HOUSE BILL NO. 21

INTRODUCED BY PETERSON
BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

IN THE HOUSE

NOVEMBER 29, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON APPROPRIATIONS.
	FIRST READING.
DECEMBER 7, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
	PRINTING REPORT.
DECEMBER 8, 1993	SECOND READING, DO PASS.
	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 67; NOES, 26.
	TRANSMITTED TO SENATE.

IN THE SENATE

DECEMBER 9, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
DECEMBER 17, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
	SECOND READING, CONCURRED IN.
	THIRD READING, CONCURRED IN. AYES, 38; NOES, 10.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

DECEMBER 18, 1993	RECEIVED FROM SENATE.
	SECOND READING, AMENDMENTS

CONCURRED IN.

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL NO. 21

INTRODUCED BY PETERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION
AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ESTABLISHING AN ACCOUNT INTO WHICH AMOUNTS PAID BY STATE AGENCIES UNDER THE RECOVERY PLAN AND AMOUNTS FROM FEDERAL SOURCES FOR COSTS ASSOCIATED WITH FEDERAL PROGRAMS ARE TO BE DEPOSITED; ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-3-111, MCA, is amended to read:

"**17-3-111. Indirect cost rates -- allocation.** (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the account established in [section 4]."

Section 2. 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 must be administered by the board of investments in accordance with the prudent expert principle, which requires any 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, ~~provided~~ except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(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.

(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. Except as provided in this chapter, 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 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 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 all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(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;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

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

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

~~(9) (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 (9)(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) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202.~~"

HB 0021/01

NEW SECTION. **Section 3.** State indirect cost recovery plan. (1) The department shall annually prepare a state indirect cost recovery plan.

(a) The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund and by the account established in [section 4] be allocated among the agencies served by those programs.

(b) When preparing the state indirect cost recovery plan, the department shall consider the balance of funds in the account established in [section 4].

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1,

March 1, and June 1 of each fiscal year, by depositing the payments into the account established in [section 4].

NEW SECTION. **Section 4. Account established for indirect costs recovered for operation of state and federal programs.** (1) There is an account in the state special revenue fund for money recovered from agencies under the state indirect cost recovery plan pursuant to [section 3] and money recovered from federal sources under the statewide cost allocation plan pursuant to 17-3-111.

(2) The money in this account must be used as appropriated by the legislature to pay for operating the programs included in the indirect cost recovery plan described in [section 3].

(3) The department shall deposit the unappropriated fund balance in the account to the general fund at the end of each biennium.

NEW SECTION. **Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [sections 3 and 4].

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0021, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
Clarifies the duties of the department of administration to annually prepare a state funds indirect cost recovery plan for certain state agencies; requires that state agencies pay the costs in a timely manner; establishes an account into which costs paid by state agencies under the recovery plan and from federal sources for costs associated with federal programs are to be deposited; eliminates statutory language stating that the board of investments will deduct from investment earnings certain program costs incurred by an agency.

ASSUMPTIONS:
1. Under the current law, the board of investments will collect approximately $200,000 each fiscal year from state special revenue accounts which retain interest for deposit to the general fund.
2. Under the proposed law, the department of administration (DoA) will collect $342,737 in FY94 and $686,830 in FY95 from, generally, all nongeneral fund state sources.
3. Under both current law and the proposed law, federal indirect cost recoveries will be approximately $500,000 in each fiscal year. Actual cash deposits of federal cost recoveries generally lag by one year. Cash deposits received in FY94 for FY93 have already been made to the general fund. For clarity, the revenue figures shown below reflect cash available for appropriations.
4. The general fund savings shown below assumes reductions in general fund appropriations, replaced with state special revenue authority, in HB 2. Appropriations for DoA-Personnel do not include amounts for the personal services contingency fund. Appropriations for DoA-Accounting reflect 0.25 FTE in FY94 and 0.50 FTE each year thereafter for implementation and oversight of indirect cost recoveries.
5. The indirect cost recovery account will require a short term "bridge" loan of $170,000 for cash flow purposes between FY94 and FY95. This cash flow imbalance is expected to be a one-time occurrence.

