States government obligations,  
15 either directly or in the form of securities of or other  
16 interests in an open-end or closed-end management type  
17 investment company or investment trust registered under the  
18 Investment Company Act of 1940 (15 U.S.C. 80a-1 through  
19 80a-64), as amended, if:

20 (i) the portfolio of the investment company or  
21 investment trust is limited to United States government  
22 obligations and repurchase agreements fully collateralized  
23 by United States government obligations; and

24 (ii) the investment company or investment trust takes  
25 delivery of the collateral for any repurchase agreement,

1 either directly or through an authorized custodian.

2 (7) The cost of administering and accounting for each  
3 investment fund ~~shall~~ must be deducted from the income  
4 therefrom earned on the fund, except that ~~such the~~ costs of  
5 the nonexpendable trust funds ~~shall~~ must be paid from income  
6 otherwise receivable from the pooled investment fund, and  
7 the amounts required for this purpose ~~shall~~ must be  
8 appropriated by the legislature from the respective  
9 investment funds.

10 (8) (a) The director of the department of  
11 administration annually may prepare a statewide cost  
12 allocation plan to distribute program costs incurred by  
13 state agencies that are funded through the general fund to  
14 the programs served by the agencies. Except as provided in  
15 subsection (8)(b), the cost to an agency of providing  
16 services to a program funded through an account in the state  
17 special revenue fund as defined in 17-2-102 must be deducted  
18 by the board from the account's investment earnings  
19 according to the statewide cost allocation plan. Amounts  
20 deducted by the board must be credited to the general fund.

21 (b) No deduction for program costs as provided in  
22 subsection (8)(a) may be made if an account's cash on hand  
23 is pooled for investment in the treasury cash account  
24 defined in 17-6-202."

25 NEW SECTION. **Section 4.** Extension of authority. Any

1 existing authority to make rules on the subject of the  
2 provisions of [this act] is extended to the provisions of  
3 [this act].

-End-

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

1 *House* BILL NO. *431*  
 2 INTRODUCED BY *Donny Haydel*  
 3 *Stacy Simon* *Patricia Mercer* *William Hagan*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING LOCAL  
 5 GOVERNMENTS AND THE BOARD OF INVESTMENTS TO INVEST PUBLIC  
 6 FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE  
 7 FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN  
 8 INVESTMENT COMPANIES OR INVESTMENT TRUSTS; PERMITTING  
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 18 not necessary for immediate use by ~~such the~~ county, city, or  
 19 town in direct obligations of the United States government  
 20 and securities issued by agencies of the United States.  
 21 (2) The local governing body may invest in these  
 22 obligations either directly or in the form of securities of  
 23 or other interests in an open-end or closed-end management  
 24 type investment company or investment trust registered under  
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 3 investment trust is limited to United States government  
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 5 by United States government obligations; and  
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 7 delivery of the collateral for any repurchase agreement,  
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 18 whether or not guaranteed by the United States:  
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 17 subdivision of the state;  
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 19 political subdivision of the state, when backed by the full  
 20 faith and credit of such the subdivision or when the  
 21 revenues pledged to the payment of the bonds are derived  
 22 from a water or sewer system and the issuer has covenanted  
 23 to establish and maintain rates and charges for the system  
 24 in an amount sufficient to produce revenues equal to at  
 25 least 125% of the average annual principal and interest due

1 on all bonds payable ~~for-such from the~~ revenues during the  
 2 outstanding term of ~~such the~~ bonds;  
 3 †6†(7) interest-bearing warrants of the state or of  
 4 any county, city, school district, or other political  
 5 subdivision of the state issued in evidence of claims in an  
 6 amount which, with all other claims on the same fund, do not  
 7 exceed the amount validly appropriated in the current budget  
 8 for expenditure from the fund in the year in which they are  
 9 issued;  
 10 †7†(8) obligations of housing authorities of the state  
 11 secured by a pledge of annual contributions or by a loan  
 12 agreement made by the United States or any agency thereof  
 13 providing for contributions or a loan sufficient with other  
 14 funds pledged to pay the principal of and interest on the  
 15 obligations when due. Subject to rules prescribed by the  
 16 department of commerce, the bonds and other obligations made  
 17 eligible for investment in 32-1-424(3) and 7-15-4505 may be  
 18 used as security for all deposits of public funds or  
 19 obligations for which depository bonds or any kind of bonds  
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 22 †8†(9) general obligation bonds of other states and of  
 23 municipalities, counties, and school districts of other  
 24 states;  
 25 †9†(10) undertaking or guarantees issued by a surety

company authorized to do business in the state;

