

1 HOUSE BILL NO. 36

2 INTRODUCED BY EWER

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO
6 SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND
7 77-1-701, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 17-6-201, MCA, is amended to read:

12 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
13 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
14 administered by the board of investments in accordance with the prudent expert principle, which requires
15 ~~any~~ an investment manager to:

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

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

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

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

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

30 (3) (a) This section does not prevent investment in any business activity in Montana, including

1 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

13 (5) The board shall:

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

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

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

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

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

21 (6) The board may:

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

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

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

29 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as
30 an investment. The expenditures may be made directly by the board and are statutorily appropriated, as

1 provided in 17-7-502. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
2 compliance with existing state law and regulations. Emergency repairs may be made by the board without
3 bid if approved by the state architect.

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

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

9
10 **Section 2.** Section 77-1-101, MCA, is amended to read:

11 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
12 land in 77-1-701, in this title, the following definitions apply:

13 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
14 Montana constitution.

15 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
16 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
17 includes all outfitting activity and all activities not included within the definition of general recreational use.

18 (3) "Department" means the department of natural resources and conservation provided for in Title
19 2, chapter 15, part 33.

20 (4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
21 and other activities determined by the board to be compatible with the use of state lands.

22 (b) General recreational use does not include the use of streams and rivers by the public under the
23 stream access laws provided in Title 23, chapter 2, part 3.

24 (5) "Legally accessible state lands" means state lands that can be accessed by:

25 (a) dedicated public road, right-of-way, or easement;

26 (b) public waters;

27 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

28 (d) adjacent contiguous private land if permission to cross the land has been secured from the
29 landowner. The granting of permission by a private landowner to cross private property in a particular
30 instance does not subject the state land that is accessed to general recreational use by members of the

1 public, other than those granted permission.

2 (6) (a) "State land" or "lands" means:

3 (i) lands granted to the state by the United States for any purpose, either directly or through
4 exchange for other lands;

5 (ii) lands deeded or devised to the state from any person; and

6 (iii) lands that are the property of the state through the operation of law.

7 (b) The term does not include:

8 (i) lands that the state conveys through the issuance of patent;

9 (ii) lands that are used for building sites, campus grounds, or experimental purposes by ~~any~~ a state
10 institution and that are the property of that institution;

11 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to
12 20-25-307; or

13 (iv) lands acquired through ~~foreclosure of any~~ investments ~~purchased~~ under the provisions of
14 ~~17-6-211~~ 17-6-201."

15

16 **Section 3.** Section 77-1-701, MCA, is amended to read:

17 **"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from
18 the context, the following definitions apply:

19 (1) "Ownership record" means the original deed, abstract, and any other instrument signifying state
20 ownership or other interest in real property.

21 (2) "State agency" means any board, bureau, department, commission, or officer of the state.

22 (3) "State land" means land held, possessed, or administered by the state by virtue of fee simple
23 title, grant, or deed. This term does not include:

24 (a) land acquired through ~~foreclosure of any~~ investments ~~purchased~~ under the provisions of
25 ~~17-6-211~~ 17-6-201;

26 (b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

27 (c) land used for easements and rights-of-way."

28 -END-

APPROVED BY COM ON
STATE ADMINISTRATION

1 HOUSE BILL NO. 36

2 INTRODUCED BY EWER

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO
6 SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND
7 77-1-701, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 17-6-201, MCA, is amended to read:

12 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
13 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
14 administered by the board of investments in accordance with the prudent expert principle, which requires
15 ~~any an~~ investment manager to:

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

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

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

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

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

30 (3) (a) This section does not prevent investment in any business activity in Montana, including

1 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

13 (5) The board shall:

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

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

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

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

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

21 (6) The board may:

22 (a) execute deeds of conveyance transferring ~~all~~ real property obtained through ~~foreclosure of any~~
23 investments ~~purchased under the provisions of 17-6-211 when full payment has been received for the~~
24 ~~property~~; PRIOR TO THE TRANSFER OF REAL PROPERTY DIRECTLY PURCHASED AND HELD AS AN
25 INVESTMENT, THE BOARD SHALL OBTAIN AN APPRAISAL BY A QUALIFIED APPRAISER.

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

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

30 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as

1 an investment. The expenditures may be made directly by the board and are statutorily appropriated, as
2 provided in 17-7-502. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
3 compliance with existing state law and regulations. Emergency repairs may be made by the board without
4 bid if approved by the state architect.