FISCAL IMPACT:

(continued on next page)

David Lewis 11-25
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MARY LOU PETERSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0021, as introduced

HB 21

Fiscal Note Request, HB0021, as introduced
Form BD-15 page 2
(continued)

FISCAL IMPACT: (continued)

Expenditures:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
DoA-Accounting						
FTE	21.83	22.08	0.25	21.83	22.33	0.50
Personal Services	694,290	703,208	8,918	706,794	724,986	18,192
Operating Expenses	358,968	359,468	500	308,506	309,006	500
Equipment	4,297	5,797	1,500	2,801	2,801	0
Total Costs	1,057,555	1,068,473	10,918	1,018,101	1,036,793	18,692
General Fund	961,776	784,057	(177,719)	921,159	567,669	(353,490)
State Special	0	188,637	188,637	0	372,182	372,182
Federal Special	30,301	30,301	0	30,667	30,667	0
Proprietary Fund	65,478	65,478	0	66,275	66,275	0
Total Funding	1,057,555	1,068,473	10,918	1,018,101	1,036,793	18,692
DoA-Personnel						
General Fund	1,062,439	862,694	(199,745)	1,049,443	652,143	(397,300)
State Special	0	199,745	199,745	0	397,300	397,300
Total Funding	1,062,439	1,062,439	0	1,049,443	1,049,443	0
OBPP						
General Fund	796,880	672,525	(124,355)	786,084	538,736	(247,348)
State Special	0	124,355	124,355	0	247,348	247,348
Total Funding	796,880	796,880	0	786,084	786,084	0

Revenues:						
General Fund						
Federal Cost Recovery	500,000	500,000	0	500,000	0	(500,000)
State Funds Cost Recovery	200,000	0	(200,000)	200,000	0	(200,000)
Total	700,000	500,000	(200,000)	700,000	0	(700,000)
Indirect Cost Recovery Account						
Federal Cost Recovery	0	0	0	0	500,000	500,000
State Funds Cost Recovery	0	342,737	342,737	0	686,830	686,830
Total	0	342,737	342,737	0	1,186,830	1,186,830

(continued)

FISCAL IMPACT: (continued)

Net Impact:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
General Fund	(2,121,095)	(1,819,276)	301,819	(2,056,686)	(1,758,548)	298,138
Indirect Cost Recovery Acct	0	(170,000)	(170,000)	0	170,000	170,000

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:
Greater central management of indirect cost recoveries is likely to increase recovery of general fund costs from federal sources. The amount of any increase is inestimable at this time due to lack of uniform data regarding federal indirect cost recoveries.

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No. The assessments are designed to be in approximate proportion to the workload associated with each nongeneral fund program which pays the assessment.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Use of a state special revenue fund creates relatively strong incentives to fully recover indirect costs and clarifies in the budgeting process the extent to which indirect costs are recovered.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? _X_ Yes ____ No (if no, explain)

d) Does the need for this state special revenue provision still exist? _X_ Yes
____ No (Explain)

Yes, to the extent that the legislation is passed and approved.

(continued)

DEDICATION OF REVENUE: (continued)

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

The dedicated revenue will not distort budget priorities to the extent that it is used to directly replace general fun appropriations. Furthermore, the legislation provides that any unappropriated fund balance shall revert to the genera fund at the end of each biennium.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes, to the extent that the legislation is passed and approved (see "b" above)

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

Use of a state special revenue account for collection of indirect cost recoveries will create a marginal increase in accounting workload. However, because the administering agency will have incentives to maximize recovery of general fund costs, these additional costs are justified by potential general fund savings. If indirect cost recoveries were deposited to the general fund, there would be a tendency for the collections to become decentralized given competing priorities.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0021, as introduced (REVISED).

DESCRIPTION OF PROPOSED LEGISLATION:

Clarifies the duties of the department of administration to annually prepare a state funds indirect cost recovery plan for certain state agencies; requires that state agencies pay the costs in a timely manner; establishes an account into which costs paid by state agencies under the recovery plan and from federal sources for costs associated with federal programs are to be deposited; eliminates statutory language stating that the board of investments will deduct from investment earnings certain program costs incurred by an agency.