~~(10)~~(11) first mortgages and trust indentures on real property. The depository shall, on a quarterly basis, certify to the state treasurer that sufficient first mortgages and trust indentures on real property are available and segregated to secure deposits of public funds. The board of investments shall determine the amount of security required.

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

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1 new jobs in Montana.

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4 capital companies. Whenever possible, preference should be  
5 given to investments in those venture capital companies  
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8 (c) In discharging its duties, the board shall  
9 consider the preservation of purchasing power of capital  
10 during periods of high monetary inflation.

11 (4) The board has the sole authority to invest state  
12 funds. No other agency may invest such state funds. The  
13 board shall direct the investment of state funds in  
14 accordance with the laws and constitution of this state. The  
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16 general supervision.

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19 when, and how much surplus cash is available for investment;

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21 be invested;

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25 fund and of all the investments belonging to such the fund

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7 has been received therefor;

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

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

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11 administration annually may prepare a statewide cost  
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 15 and interest is guaranteed by the United States;  
 16 (3) securities issued or fully guaranteed by the  
 17 following agencies of the United States or their successors,  
 18 whether or not guaranteed by the United States:

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 20 (b) federal intermediate credit banks;  
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 12 (b) the investment company or investment trust takes  
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 14 either directly or through an authorized custodian;  
 15 (4)(5) general obligation bonds of the state or of any  
 16 county, city, school district, or other political  
 17 subdivision of the state;  
 18 (5)(6) revenue bonds of any county, city, or other  
 19 political subdivision of the state, when backed by the full  
 20 faith and credit of such the subdivision or when the  
 21 revenues pledged to the payment of the bonds are derived  
 22 from a water or sewer system and the issuer has covenanted  
 23 to establish and maintain rates and charges for the system  
 24 in an amount sufficient to produce revenues equal to at  
 25 least 125% of the average annual principal and interest due

1 on all bonds payable ~~for-such~~ from the revenues during the  
 2 outstanding term of ~~such the~~ bonds;  
 3 ~~(6)(7)~~ interest-bearing warrants of the state or of  
 4 any county, city, school district, or other political  
 5 subdivision of the state issued in evidence of claims in an  
 6 amount which, with all other claims on the same fund, do not  
 7 exceed the amount validly appropriated in the current budget  
 8 for expenditure from the fund in the year in which they are  
 9 issued;  
 10 ~~(7)(8)~~ obligations of housing authorities of the state  
 11 secured by a pledge of annual contributions or by a loan  
 12 agreement made by the United States or any agency thereof  
 13 providing for contributions or a loan sufficient with other  
 14 funds pledged to pay the principal of and interest on the  
 15 obligations when due. Subject to rules prescribed by the  
 16 department of commerce, the bonds and other obligations made  
 17 eligible for investment in 32-1-424(3) and 7-15-4505 may be  
 18 used as security for all deposits of public funds or  
 19 obligations for which depository bonds or any kind of bonds  
 20 or other securities are required or may by law be deposited  
 21 as security.  
 22 ~~(8)(9)~~ general obligation bonds of other states and of  
 23 municipalities, counties, and school districts of other  
 24 states;  
 25 ~~(9)(10)~~ undertaking or guarantees issued by a surety

1 company authorized to do business in the state;

2 ~~{10}~~(11) first mortgages and trust indentures on real  
3 property. The depository shall, on a quarterly basis,  
4 certify to the state treasurer that sufficient first  
5 mortgages and trust indentures on real property are  
6 available and segregated to secure deposits of public funds.  
7 The board of investments shall determine the amount of  
8 security required.

