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INTRODUCED BY Grady Orr Bush Weir ^{House} BILL NO. 214

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Loans to petroleum tank release compensation board. (1) The board of investments may loan funds to the petroleum tank release compensation board to cover temporary cash shortfalls. The total of all loans may not exceed the greater of \$15 million or 80% of the fees that the office of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years. A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

(2) The board shall establish the interest rate on the loan, considering the security and the term of the loan.

Section 2. Section 75-11-307, MCA, is amended to read:

"75-11-307. Reimbursement for expenses caused by a release. (1) Subject to the availability of money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

(a) corrective action costs as required by a department-approved corrective action plan except if the corrective action plan addresses releases of substances other than petroleum products from an eligible petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred if the only release at the site was the release of the petroleum or petroleum products from the eligible petroleum storage tank; and

1 (b) compensation paid to third parties for bodily injury or property damage. The board may not
2 reimburse for property damage until the corrective action is completed.

3 (2) An owner or operator may not be reimbursed from the fund for the following expenses:

4 (a) corrective action costs or the costs of bodily injury or property damage paid to third parties that
5 are determined by the board to be ineligible for reimbursement;

6 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the
7 owner or operator;

8 (c) penalties or payments for damages incurred under actions by the department, board, or federal,
9 state, local, or tribal agencies or other government entities involving judicial or administrative enforcement
10 activities and related negotiations;

11 (d) attorney fees and legal costs of the owner, the operator, or a third party;

12 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment,
13 or labor related to the operation, repair, or replacement of a tank or piping;

14 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from
15 the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or
16 operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating
17 oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity
18 of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

19 (g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

20 (h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior
21 to the owner's or operator's request for reimbursement. This limitation does not apply to claims for
22 compensation paid to third parties for bodily injury or property damage.

23 (3) An owner or operator may designate a person as an agent to receive the reimbursement,
24 ~~provided that~~ if the owner or operator remains legally responsible for all costs and liabilities incurred as a
25 result of the release.

26 (4) Subject to the availability of funds under subsection (5):

27 (a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are
28 discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on
29 the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less
30 that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or

1 operator for:

2 (i) 50% of the first \$10,000 of eligible costs and 100% of subsequent eligible costs, up to a
3 maximum total reimbursement of \$495,000:

4 (A) for single-walled tank system releases; and

5 (B) for double-walled tank system releases for which the release date was prior to October 1, 1993;

6 or

7 (ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly
8 designed and installed double-walled tank system accidental releases that were discovered and reported
9 on or after October 1, 1993; and

10 (b) for all other releases eligible for reimbursement from the petroleum tank release cleanup fund
11 that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator
12 for:

13 (i) 50% of the first \$35,000 of eligible costs and 100% of subsequent eligible costs, up to a
14 maximum total reimbursement of \$982,500:

15 (A) for single-walled tank system releases; and

16 (B) for double-walled tank system releases for which the release date was prior to October 1, 1993;

17 or

18 (ii) 100% of the eligible costs, up to a maximum total reimbursement of \$1 million, for properly
19 designed and installed double-walled tank system accidental releases that were discovered and reported
20 on or after October 1, 1993.

21 (5) If the fund does not contain sufficient money to pay approved claims for eligible costs, a
22 reimbursement may not be made and the fund and the board are not liable for making any reimbursement
23 for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed
24 subsequently in the order in which they were approved by the board."

25

26 **Section 3.** Section 75-11-313, MCA, is amended to read:

27 **"75-11-313. Petroleum tank release cleanup fund.** (1) There is a petroleum tank release cleanup
28 fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund
29 by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under
30 subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a

1 legislative appropriation.

2 (2) There is deposited in the fund:

3 (a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

4 (b) money received by the board in the form of gifts, grants, reimbursements, or appropriations,
5 from any source, intended to be used for the purposes of this fund;

6 (c) money appropriated or advanced to the fund by the legislature; ~~and~~

7 (d) money loaned to the board by the board of investments; and

8 ~~(d)~~(e) all interest earned on money in the fund.

9 (3) The fund may be used only:

10 (a) to administer this part, including payment of board and department expenses associated with
11 administration;

12 (b) to reimburse owners and operators for eligible costs caused by a release from a petroleum
13 storage tank and approved by the board; and

14 (c) for repayment of any advance made under subsection (4) and any loan made pursuant to
15 [section 1], plus interest earned on the advance or loan.

16 (4) (a) The legislature may appropriate to the fund repayable advances as necessary to carry out
17 the purposes of this part. The outstanding total of repayable advances may not exceed the amount that
18 the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the
19 next 24 months.

20 (b) Advances to the fund must be repaid, and interest earned on advances must be paid to the
21 general fund when determined appropriate by the board. However, all advances to the fund plus the interest
22 earned must be repaid ~~on or before December 31, 1995~~ by the board within 24 months of receipt of the
23 advance.