ASSUMPTIONS:

1. Under the current law, the board of investments will collect approximately $200,000 each fiscal year from state special revenue accounts which retain interest for deposit to the general fund.
2. Under the proposed law, the department of administration (DoA) will collect $309,583 in FY94 and $620,794 in FY95 from, generally, all nongeneral fund state sources. This revised fiscal note reflects a reduction of $33,154 in FY 1994 and $66,036 in assessments applicable to the University System.
3. Under both current law and the proposed law, federal indirect cost recoveries will be approximately $500,000 in each fiscal year. Actual cash deposits of federal cost recoveries generally lag by one year. Cash deposits received in FY94 for FY93 have already been made to the general fund. For clarity, the revenue figures shown below reflect cash available for appropriations.
4. The general fund savings shown below assumes reductions in general fund appropriations, replaced with state special revenue authority, in HB 2. Appropriations for DoA-Personnel do not include amounts for the personal services contingency fund. Appropriations for DoA-Accounting reflect 0.25 FTE in FY94 and 0.50 FTE each year thereafter for implementation and oversight of indirect cost recoveries.
5. The indirect cost recovery account will require a short term "bridge" loan of $150,000 for cash flow purposes between FY94 and FY95. This cash flow imbalance is expected to be a one-time occurrence.

FISCAL IMPACT:

(continued on next page)

David Lewis 12-3

DAVID LEWIS, BUDGET DIRECTOR DATE

Office of Budget and Program Planning

Mary Lou Peterson 12-4-93

MARY LOU PETERSON, PRIMARY SPONSOR DATE

Fiscal Note Request, HB0021, as introduced (REVISED)
Form BD-15 page 2
(continued)

FISCAL IMPACT: (continued)

Expenditures:	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
DoA-Accounting						
FTE	21.83	22.08	0.25	21.83	22.33	0.50
Personal Services	694,290	703,208	8,918	706,794	724,986	18,192
Operating Expenses	358,968	359,468	500	308,506	309,006	500
Equipment	4,297	5,797	1,500	2,801	2,801	0
Total Costs	1,057,555	1,068,473	10,918	1,018,101	1,036,793	18,692
General Fund	961,776	824,223	(137,553)	921,159	629,262	(291,897)
State Special	0	148,471	148,471	0	310,589	310,589
Federal Special	30,301	30,301	0	30,667	30,667	0
Proprietary Fund	65,478	65,478	0	66,275	66,275	0
Total Funding	1,057,555	1,068,473	10,918	1,018,101	1,036,793	18,692
DoA-Personnel						
General Fund	1,062,439	864,470	(197,969)	1,049,443	629,338	(420,105)
State Special	0	197,969	197,969	0	420,105	420,105
Total Funding	1,062,439	1,062,439	0	1,049,443	1,049,443	0
OBPP						
General Fund	796,880	683,736	(113,144)	786,084	545,984	(240,100)
State Special	0	113,144	113,144	0	240,100	240,100
Total Funding	796,880	796,880	0	786,084	786,084	0

Revenues:						
General Fund						
Federal Cost Recovery	500,000	500,000	0	500,000	0	(500,000)
State Funds Cost Recovery	200,000	0	(200,000)	200,000	0	(200,000)
Total	700,000	500,000	(200,000)	700,000	0	(700,000)
Indirect Cost Recovery Account						
Federal Cost Recovery	0	0	0	0	500,000	500,000
State Funds Cost Recovery	0	309,583	309,583	0	620,794	620,794
Total	0	309,583	309,583	0	1,120,794	1,120,794

(continued)

FISCAL IMPACT: (continued)

Net Impact:	FY '94	FY '95
General Fund	248,666	252,102
Indirect Cost Recovery Acct	(150,000)	170,000

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:
Greater central management of indirect cost recoveries is likely to increase recovery of general fund costs from federal sources. The amount of any increase is inestimable at this time due to lack of uniform data regarding federal indirect cost recoveries.