9 ~~{11}~~(12) bonds issued pursuant to Title 7, chapter 12,  
10 parts 21, 41, and 42;

11 ~~{12}~~(13) bonds issued pursuant to Title 90, chapter 6,  
12 part 1;

13 ~~{13}~~(14) revenue bonds issued by any unit of the  
14 university system of the state of Montana;

15 ~~{14}~~(15) advance refunded bonds secured by direct  
16 obligations of the United States treasury held in  
17 irrevocable escrow; and

18 ~~{15}~~(16) linked deposit loan obligations incurred under  
19 80-14-203. (Subsection ~~{15}~~ (16) terminates June 30,  
20 1989--sec. 6, Ch. 57, L. 1987.)"

21 **Section 3.** Section 17-6-201, MCA, is amended to read:

22 "17-6-201. Unified investment program -- general  
23 provisions. (1) The unified investment program directed by  
24 Article VIII, section 13, of the 1972 Montana constitution  
25 to be provided for public funds shall ~~shall~~ must be administered

1 by the board of investments in accordance with the prudent  
2 expert principle, which requires any investment manager to:

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

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

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

16 (2) Retirement funds may be invested in common stocks  
17 of any corporation provided that no investment may be made  
18 at any time ~~which that~~ would cause the book value of ~~such~~  
19 the investments in any retirement fund to exceed 50% of the  
20 book value of ~~such the~~ fund or would cause the stock of one  
21 corporation to exceed 2% of the book value of ~~such the~~  
22 retirement fund.

23 (3) (a) Nothing contained in this section prevents  
24 the investment in any business activity in Montana,  
25 including activities that continue existing jobs or create

1 new jobs in Montana.

2 (b) The board is urged under the prudent expert  
3 principle to invest up to 3% of retirement funds in venture  
4 capital companies. Whenever possible, preference should be  
5 given to investments in those venture capital companies  
6 which that demonstrate an interest in making investments in  
7 Montana.

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

11 (4) The board has the sole authority to invest state  
12 funds. No other agency may invest such state funds. The  
13 board shall direct the investment of state funds in  
14 accordance with the laws and constitution of this state. The  
15 board has the power to veto any investments made under its  
16 general supervision.

17 (5) The board shall:

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

20 (b) determine the amount of surplus treasury cash to  
21 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  
25 fund and of all the investments belonging to such the fund

1 and a record of the participation of each treasury fund  
2 account therein.

3 (6) The board may:

4 (a) execute deeds of conveyance transferring all real  
5 property obtained through foreclosure of any investments  
6 purchased under the provisions of 17-6-211 when full payment  
7 has been received therefor;

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

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

14 (d) invest in United States government obligations,  
15 either directly or in the form of securities of or other  
16 interests in an open-end or closed-end management type  
17 investment company or investment trust registered under the  
18 Investment Company Act of 1940 (15 U.S.C. 80a-1 through  
19 80a-64), as amended, if:

20 (i) the portfolio of the investment company or  
21 investment trust is limited to United States government  
22 obligations and repurchase agreements fully collateralized  
23 by United States government obligations; and

24 (ii) the investment company or investment trust takes  
25 delivery of the collateral for any repurchase agreement,



1 either directly or through an authorized custodian.

2 (7) The cost of administering and accounting for each  
3 investment fund ~~shall~~ must be deducted from the income  
4 ~~therefrom~~ earned on the fund, except that ~~such the~~ costs of  
5 the nonexpendable trust funds ~~shall~~ must be paid from income  
6 otherwise receivable from the pooled investment fund, and  
7 the amounts required for this purpose ~~shall~~ must be  
8 appropriated by the legislature from the respective  
9 investment funds.

10 (8) (a) The director of the department of  
11 administration annually may prepare a statewide cost  
12 allocation plan to distribute program costs incurred by  
13 state agencies that are funded through the general fund to  
14 the programs served by the agencies. Except as provided in  
15 subsection (8)(b), the cost to an agency of providing  
16 services to a program funded through an account in the state  
17 special revenue fund as defined in 17-2-102 must be deducted  
18 by the board from the account's investment earnings  
19 according to the statewide cost allocation plan. Amounts  
20 deducted by the board must be credited to the general fund.