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

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

10

11 **Section 2.** Section 77-1-101, MCA, is amended to read:

12 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
13 land in 77-1-701, in this title, the following definitions apply:

14 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
15 Montana constitution.

16 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
17 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
18 includes all outfitting activity and all activities not included within the definition of general recreational use.

19 (3) "Department" means the department of natural resources and conservation provided for in Title
20 2, chapter 15, part 33.

21 (4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
22 and other activities determined by the board to be compatible with the use of state lands.

23 (b) General recreational use does not include the use of streams and rivers by the public under the
24 stream access laws provided in Title 23, chapter 2, part 3.

25 (5) "Legally accessible state lands" means state lands that can be accessed by:

26 (a) dedicated public road, right-of-way, or easement;

27 (b) public waters;

28 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

29 (d) adjacent contiguous private land if permission to cross the land has been secured from the
30 landowner. The granting of permission by a private landowner to cross private property in a particular

1 instance does not subject the state land that is accessed to general recreational use by members of the
2 public, other than those granted permission.

3 (6) (a) "State land" or "lands" means:

4 (i) lands granted to the state by the United States for any purpose, either directly or through
5 exchange for other lands;

6 (ii) lands deeded or devised to the state from any person; and

7 (iii) lands that are the property of the state through the operation of law.

8 (b) The term does not include:

9 (i) lands that the state conveys through the issuance of patent;

10 (ii) lands that are used for building sites, campus grounds, or experimental purposes by ~~any~~ a state
11 institution and that are the property of that institution;

12 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to
13 20-25-307; or

14 (iv) lands acquired through ~~foreclosure of any investments purchased~~ under the provisions of
15 ~~17-6-211~~ 17-6-201."

16

17 **Section 3.** Section 77-1-701, MCA, is amended to read:

18 **"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from
19 the context, the following definitions apply:

20 (1) "Ownership record" means the original deed, abstract, and any other instrument signifying state
21 ownership or other interest in real property.

22 (2) "State agency" means any board, bureau, department, commission, or officer of the state.

23 (3) "State land" means land held, possessed, or administered by the state by virtue of fee simple
24 title, grant, or deed. This term does not include:

25 (a) land acquired through ~~foreclosure of any investments purchased~~ under the provisions of
26 ~~17-6-211~~ 17-6-201;

27 (b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

28 (c) land used for easements and rights-of-way."

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HOUSE BILL NO. 36

INTRODUCED BY EWER

BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND 77-1-701, MCA."

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

Section 1. Section 17-6-201, MCA, is amended to read:

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

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

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

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

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in ~~any~~ a 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

1 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

13 (5) The board shall:

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

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

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

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

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

21 (6) The board may:

22 (a) execute deeds of conveyance transferring ~~all~~ real property obtained through ~~foreclosure of any~~
23 ~~investments purchased under the provisions of 17-6-211 when full payment has been received for the~~
24 ~~property~~; PRIOR TO THE TRANSFER OF REAL PROPERTY DIRECTLY PURCHASED AND HELD AS AN

25 INVESTMENT, THE BOARD SHALL OBTAIN AN APPRAISAL BY A QUALIFIED APPRAISER.

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

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

30 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as

1 an investment. The expenditures may be made directly by the board and are statutorily appropriated, as
2 provided in 17-7-502. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
3 compliance with existing state law and regulations. Emergency repairs may be made by the board without
4 bid if approved by the state architect.

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

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

10

11 **Section 2.** Section 77-1-101, MCA, is amended to read:

12 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
13 land in 77-1-701, in this title, the following definitions apply:

14 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
15 Montana constitution.

16 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
17 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
18 includes all outfitting activity and all activities not included within the definition of general recreational use.

19 (3) "Department" means the department of natural resources and conservation provided for in Title
20 2, chapter 15, part 33.

21 (4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
22 and other activities determined by the board to be compatible with the use of state lands.

23 (b) General recreational use does not include the use of streams and rivers by the public under the
24 stream access laws provided in Title 23, chapter 2, part 3.

25 (5) "Legally accessible state lands" means state lands that can be accessed by:

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30 landowner. The granting of permission by a private landowner to cross private property in a particular

1 instance does not subject the state land that is accessed to general recreational use by members of the
2 public, other than those granted permission.