DEDICATION OF REVENUE:

a) Are there persons or entities that benefit from this dedicated revenue that do not pay? (Please explain)

No. The assessments are designed to be in approximate proportion to the workload associated with each nongeneral fund program which pays the assessment.

b) What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?

Use of a state special revenue fund creates relatively strong incentives to fully recover indirect costs and clarifies in the budgeting process the extent to which indirect costs are recovered.

c) Is the source of revenue relevant to current use of the funds and adequate to fund the program/activity that is intended? _X_ Yes ____ No (if no, explain)

d) Does the need for this state special revenue provision still exist? _X_ Yes ____ No (Explain)

Yes, to the extent that the legislation is passed and approved.

(continued)

DEDICATION OF REVENUE: (continued)

e) Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending? (Please explain)

The dedicated revenue will not distort budget priorities to the extent that it is used to directly replace general fund appropriations. Furthermore, the legislation provides that any unappropriated fund balance shall revert to the general fund at the end of each biennium.

f) Does the dedicated revenue fulfill a continuing, legislatively recognized need? (Please explain)

Yes, to the extent that the legislation is passed and approved (see "b" above)

g) How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? (Please explain. Also, if the program/activity were general funded, could you adequately account for the program/activity?)

Use of a state special revenue account for collection of indirect cost recoveries will create a marginal increase in accounting workload. However, because the administering agency will have incentives to maximize recovery of general fund costs, these additional costs are justified by potential general fund savings. If indirect cost recoveries were deposited to the general fund, there would be a tendency for the collections to become decentralized given competing priorities.

APPROVED BY COMMITTEE
ON APPROPRIATIONS

HOUSE BILL NO. 21

INTRODUCED BY PETERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ESTABLISHING AN ACCOUNT INTO WHICH AMOUNTS PAID BY STATE AGENCIES UNDER THE RECOVERY PLAN AND AMOUNTS FROM FEDERAL SOURCES FOR COSTS ASSOCIATED WITH FEDERAL PROGRAMS ARE TO BE DEPOSITED; ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-3-111, MCA, is amended to read:

"**17-3-111. Indirect cost rates -- allocation.** (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the account established in [section 4]."

Section 2. 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 must be administered by the board of investments in accordance with the prudent expert principle, which requires any 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.

SECOND READING

(2) (a) Retirement funds may be invested in common stocks of any corporation, ~~provided~~ except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(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.

(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. Except as provided in this chapter, 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 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 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 all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(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;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

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

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

~~(9)--(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-(9)(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)--A--deduction--for--program--costs,--as--provided-in subsection-(9)(a),-may-not-be-made-if-an-account's--cash--on hand--is--pooled-for-investment-in-the-treasury-cash-account defined-in-17-6-202.~~"

<u>NEW SECTION.</u> **Section 3.** **State indirect cost recovery plan.** (1) The department shall annually prepare a state indirect cost recovery plan.

(a) The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund and by the account established in [section 4] be allocated among the agencies served by those programs.

(b) When preparing the state indirect cost recovery plan, the department shall consider the balance of funds in the account established in [section 4].

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1,

March 1, and June 1 of each fiscal year, by depositing the payments into the account established in [section 4].

NEW SECTION. **Section 4. Account established for indirect costs recovered for operation of state and federal programs.** (1) There is an account in the state special revenue fund for money recovered from agencies under the state indirect cost recovery plan pursuant to [section 3] and money recovered from federal sources under the statewide cost allocation plan pursuant to 17-3-111.

(2) The money in this account must be used as appropriated by the legislature to pay for operating the programs included in the indirect cost recovery plan described in [section 3].

(3) The department shall deposit the unappropriated fund balance in the account to the general fund at the end of each biennium, SUBJECT TO [SECTION 3(1)(B)].

NEW SECTION. **Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [sections 3 and 4].