24 (5) Whenever the board accepts a loan from the board of investments pursuant to [section 1], the
25 receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and
26 dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that
27 fiscal year."

28

29 **Section 4.** Section 75-11-318, MCA, is amended to read:

30 **"75-11-318. Powers and duties of board.** (1) The board shall administer the petroleum tank release

1 cleanup fund in accordance with the provisions of this part, including the payment of reimbursement to
2 owners and operators.

3 (2) The board shall determine whether to approve reimbursement of eligible costs under the
4 provisions of 75-11-309(2), shall obligate money from the fund for approved costs, and shall act on
5 requests for the guarantee of payments through the procedures and criteria provided in 75-11-309.

6 (3) The board may conduct meetings, hold hearings, undertake legal action, and conduct other
7 business as may be necessary to administer its responsibilities under this part. The board shall meet at least
8 quarterly for the purpose of reviewing and approving claims for reimbursement from the fund and
9 conducting other business as necessary.

10 (4) The board may hire staff, and the department shall provide staff support to the board as the
11 department determines it is able. The board shall use the fund to pay its staff expenses, to pay for
12 department staff ~~utilized~~ used for the review or preparation of corrective action plans and for the oversight
13 of corrective action undertaken by owners and operators for the purposes of this part, and to pay for
14 department of transportation staff ~~utilized~~ used for the collection of the petroleum storage tank cleanup fee.

15 (5) The board shall adopt rules to administer this part, including:

16 (a) rules governing submission of claims by owners or operators to the department and board;

17 (b) procedures for determining owners or operators who are eligible for reimbursement and
18 determining the validity of claims;

19 (c) procedures for the review and approval of corrective action plans;

20 (d) procedures for conducting board meetings, hearings, and other business necessary for the
21 implementation of this part; and

22 (e) other rules necessary for the administration of this part.

23 (6) The board may apply for, accept, and repay loans from the board of investments pursuant to
24 [section 1]."

25

26 NEW SECTION. Section 5. Nonimpairment by state. In accordance with the constitutions of the
27 United States and the state of Montana, the state pledges that it may not in any way impair the obligations
28 of any loan agreement between the board and the board of investments by repealing the petroleum storage
29 tank cleanup fee imposed by 75-11-314 or by reducing it below the amount necessary to make annual loan
30 payments.

1 **NEW SECTION.** **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as
2 an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to
3 [section 1].

4 (2) [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the
5 provisions of Title 75, chapter 11, part 3, apply to [section 5].

6

7 **NEW SECTION.** **Section 7. Effective date.** [This act] is effective July 1, 1997.

8

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0214, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the funding and cost reimbursement provisions of the petroleum tank release compensation laws; clarifying and imposing limitations on cost reimbursement; authorizing loans by the board of investments to the Petroleum Tank Release Compensation Board; pledging the petroleum storage tank cleanup fees for loan repayment.

ASSUMPTIONS:

1. The petroleum storage tank cleanup fee of \$.0075 a gallon will not increase.
2. EPA requires owners/operators of underground petroleum storage tanks to have at least \$1 million of financial assurance to cover corrective action and damage to third parties for bodily injury and property damage. Nearly all owners/operators in the state of Montana rely on the petroleum tank release cleanup fund (FUND) as a financial assurance mechanism. For the FUND to remain as an EPA approved financial assurance mechanism it must contain a balance of at least \$1 million.
3. Underground petroleum storage tanks are required to be upgraded or taken out of service by December 22, 1998. If an underground storage tank is not upgraded by December 22, 1998, it cannot be used and the owner must remove it from the ground or close it in place by December 22, 1999. There are approximately 7,000 petroleum storage tanks registered in Montana that have not been upgraded or taken out of service. Approximately 2,000 tanks will be abandoned leaving 5,000 tanks to be removed, replaced, or closed in place. To date 1,968 tanks have been upgraded or removed.
4. Historically each cleanup site has averaged 2.5 tanks; therefore, it is predicted that there are 1,213 potential cleanup sites. Approximately one third of these sites will seek assistance from the FUND for cleanup purposes due to contamination discovered during removal or closure, and these 400 sites will average \$28,000 per site for a total expense of \$11,200,000.
5. Most petroleum releases are discovered at the time of the upgrade, removal, or closure in place. Historically, reimbursement of corrective action costs are highest for the first three years following release discovery.
6. Based upon current revenue and expenditure trends, the FUND balance will continue to decline and will fall below \$1,000,000 late in fiscal 1999. In order to (1) protect the financial assurance mechanism required by EPA on behalf of tank owners/operators and (2) insure an adequate FUND balance that will allow for the timely processing of claims against the FUND, low interest loans through BOI, in lieu of a gas tax increase, will be necessary through at least fiscal year 2004.
7. It is anticipated that the first loan will be requested in May of 1999 based on monthly projections by DEQ for revenues, administrative costs, and reimbursements made to owners/operators. The projections of these expenses is based on an annual inflation rate of 1%. The Legislative Auditor's Office has affirmed the methodology of the projections for when the fund would drop below the \$1,000,000 balance. If the dollar amount of claims approved exceeds the estimated projections, the loan may be needed earlier. No loan repayments will be made in fiscal 1998 or fiscal 1999, based on the projected initial loan date of May 1999.
8. Loans will only be requested as required to keep the FUND balance above the \$1 million required by EPA and to continue to make reimbursements.
9. Loan amounts are figured using budgeted administrative costs and the projections for reimbursements to owners/operators of eligible petroleum storage tanks for eligible expenses. DEQ uses \$28,000 as the average site reimbursement amount. However, claim amounts vary greatly (to date the largest site reimbursement was \$761,351). A single large site could significantly change both the amount and the date of the loan. The best information available as of this date indicates that of the \$11,200,000 identified in Assumption #4 the minimum loan would be \$700,000 and the maximum would be \$4,800,000.

