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House BILL NO. 578
INTRODUCED BY *[Signature]*

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. (1) Parts 1 and 2 do not apply to the following positions in state government:

- (a) elected officials;
- (b) county assessors and their chief deputy;
- (c) employees of the office of consumer counsel;
- (d) judges and employees of the judicial branch;
- (e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (f) officers or members of the militia;
- (g) agency heads appointed by the governor;
- (h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

1 (i) academic and professional administrative personnel and live-in houseparents who have entered
2 into individual contracts with the state school for the deaf and blind under the authority of the state board
3 of public education;

4 (j) teachers under the authority of the department of corrections or the department of public health
5 and human services;

6 (k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional
7 staff positions of the board of investments;

8 (l) four professional staff positions under the board of oil and gas conservation;

9 (m) assistant director for security of the Montana state lottery;

10 ~~(n) executive director and senior investment officer of the Montana board of science and
11 technology development;~~

12 ~~(o)~~ (n) executive director and employees of the state compensation insurance fund;

13 ~~(p)~~ (o) state racing stewards employed by the executive secretary of the Montana board of
14 horseracing;

15 ~~(q)~~ (p) executive director of the Montana wheat and barley committee;

16 ~~(r)~~ (q) commissioner of banking and financial institutions; and

17 ~~(s)~~ (r) training coordinator for county attorneys.

18 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
19 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
20 branch, other than the office of consumer counsel:

21 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
22 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
23 duties to the legislative services division established by 5-11-111;

24 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

25 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
26 in 17-7-102."

27
28 **Section 2.** Section 17-6-201, MCA, is amended to read:

29 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
30 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

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

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

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

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

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

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

17 (3) (a) This section does not prevent investment in any business activity in Montana, including
18 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

30 (5) The board shall:

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

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

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

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

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

8 (6) The board may:

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

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

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

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

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

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

26

27 **Section 3.** Section 17-6-302, MCA, is amended to read:

28 "17-6-302. **Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

30 (1) "Board" means the board of investments created in 2-15-1808.

1 (2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

2 (3) "Clean and healthful environment" means an environment that is relatively free from pollution
3 that threatens human health, including as a minimum, compliance with federal and state environmental and
4 health standards.

5 ~~(4)~~ (4) "Department" means the department of commerce provided for in 2-15-1801.

6 ~~(4)(5)~~ (5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock,
7 partnership interests, or other ownership interests is owned and controlled by residents of Montana each
8 of whose principal occupation is as an employee, officer, or partner of the enterprise.

9 ~~(6)(6)~~ (6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a
10 savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter
11 4.

12 ~~(6)(7)~~ (7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial
13 institution and does not include the purchase of debentures issued by a capital company.

14 ~~(7)(8)~~ (8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests,
15 or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

16 ~~(8)(9)~~ (9) "Long-term benefit to the Montana economy" means an activity that strengthens the
17 Montana economy and that has the potential to maintain and create jobs, increase per capita income, or
18 increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

19 ~~(9)(10)~~ (10) "Montana economy" means any business activity in the state of Montana, including those
20 ~~which~~ that continue existing jobs or create new jobs in Montana.

21 ~~(10)(11)~~ (11) "Service fees" means the fees normally charged by a financial institution for servicing a
22 loan, including amounts charged for collecting payments and remitting amounts to the fund."

23

24 **Section 4.** Section 17-6-305, MCA, is amended to read:

25 **"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy**
26 **-- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to
27 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special
28 emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to
29 this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25%
30 of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

1 the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of
 2 science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5
 3 of this chapter ~~may is not be~~ included in the 25% of the trust fund allocated to the board for in-state
 4 investment under this section.

5 (2) In determining the probable income to be derived from investment of this revenue, the long-term
 6 benefit to the Montana economy must be considered.

7 (3) The legislature may provide additional procedures to implement this section.

8 (4) The board shall include a report on the investments made under this section as a part of the
 9 information required by 17-7-111."

10
 11 **Section 5.** Section 17-6-308, MCA, is amended to read:

12 "**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
 13 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
 14 by rules adopted by the board.