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-End-

HOUSE BILL NO. 21

INTRODUCED BY PETERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ESTABLISHING AN ACCOUNT INTO WHICH AMOUNTS PAID BY STATE AGENCIES UNDER THE RECOVERY PLAN AND AMOUNTS FROM FEDERAL SOURCES FOR COSTS ASSOCIATED WITH FEDERAL PROGRAMS ARE TO BE DEPOSITED; ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 17-3-111, MCA, is amended to read:

"**17-3-111. Indirect cost rates** -- allocation. (1) Grantee agencies shall, in accordance with federal regulations and guidelines, negotiate indirect cost rates and endeavor, to the fullest extent possible, to recover indirect costs of federal assistance programs.

(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the account established in [section 4]."

Section 2. 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 must be administered by the board of investments in accordance with the prudent expert principle, which requires any 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.

THIRD READING

(2) (a) Retirement funds may be invested in common stocks of any corporation, ~~provided~~ except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(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.

(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. Except as provided in this chapter, 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 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 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 all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(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;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

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

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

~~(9)--(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-(9)(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)--A--deduction--for--program--costs,--as--provided-in subsection-(9)(a),-may-not-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.** State indirect cost recovery plan. (1) The department shall annually prepare a state indirect cost recovery plan.

(a) The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund and by the account established in [section 4] be allocated among the agencies served by those programs.

(b) When preparing the state indirect cost recovery plan, the department shall consider the balance of funds in the account established in [section 4].

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1,

March 1, and June 1 of each fiscal year, by depositing the payments into the account established in [section 4].

NEW SECTION. **Section 4. Account established for indirect costs recovered for operation of state and federal programs.** (1) There is an account in the state special revenue fund for money recovered from agencies under the state indirect cost recovery plan pursuant to [section 3] and money recovered from federal sources under the statewide cost allocation plan pursuant to 17-3-111.

(2) The money in this account must be used as appropriated by the legislature to pay for operating the programs included in the indirect cost recovery plan described in [section 3].

(3) The department shall deposit the unappropriated fund balance in the account to the general fund at the end of each biennium, SUBJECT TO [SECTION 3(1)(B)].

NEW SECTION. **Section 5. Codification instruction.** [Sections 3 and 4] are intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [sections 3 and 4].

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

December 17, 1993

MR. PRESIDENT:

We, your committee on Finance and Claims having had under consideration House Bill No. 21 (third reading copy -- blue), respectfully report that House Bill No. 21 be amended as follows and as so amended be concurred in.

Signed: Judy H. Jacobson
Senator Judy H. Jacobson, Chair

That such amendments read:

1. Title, lines 10 through 13.
Following: "MANNER;" on line 10
Strike: "ESTABLISHING" through "DEPOSITED;" on line 13

2. Page 2, lines 4 and 5.
Following: "in the" on line 4
Strike: "account" on line 4 through "[section 4]" on line 5
Insert: "general fund"

3. Page 6, line 15.
Strike: "(a)"

4. Page 6, line 18.
Strike: "and by the account established in [section 4]"

5. Page 6, lines 20 through 22.
Strike: lines 20 through 22 in their entirety

6. Page 7, line 2.
Strike: "account established in [section 4]"
Insert: "general fund"

7. Page 7, lines 3 through 16.
Strike: section 4 in its entirety
Renumber: subsequent sections

8. Page 7, line 18.
Strike: "Sections"
Insert: "Section"
Strike: "and 4"
Strike: "are"
Insert: "is"

9. Page 7, line 20.
Strike: "sections"
Insert: "section"
Strike: "and 4"

m~ Amd. Coord.
SB Sec. of Senate

Sen. Tveit
Senator Carrying Bill

171147SC.Sma

December 17, 1993

Explanation: This amendment removes the provisions relating to use of a state special revenue account and provides that the SWCAP and SFCAP collections be deposited to the general fund.