3 (6) (a) "State land" or "lands" means:

4 (i) lands granted to the state by the United States for any purpose, either directly or through
5 exchange for other lands;

6 (ii) lands deeded or devised to the state from any person; and

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8 (b) The term does not include:

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10 (ii) lands that are used for building sites, campus grounds, or experimental purposes by ~~any a~~ state
11 institution and that are the property of that institution;

12 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to
13 20-25-307; or

14 (iv) lands acquired through ~~foreclosure of any investments purchased~~ under the provisions of
15 ~~17-6-211~~ 17-6-201."

16

17 **Section 3.** Section 77-1-701, MCA, is amended to read:

18 **"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from
19 the context, the following definitions apply:

20 (1) "Ownership record" means the original deed, abstract, and any other instrument signifying state
21 ownership or other interest in real property.

22 (2) "State agency" means any board, bureau, department, commission, or officer of the state.

23 (3) "State land" means land held, possessed, or administered by the state by virtue of fee simple
24 title, grant, or deed. This term does not include:

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27 (b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

28 (c) land used for easements and rights-of-way."

29

-END-

1 HOUSE BILL NO. 36

2 INTRODUCED BY EWER

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE
45 A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO
6 SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND
7 77-1-701, MCA."8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
1011 **Section 1.** Section 17-6-201, MCA, is amended to read:12 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
13 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
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15 ~~any~~ an investment manager to:16 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then
17 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like
18 matters exercises in the conduct of an enterprise of a like character with like aims;19 (b) diversify the holdings of each fund within the unified investment program to minimize the risk
20 of loss and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do
21 so; and22 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified
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26 retirement fund to exceed 50% of the book value of the fund or would cause the stock of one corporation
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29 capital stock" means only the common stock of a corporation.

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

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

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10 funds unless otherwise provided by law. The board shall direct the investment of state funds in accordance
11 with the laws and constitution of this state. The board has the power to veto ~~any~~ investments made under
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15 available for investment;

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27 and 17-6-105;

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

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1 an investment. The expenditures may be made directly by the board and are statutorily appropriated, as
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4 bid if approved by the state architect.

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6 income from each fund.

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

10
11 **Section 2.** Section 77-1-101, MCA, is amended to read:

12 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
13 land in 77-1-701, in this title, the following definitions apply:

14 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
15 Montana constitution.

16 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
17 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
18 includes all outfitting activity and all activities not included within the definition of general recreational use.

19 (3) "Department" means the department of natural resources and conservation provided for in Title
20 2, chapter 15, part 33.

21 (4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
22 and other activities determined by the board to be compatible with the use of state lands.

23 (b) General recreational use does not include the use of streams and rivers by the public under the
24 stream access laws provided in Title 23, chapter 2, part 3.

25 (5) "Legally accessible state lands" means state lands that can be accessed by:

26 (a) dedicated public road, right-of-way, or easement;

27 (b) public waters;

28 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

29 (d) adjacent contiguous private land if permission to cross the land has been secured from the
30 landowner. The granting of permission by a private landowner to cross private property in a particular

1 instance does not subject the state land that is accessed to general recreational use by members of the
2 public, other than those granted permission.

3 (6) (a) "State land" or "lands" means:

4 (i) lands granted to the state by the United States for any purpose, either directly or through
5 exchange for other lands;

6 (ii) lands deeded or devised to the state from any person; and

7 (iii) lands that are the property of the state through the operation of law.

8 (b) The term does not include:

9 (i) lands that the state conveys through the issuance of patent;

10 (ii) lands that are used for building sites, campus grounds, or experimental purposes by ~~any~~ a state
11 institution and that are the property of that institution;

12 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to
13 20-25-307; or

14 (iv) lands acquired through ~~foreclosure of any investments purchased~~ under the provisions of
15 ~~17-6-211~~ 17-6-201."

16

17 **Section 3.** Section 77-1-701, MCA, is amended to read:

18 **"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from
19 the context, the following definitions apply:

20 (1) "Ownership record" means the original deed, abstract, and any other instrument signifying state
21 ownership or other interest in real property.

22 (2) "State agency" means any board, bureau, department, commission, or officer of the state.

23 (3) "State land" means land held, possessed, or administered by the state by virtue of fee simple
24 title, grant, or deed. This term does not include:

25 (a) land acquired through ~~foreclosure of any investments purchased~~ under the provisions of
26 ~~17-6-211~~ 17-6-201;

27 (b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

28 (c) land used for easements and rights-of-way."