15 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
 16 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
 17 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
 18 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
 19 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
 20 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

21 (3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios
 22 created by the former Montana board of science and technology development, ~~provided for in 2-15-1919,~~
 23 ~~to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine~~
 24 ~~financing loans and \$11.1 million of the permanent coal tax trust fund for research and development project~~
 25 ~~matching funds for projects at Montana public universities. This authority does not extend beyond June~~
 26 ~~30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects.~~
 27 The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments
 28 entered into by the Montana board of science and technology development as part of the seed capital and
 29 research and development loan portfolios. ~~Until the Montana board of science and technology development~~
 30 ~~department~~ makes a loan pursuant to the provisions of ~~Title 90, part 5 of this chapter 3,~~ the \$2 million in

1 funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As
 2 ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this subsection ~~chapter~~ are repaid,
 3 the ~~Montana board of science and technology development~~ department may reinvest the principal in new
 4 loans pursuant to part 5 of this chapter.

5 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
 6 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
 7 corporations."

8
 9 **Section 6.** Section 17-6-503, MCA, is amended to read:

10 **"17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following
 11 definitions apply:

12 ~~(1) "Board" means the Montana board of science and technology development provided for in~~
 13 ~~2-15-1818.~~

14 ~~(2)(1)~~ "Department" means the department of commerce provided for in 2-15-1801.

15 (2) "Job investment administrative account" means the account established in 17-6-509.

16 (3) "Job investment loan account" means the account established in [section 7].

17 ~~(3)(4)~~ "Loan review committee" means the committee that is established by the department to
 18 consider economic development loan applications for funding by the federal community development block
 19 grant program and that is responsible for reviewing and recommending to the ~~board~~ department the
 20 approval or denial of job investment loans subject to this part and rules implementing this part.

21 ~~(4)(5)~~ "Qualified business" means a business enterprise that either is or will be located in the state
 22 and that produces goods or provides services that will, as a result of receiving a job investment loan, create
 23 jobs for Montana workers."

24
 25 **NEW SECTION. Section 7. Job investment loan account.** There is a job investment loan account.
 26 The department shall deposit all principal payments on loans made pursuant to this part in the account and
 27 may make additional loans pursuant to this part. The department shall make loans from the funds allocated
 28 to the department under 17-6-308.

29
 30 **Section 8.** Section 17-6-509, MCA, is amended to read:

1 **"17-6-509. Job investment administrative account.** There is a job investment administrative
2 account in the state special revenue fund. The department shall deposit up to 20% of interest payments
3 on job investment loans into the account. Money in the account must be used to pay the costs of
4 administering this part, including personnel costs, operating costs, and administrative costs. Interest
5 payments not deposited into the account must be deposited into the coal severance tax income fund
6 established in 17-5-703."

7
8 **Section 9.** Section 17-6-510, MCA, is amended to read:

9 **"17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department
10 shall establish a loan review committee to administer this part. The committee shall accept and review loan
11 applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~
12 department the approval or disapproval of loans. A loan may not exceed \$500,000.

13 (2) If a member of the committee has a financial interest in a business that submits a job
14 investment loan application, then the application must be denied.

15 (3) The department ~~shall~~ may contract for the servicing of loans.

16 (4) The department is the successor in interest to all agreements, contracts, loans, notes, or other
17 instruments entered into under this part."

18
19 **Section 10.** Section 17-7-502, MCA, is amended to read:

20 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
21 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
22 without the need for a biennial legislative appropriation or budget amendment.

23 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
24 with both of the following provisions:

25 (a) The law containing the statutory authority must be listed in subsection (3).

26 (b) The law or portion of the law making a statutory appropriation must specifically state that a
27 statutory appropriation is made as provided in this section.

28 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
29 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
30 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

1 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
 2 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
 3 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
 4 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
 5 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
 6 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
 7 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301~~;
 8 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

9 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 10 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 11 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 12 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 13 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 15 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 16 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
 17 July 1, 2001.)"