21 (b) No deduction for program costs as provided in  
22 subsection (8)(a) may be made if an account's cash on hand  
23 is pooled for investment in the treasury cash account  
24 defined in 17-6-202."

25 NEW SECTION. **Section 4. Extension of authority.** Any

1 existing authority to make rules on the subject of the  
2 provisions of [this act] is extended to the provisions of  
3 [this act].

-End-

SENATE STANDING COMMITTEE REPORT

March 3, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 431 (third reading copy -- blue), respectfully report that HB 431 be amended and as so amended be concurred in:

Sponsor: Grady (Blaylock)

1. Title, line 5.

Strike: "AND THE BOARD OF INVESTMENTS"

2. Title, line 11.

Following: "7-6-202"

Strike: ", "

Insert: "AND"

Strike: "AND 17-6-201,"

3. Page 5, line 21 through page 9, line 24.

Strike: section 3 in its entirety

Renumber: subsequent section

AND AS AMENDED BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

SENATE

scrhb431.303

## 1 HOUSE BILL NO. 431

2 INTRODUCED BY GRADY, BLAYLOCK, MAZUREK, STORY,

3 SIMON, PATTERSON, MERCER, QUILICI, HARPER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING LOCAL  
6 GOVERNMENTS ~~AND--THE--BOARD--OF--INVESTMENTS~~ TO INVEST PUBLIC  
7 FUNDS IN UNITED STATES OBLIGATIONS EITHER DIRECTLY OR IN THE  
8 FORM OF SECURITIES OF OR OTHER INTERESTS IN CERTAIN  
9 INVESTMENT COMPANIES OR INVESTMENT TRUSTS; PERMITTING  
10 SECURITIES OF OR OTHER INTERESTS IN THESE COMPANIES OR  
11 TRUSTS TO BE PLEDGED TO SECURE DEPOSITS OF PUBLIC FUNDS; AND  
12 AMENDING SECTIONS 7-6-202, AND 17-6-103, ~~AND 17-6-201~~, MCA."

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

15 Section 1. Section 7-6-202, MCA, is amended to read:

16 "7-6-202. Investment of public money in direct  
17 obligations of the United States. (1) Said A local governing  
18 body is--hereby--authorized to may invest such public money  
19 not necessary for immediate use by such the county, city, or  
20 town in direct obligations of the United States government  
21 and securities issued by agencies of the United States.

22 (2) The local governing body may invest in these  
23 obligations either directly or in the form of securities of  
24 or other interests in an open-end or closed-end management  
25 type investment company or investment trust registered under

1 the Investment Company Act of 1940 (15 U.S.C. 80a-1 through  
2 80a-64), as amended, if:

3 (a) the portfolio of the investment company or  
4 investment trust is limited to United States government  
5 obligations and repurchase agreements fully collateralized  
6 by United States government obligations; and

7 (b) the investment company or investment trust takes  
8 delivery of the collateral for any repurchase agreement,  
9 either directly or through an authorized custodian."

10 Section 2. Section 17-6-103, MCA, is amended to read:

11 "17-6-103. Security for deposits of public funds. The  
12 following kinds of securities may be pledged or guarantees  
13 may be issued to secure deposits of public funds:

14 (1) direct obligations of the United States;

15 (2) securities as to which the payment of principal  
16 and interest is guaranteed by the United States;

17 (3) securities issued or fully guaranteed by the  
18 following agencies of the United States or their successors,  
19 whether or not guaranteed by the United States:

20 (a) commodity credit corporation;

21 (b) federal intermediate credit banks;

22 (c) federal land bank;

23 (d) bank for cooperatives;

24 (e) federal home loan banks;

25 (f) federal national mortgage association;