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HOUSE BILL NO. 36
INTRODUCED BY EWER
BY REQUEST OF THE DEPARTMENT OF COMMERCE

A BILL FOR AN ACT ENTITLED: "AN ACT MODIFYING THE BOARD OF INVESTMENTS' AUTHORITY TO SELL REAL PROPERTY HELD AS AN INVESTMENT; AND AMENDING SECTIONS 17-6-201, 77-1-101, AND 77-1-701, MCA."

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

Section 1. Section 17-6-201, MCA, is amended to read:

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

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

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

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

(2) (a) Retirement funds may be invested in common stocks of any corporation, except that an investment may not be made at any time that would cause the book value of the investments in ~~any a~~ 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

1 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

13 (5) The board shall:

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

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

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

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

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

21 (6) The board may:

22 (a) execute deeds of conveyance transferring ~~all~~ real property obtained through ~~foreclosure of any~~
23 ~~investments purchased under the provisions of 17-6-211 when full payment has been received for the~~
24 ~~property~~; PRIOR TO THE TRANSFER OF REAL PROPERTY DIRECTLY PURCHASED AND HELD AS AN
25 INVESTMENT, THE BOARD SHALL OBTAIN AN APPRAISAL BY A QUALIFIED APPRAISER.

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

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

30 (d) expend funds needed to cover costs of necessary repairs to property owned by the board as

1 an investment. The expenditures may be made directly by the board and are statutorily appropriated, as
2 provided in 17-7-502. Repairs that cost in excess of \$2,500 must be bid, and the bid must be awarded in
3 compliance with existing state law and regulations. Emergency repairs may be made by the board without
4 bid if approved by the state architect.

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

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

10

11 **Section 2.** Section 77-1-101, MCA, is amended to read:

12 **"77-1-101. Definitions.** Unless the context requires otherwise and except for the definition of state
13 land in 77-1-701, in this title, the following definitions apply:

14 (1) "Board" means the board of land commissioners provided for in Article X, section 4, of the
15 Montana constitution.

16 (2) "Commercial or concentrated recreational use" means any recreational use that is organized,
17 developed, or coordinated, whether for profit or otherwise. Commercial or concentrated recreational use
18 includes all outfitting activity and all activities not included within the definition of general recreational use.

19 (3) "Department" means the department of natural resources and conservation provided for in Title
20 2, chapter 15, part 33.

21 (4) (a) "General recreational use" includes noncommercial and nonconcentrated hunting, fishing,
22 and other activities determined by the board to be compatible with the use of state lands.

23 (b) General recreational use does not include the use of streams and rivers by the public under the
24 stream access laws provided in Title 23, chapter 2, part 3.

25 (5) "Legally accessible state lands" means state lands that can be accessed by:

26 (a) dedicated public road, right-of-way, or easement;

27 (b) public waters;

28 (c) adjacent federal, state, county, or municipal land if the land is open to public use; or

29 (d) adjacent contiguous private land if permission to cross the land has been secured from the
30 landowner. The granting of permission by a private landowner to cross private property in a particular

1 instance does not subject the state land that is accessed to general recreational use by members of the
2 public, other than those granted permission.

3 (6) (a) "State land" or "lands" means:

4 (i) lands granted to the state by the United States for any purpose, either directly or through
5 exchange for other lands;

6 (ii) lands deeded or devised to the state from any person; and

7 (iii) lands that are the property of the state through the operation of law.

8 (b) The term does not include:

9 (i) lands that the state conveys through the issuance of patent;

10 (ii) lands that are used for building sites, campus grounds, or experimental purposes by ~~any~~ a state
11 institution and that are the property of that institution;

12 (iii) lands that the board of regents of higher education has authority to dispose of pursuant to
13 20-25-307; or

14 (iv) lands acquired through ~~foreclosure of any investments purchased~~ under the provisions of
15 ~~17-6-211~~ 17-6-201."

16

17 **Section 3.** Section 77-1-701, MCA, is amended to read:

18 **"77-1-701. Definitions.** When used in this part, unless a different meaning clearly appears from
19 the context, the following definitions apply:

20 (1) "Ownership record" means the original deed, abstract, and any other instrument signifying state
21 ownership or other interest in real property.

22 (2) "State agency" means any board, bureau, department, commission, or officer of the state.

23 (3) "State land" means land held, possessed, or administered by the state by virtue of fee simple
24 title, grant, or deed. This term does not include:

25 (a) land acquired through ~~foreclosure of any investments purchased~~ under the provisions of
26 ~~17-6-211~~ 17-6-201;

27 (b) land used by virtue of an interest temporary in nature, such as a lease, license, or permit; or

28 (c) land used for easements and rights-of-way."

29

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