(Continued)

Dave Lewis 1-16-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

ED GRADY, PRIMARY SPONSOR DATE

Fiscal Note for HB0214, as introduced

HR 214

ASSUMPTIONS CONTINUED:

10. The loan interest rate is estimated at 6.250% based on past history of the BOI Intercap Revolving Program. The term of the loan is 10 years.
11. Loans may be necessary through fiscal year 2004. At that time, revenues are projected to exceed expenditures and the loans will be repaid at an accelerated rate.
12. There may be a savings to the FUND with the clarification of reimbursements made for corrective action and third party property damages; however, at this time the savings cannot be projected because the board is unable to predict which potential claims this may affect or the dollar amounts involved.
13. No additional revenues are anticipated by this legislation.

FISCAL IMPACT:

None this biennium.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Counties and cities use the FUND as a financial assurance mechanism. If this bill is passed there will be no effect on the state, county, city, or the public. Without the loan authorization, counties and cities, along with other petroleum storage tank owners/operators, would be required to obtain other financial assurance. That would result in increased expenditures to cities and counties.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The term of the loans is anticipated to be 10 years. The projections indicate revenues will exceed expenditures in fiscal year 2004. For purposes of illustration, if the board borrowed \$700,000 in May of 1999 and paid it back over the full ten years the interest expense at 6.25% would be \$251,929. If the board borrowed the current maximum projected of \$4,800,000 the interest expense for ten years at 6.25% interest would be \$1,727,513.

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NATURAL RESOURCES

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INTRODUCED BY

House BILL NO. *214*
Grady ORR Bond Wynn

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO INTRODUCED COPY (WHITE) FOR COMPLETE TEXT.

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INTRODUCED BY House BILL NO. 214
Grady ORR Bud Weir

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INTRODUCED BY Grady Orr Bush Weyer ^{House} BILL NO. ²¹⁴

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318, MCA; AND PROVIDING AN EFFECTIVE DATE."

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1 HOUSE BILL NO. 214

2 INTRODUCED BY GRADY, ORR, BECK, ELLINGSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE FUNDING AND COST REIMBURSEMENT
5 PROVISIONS OF THE PETROLEUM TANK RELEASE COMPENSATION LAWS; CLARIFYING AND IMPOSING
6 LIMITATIONS ON COST REIMBURSEMENT; AUTHORIZING LOANS BY THE BOARD OF INVESTMENTS TO
7 THE PETROLEUM TANK RELEASE COMPENSATION BOARD; PLEDGING THE PETROLEUM STORAGE TANK
8 CLEANUP FEES FOR LOAN REPAYMENT; AMENDING SECTIONS 75-11-307, 75-11-313, AND 75-11-318,
9 MCA; AND PROVIDING AN EFFECTIVE DATE."

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12
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14 of investments may loan funds to the petroleum tank release compensation board to cover temporary cash
15 shortfalls. The total of all loans may not exceed the greater of \$15 million or 80% of the fees that the office
16 of budget and program planning projects will be collected under 75-11-314 during the next 3 fiscal years.
17 A loan must be amortized, based on projected fee revenue, over a period of not more than 10 years.

18 (2) The board shall establish the interest rate on the loan, considering the security and the term
19 of the loan.