1 (g) government national mortgage association;  
 2 (h) small business administration;  
 3 (i) federal housing administration; and  
 4 (j) federal home loan mortgage corporation;  
 5 (4) securities of or other interests in an open-end or  
 6 closed-end management type investment company or investment  
 7 trust registered under the Investment Company Act of 1940  
 8 (15 U.S.C. 80a-1 through 80a-64), as amended, if:  
 9 (a) the portfolio of the investment company or  
 10 investment trust is limited to United States government  
 11 obligations and repurchase agreements fully collateralized  
 12 by United States government obligations; and  
 13 (b) the investment company or investment trust takes  
 14 delivery of the collateral for any repurchase agreement,  
 15 either directly or through an authorized custodian;  
 16 (4)(5) general obligation bonds of the state or of any  
 17 county, city, school district, or other political  
 18 subdivision of the state;  
 19 (5)(6) revenue bonds of any county, city, or other  
 20 political subdivision of the state, when backed by the full  
 21 faith and credit of such the subdivision or when the  
 22 revenues pledged to the payment of the bonds are derived  
 23 from a water or sewer system and the issuer has covenanted  
 24 to establish and maintain rates and charges for the system  
 25 in an amount sufficient to produce revenues equal to at

1 least 125% of the average annual principal and interest due  
 2 on all bonds payable ~~for-such~~ from the revenues during the  
 3 outstanding term of ~~such the~~ bonds;  
 4 ~~(6)(7)~~ interest-bearing warrants of the state or of  
 5 any county, city, school district, or other political  
 6 subdivision of the state issued in evidence of claims in an  
 7 amount which, with all other claims on the same fund, do not  
 8 exceed the amount validly appropriated in the current budget  
 9 for expenditure from the fund in the year in which they are  
 10 issued;  
 11 ~~(7)(8)~~ obligations of housing authorities of the state  
 12 secured by a pledge of annual contributions or by a loan  
 13 agreement made by the United States or any agency thereof  
 14 providing for contributions or a loan sufficient with other  
 15 funds pledged to pay the principal of and interest on the  
 16 obligations when due. Subject to rules prescribed by the  
 17 department of commerce, the bonds and other obligations made  
 18 eligible for investment in 32-1-424(3) and 7-15-4505 may be  
 19 used as security for all deposits of public funds or  
 20 obligations for which depository bonds or any kind of bonds  
 21 or other securities are required or may by law be deposited  
 22 as security.  
 23 ~~(8)(9)~~ general obligation bonds of other states and of  
 24 municipalities, counties, and school districts of other  
 25 states;

1       ~~{9}~~(10) undertaking or guarantees issued by a surety  
2 company authorized to do business in the state;

3       ~~{10}~~(11) first mortgages and trust indentures on real  
4 property. The depository shall, on a quarterly basis,  
5 certify to the state treasurer that sufficient first  
6 mortgages and trust indentures on real property are  
7 available and segregated to secure deposits of public funds.  
8 The board of investments shall determine the amount of  
9 security required.

10       ~~{11}~~(12) bonds issued pursuant to Title 7, chapter 12,  
11 parts 21, 41, and 42;

12       ~~{12}~~(13) bonds issued pursuant to Title 90, chapter 6,  
13 part 1;

14       ~~{13}~~(14) revenue bonds issued by any unit of the  
15 university system of the state of Montana;

16       ~~{14}~~(15) advance refunded bonds secured by direct  
17 obligations of the United States treasury held in  
18 irrevocable escrow; and

19       ~~{15}~~(16) linked deposit loan obligations incurred under  
20 80-14-203. (Subsection ~~{15}~~ (16) terminates June 30,  
21 1989--sec. 6, Ch. 57, L. 1987.)"

22       ~~Section 3. Section 17-6-201, MCA, is amended to read:~~

23       ~~"17-6-201. Unified investment program-----generat~~  
24 ~~provisions:--(1) The unified investment program directed by~~  
25 ~~Article VIII, section 13, of the 1972 Montana constitution~~

1       ~~to--be--provided--for--public--funds--shall must--be--administered~~  
2 ~~by--the--board--of--investments--in--accordance--with--the--prudent~~  
3 ~~expert--principle,--which--requires--any--investment--manager--to:~~  
4       ~~{a}--discharge--his--duties--with--the---care,---skill,~~  
5 ~~prudence,---and--diligence,---under--the--circumstances--then~~  
6 ~~prevailing,--that--a--prudent--person--acting--in--a--like--capacity~~  
7 ~~with--the--same--resources--and--familiar--with--like--matters~~  
8 ~~exercises--in--the--conduct--of--an--enterprise--of--a--like~~  
9 ~~character--with--like--aims;~~