-END-

HB21
SENATE

HB 0021/03

HOUSE BILL NO. 21

INTRODUCED BY PETERSON

BY REQUEST OF THE DEPARTMENT OF ADMINISTRATION

AND THE OFFICE OF BUDGET AND PROGRAM PLANNING

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE DUTIES OF THE DEPARTMENT OF ADMINISTRATION TO ANNUALLY PREPARE A STATE INDIRECT COST RECOVERY PLAN FOR CERTAIN STATE AGENCIES; REQUIRING THAT STATE AGENCIES PAY THE INDIRECT COSTS IN A TIMELY MANNER; ~~ESTABLISHING AN ACCOUNT INTO WHICH AMOUNTS PAID BY STATE AGENCIES UNDER THE RECOVERY PLAN AND AMOUNTS FROM FEDERAL SOURCES FOR COSTS ASSOCIATED WITH FEDERAL PROGRAMS ARE TO BE DEPOSITED;~~ ELIMINATING THE REQUIREMENT THAT THE BOARD OF INVESTMENTS DEDUCT FROM INVESTMENT EARNINGS CERTAIN PROGRAM COSTS INCURRED BY AN AGENCY; AMENDING SECTIONS 17-3-111 AND 17-6-201, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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(2) Indirect costs recovered from federal sources pursuant to the statewide cost allocation plan provided in 17-3-110, except those costs recovered by a unit of the university system, must be deposited in the ~~account established in [section 4]~~ GENERAL FUND."

Section 2. 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 must be administered by the board of investments in accordance with the prudent expert principle, which requires any 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, ~~provided~~ except that an investment may not be made at any time that would cause the book value of the investments in any retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation to exceed 2% of the book value of the retirement fund.

(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.

(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. Except as provided in this chapter, 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 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 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 all real property obtained through foreclosure of any investments purchased under the provisions of 17-6-211 when full payment has been received for the property;

(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;

(d) expend funds needed to cover costs of necessary repairs to property owned by the board as an investment. The expenditures may be made directly by the board and are statutorily appropriated, as provided in 17-7-502. Repairs that cost in excess of $2,500 must be bid, and the bid must be awarded in compliance with existing state law and regulations. Emergency repairs may be made by the board without bid if approved by the state architect.

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

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

~~(9) (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 (9)(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) A deduction for program costs, as provided in subsection (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202.~~"

<u>NEW SECTION.</u> **Section 3.** State indirect cost recovery plan. (1) The department shall annually prepare a state indirect cost recovery plan.

~~(a)~~ The state indirect cost recovery plan must provide that the general government program costs that are indirectly incurred by agencies and that are funded by the general fund ~~and by the account established in [section 4]~~ be allocated among the agencies served by those programs.

~~(b) When preparing the state indirect cost recovery plan, the department shall consider the balance of funds in the account established in [section 4].~~

(2) Agencies required to pay costs under the state indirect cost recovery plan shall make payments in four equal installments, due no later than October 1, January 1,

March 1, and June 1 of each fiscal year, by depositing the payments into the ~~account-established-in-[section-4]~~ GENERAL FUND.

~~NEW-SECTION.--Section-4.--Account----established-----for--indirect--costs-recovered-for-operation-of-state-and-federal programs.--(1)-There-is--an--account--in--the--state--special revenue--fund--for--money--recovered-from-agencies-under-the state-indirect-cost-recovery-plan-pursuant--to--[section--3] and-money-recovered-from-federal-sources-under-the-statewide cost-allocation-plan-pursuant-to-17-3-111.~~

~~(2)--The---money---in--this--account--must--be--used--as appropriated-by-the-legislature-to--pay--for--operating--the programs---included--in--the--indirect--cost--recovery--plan described-in-[section-3].~~

~~(3)--The-department--shall--deposit--the--unappropriated fund--balance--in-the-account-to-the-general-fund-at-the-end of-each-biennium,-SUBJECT-TO-[SECTION-3(1)(B)].~~

NEW SECTION. **Section 4.** Codification instruction. [~~Sections~~ SECTION 3 ~~and-4~~] ~~are~~ IS intended to be codified as an integral part of Title 17, chapter 1, and the provisions of Title 17, chapter 1, apply to [~~sections~~ SECTION 3 ~~and-4~~].

NEW SECTION. **Section 5.** Effective date. [This act] is effective on passage and approval.

-End-