20
21 **Section 2.** Section 75-11-307, MCA, is amended to read:

22 **"75-11-307. Reimbursement for expenses caused by a release.** (1) Subject to the availability of
23 money from the fund under subsection (5), an owner or operator who is eligible under 75-11-308 and who
24 complies with 75-11-309 and any rules adopted to implement those sections must be reimbursed by the
25 board from the fund for the following eligible costs caused by a release from a petroleum storage tank:

26 (a) corrective action costs as required by a department-approved corrective action plan except if
27 the corrective action plan addresses releases of substances other than petroleum products from an eligible
28 petroleum storage tank, the board may reimburse only the costs that would have reasonably been incurred
29 if the only release at the site was the release of the petroleum or petroleum products from the eligible
30 petroleum storage tank; and

1 (b) compensation paid to third parties for bodily injury or property damage. The board may not
2 reimburse for property damage until the corrective action is completed.

3 (2) An owner or operator may not be reimbursed from the fund for the following expenses:

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5 are determined by the board to be ineligible for reimbursement;

6 (b) costs for bodily injury and property damage, other than corrective action costs, incurred by the
7 owner or operator;

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9 state, local, or tribal agencies or other government entities involving judicial or administrative enforcement
10 activities and related negotiations;

11 (d) attorney fees and legal costs of the owner, the operator, or a third party;

12 (e) costs for the repair or replacement of a tank or piping or costs of other materials, equipment,
13 or labor related to the operation, repair, or replacement of a tank or piping;

14 (f) expenses incurred before April 13, 1989, for owners or operators seeking reimbursement from
15 the petroleum tank release cleanup fund and expenses incurred before May 15, 1991, for owners or
16 operators seeking reimbursement from the petroleum tank release cleanup fund for a tank storing heating
17 oil for consumptive use on the premises where it is stored or for a farm or residential tank with a capacity
18 of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes;

19 (g) expenses exceeding the maximum reimbursements provided for in subsection (4); and

20 (h) expenses for work completed by or on behalf of the owner or operator more than 2 years prior
21 to the owner's or operator's request for reimbursement. This limitation does not apply to claims for
22 compensation paid to third parties for bodily injury or property damage.

23 (3) An owner or operator may designate a person as an agent to receive the reimbursement,
24 ~~provided that~~ if the owner or operator remains legally responsible for all costs and liabilities incurred as a
25 result of the release.

26 (4) Subject to the availability of funds under subsection (5):

27 (a) for releases eligible for reimbursement from the petroleum tank release cleanup fund that are
28 discovered and reported on or after April 13, 1989, from a tank storing heating oil for consumptive use on
29 the premises where it is stored or from a farm or residential tank with a capacity of 1,100 gallons or less
30 that is used for storing motor fuel for noncommercial purposes, the board shall reimburse an owner or

1 operator for:

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3 maximum total reimbursement of \$495,000:

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5 (B) for double-walled tank system releases for which the release date was prior to October 1, 1993;

6 or

7 (ii) 100% of the eligible costs, up to a maximum total reimbursement of \$500,000, for properly
8 designed and installed double-walled tank system accidental releases that were discovered and reported
9 on or after October 1, 1993; and

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11 that are discovered and reported on or after April 13, 1989, the board shall reimburse an owner or operator
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22 reimbursement may not be made and the fund and the board are not liable for making any reimbursement
23 for the costs at that time. When the fund contains sufficient money, eligible costs must be reimbursed
24 subsequently in the order in which they were approved by the board."

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28 fund in the state special revenue fund established in 17-2-102. The fund is administered as a revolving fund
29 by the board and is statutorily appropriated, as provided in 17-7-502, for the purposes provided for under
30 subsections (3)(b) and (3)(c). Administrative costs under subsection (3)(a) must be paid pursuant to a

1 legislative appropriation.

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3 (a) all revenue from the petroleum storage tank cleanup fee as provided in 75-11-314;

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5 from any source, intended to be used for the purposes of this fund;

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11 administration;

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17 the purposes of this part. The outstanding total of repayable advances may not exceed the amount that
18 the board estimates will be received by the fund from the petroleum storage tank cleanup fee during the
19 next 24 months.

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21 general fund when determined appropriate by the board. However, all advances to the fund plus the interest
22 earned must be repaid ~~on or before December 31, 1995~~ by the board within 24 months of receipt of the
23 advance.

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25 receipts from the fees provided for in 75-11-314 in each fiscal year until the loan is repaid are pledged and
26 dedicated for the repayment of the loan in an amount sufficient to meet the repayment obligation for that
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7 business as may be necessary to administer its responsibilities under this part. The board shall meet at least
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30 payments.

1 **NEW SECTION.** **Section 6. Codification instruction.** (1) [Section 1] is intended to be codified as
2 an integral part of Title 17, chapter 6, part 2, and the provisions of Title 17, chapter 6, part 2, apply to
3 [section 1].

4 (2) [Section 5] is intended to be codified as an integral part of Title 75, chapter 11, part 3, and the
5 provisions of Title 75, chapter 11, part 3, apply to [section 5].

6

7 **NEW SECTION.** **Section 7. Effective date.** [This act] is effective July 1, 1997.

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