10       ~~{b}--diversify--the--holdings--of--each--fund--within--the~~  
11 ~~unified--investment--program--to--minimize--the--risk--of--loss--and~~  
12 ~~to---maximize---the---rate---of---return,---unless--under--the~~  
13 ~~circumstances--it--is--clearly--prudent--not--to--do--so;--and~~

14       ~~{c}--discharge--his--duties--solely--in--the--interest--of--and~~  
15 ~~for--the--benefit--of--the--funds--forming--the--unified--investment~~  
16 ~~program;~~

17       ~~{2}--Retirement--funds--may--be--invested--in--common--stocks~~  
18 ~~of--any--corporation--provided--that--no--investment--may--be--made~~  
19 ~~at--any--time--which that would cause the book value of such~~  
20 ~~the investments in any retirement fund to exceed 50% of the~~  
21 ~~book--value--of--such the fund or would cause the stock of one~~  
22 ~~corporation to exceed 2% of the book value of such the~~  
23 ~~retirement fund;~~

24       ~~{3}--(a) Nothing contained in this section prevents~~  
25 ~~the--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  
which that demonstrate--an--interest--in--making--investments--in  
Montana;

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

(4)--The--board--has--the--sole--authority--to--invest--state  
funds;--No--other--agency--may--invest--such--state--funds;--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--any--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--such the fund  
and--a--record--of--the--participation--of--each--treasury--fund  
account--therein;

(6)--The--board--may;

(a)--execute--deeds--of--conveyance--transferring--all--real  
property--obtained--through--foreclosure--of--any--investments  
purchased--under--the--provisions--of--17-6-211--when--full--payment  
has--been--received--therefor;

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

(c)--direct--the--sale--of--any--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;--and

(d)--invest--in--United--States--government--obligations;  
either--directly--or--in--the--form--of--securities--of--or--other  
interests--in--an--open--end--or--closed--end--management--type  
investment--company--or--investment--trust--registered--under--the  
Investment--Company--Act--of--1940--(15-U.S.C.--80a-1--through  
80a-64);--as--amended;--if;

(i)--the--portfolio--of--the--investment--company--or  
investment--trust--is--limited--to--United--States--government  
obligations--and--repurchase--agreements--fully--collateralized  
by--United--States--government--obligations;--and

(ii)--the--investment--company--or--investment--trust--takes

~~delivery-of-the-collateral--for--any--repurchase--agreement,  
either-directly-or-through-an-authorized-custodian;~~

~~{7}--The--cost-of-administering-and-accounting-for-each  
investment-fund-shall must be--deducted--from--the--income  
therefrom earned-on-the-fund, except-that-such the costs-of  
the-nonexpendable-trust-funds-shall must be-paid-from-income  
otherwise-receivable-from-the-pooled--investment--fund,--and  
the---amounts---required---for---this---purpose---shall must be  
appropriated--by--the--legislature---from---the---respective  
investment-funds;~~

~~{8}--(a)--The---director---of---the---department---of  
administration--annually--may--prepare--a---statewide---cost  
allocation--plan--to--distribute--program--costs-incurred-by  
state-agencies-that-are-funded-through-the-general--fund--to  
the--programs--served-by-the-agencies--Except-as-provided-in  
subsection-(8){b},--the--cost--to--an--agency--of--providing  
services-to-a-program-funded-through-an-account-in-the-state  
special-revenue-fund-as-defined-in-17-2-102-must-be-deducted  
by---the---board--from--the--account's--investment--earnings  
according-to-the-statewide--cost--allocation--plan--Amounts  
deducted--by-the-board-must-be-credited-to-the-general-fund;~~

~~{b}--No-deduction-for--program--costs--as--provided--in  
subsection--(8){a}--may-be-made-if-an-account's-cash-on-hand  
is-pooled--for--investment--in--the--treasury--cash--account  
defined-in-17-6-202;"~~

NEW SECTION. **Section 3.** Extension of authority. Any  
existing authority to make rules on the subject of the  
provisions of [this act] is extended to the provisions of  
[this act].

-End-