18

19 **Section 11.** Section 90-8-201, MCA, is amended to read:

20 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
 21 **investment capital company.** (1) The department shall certify one Montana small business investment
 22 capital company, and from time to time, the department shall certify Montana capital companies. A
 23 company seeking to be certified as a Montana capital company or as the Montana small business
 24 investment capital company shall make written application to the department on forms provided by the
 25 department. The application must contain the information required by 90-8-204 and other information that
 26 the department requires. The application and certificate must specify the level of capitalization that the
 27 company expects to qualify for the tax credits provided for in 90-8-202.

28 (2) The application must show that the applicant's purpose is to increase the general economic
 29 welfare of the state of Montana by:

30 (a) making investment capital available to businesses in Montana; and

1 (b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there
2 is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

3 (3) Certifiable applicants include but are not limited to local and community development
4 corporations, small business administration 503 corporations, and small business investment companies.

5 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
6 capital company or as the qualified Montana small business investment capital company.

7 (5) To be eligible for certification under this section as the Montana small business investment
8 capital company, the applicant shall commit to:

9 (a) ~~utilize~~ using the tax credits to accumulate private capital, with the intention of being designated
10 a small business investment corporation by the United States small business administration as provided in
11 Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

12 (b) ~~target~~ targeting its investments as a small business investment capital company toward
13 commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories,
14 the federal small business innovative research program, the federal cooperative research and development
15 agreement program, Montana university system research and development, ~~the Montana board of science
16 and technology development (second stage)~~, small business incubators, community development block
17 grant programs, and projects emerging from economic development programs of Montana certified
18 communities, with the objective of providing significant investment opportunities in an area where economic
19 development capital is limited;

20 (c) ~~consider~~ considering investment opportunities originating in any Montana county; and

21 (d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital
22 is invested in counties with populations of 20,000 or less."

23
24 **NEW SECTION. Section 12. Appropriation -- loan repayment.** There is appropriated to the office
25 of the commissioner of higher education from the coal severance tax permanent trust fund up to
26 \$9,350,000 for the purpose of repaying the research and development loan made by the Montana board
27 of science and technology development to the university system. The appropriation must be used to repay
28 the loan principal to the board of investments as the successor in interest to the Montana board of science
29 and technology development. The repayment must be deposited in the coal severance tax permanent fund.
30 The principal must be repaid within 30 days after [the effective date of this act].

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0578, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill for an act eliminating the Montana Board of Science and Technology Development; transferring the portfolios to the Montana Board of Investments; revising the Job Investment Loan laws; appropriating coal severance tax permanent funds to the Commissioner of Higher Education to repay the research and development loan.

ASSUMPTIONS:

Department of Commerce:

1. All Montana Board of Science and Technology (MST) administrative expenditures will be eliminated. Three FTE will be eliminated. An FTE will be transferred to the Board of Investments (BOI) to monitor and evaluate the investment portfolios and 1.00 FTE has already been transferred to the Economic Development Division to staff a new federal grant. The Economic Development Division FTE will be supported with federal funds already included in the Executive Budget for the 1999 biennium.
2. BOI operational expenditures will increase slightly to accommodate the management and evaluation of the transferred investment portfolios. The Economic Development Division will assume administration of the Jobs Investment Loan (JIL) program with the appropriation requested by MST in the Executive Budget.
3. The MST state special revenue accounting entity 02121 is funded by interest earned on seed capital and research and development loan portfolios. Once this account is eliminated, all of the interest earned on these portfolios will be deposited in the state general fund. The Economic Development Division will retain the JIL state special revenue accounting entity 02353 for loan servicing requirements.
4. The BOI utilizes a cost allocation system to charge accounts it invests based on personal service costs and identifiable operational costs attributed to the account. The charges are netted against the income earned by the account and deposited in an internal service account that funds the BOI investment operations. Because the interest earned by the MST loan portfolios transferred to the BOI accrues to the state general fund, the BOI costs for managing and evaluating the portfolios would be charged against this state general fund interest income.
5. If a three-fourths vote is obtained, upon payment of the Montana University System loans, the interest earnings on coal severance tax permanent trust fund would create a general fund would loss \$19,095 in fiscal year 1998 and \$20,100 in fiscal year 1999.


Commissioner of Higher Education:


6. The current research and loan balance is \$9,350,000. Section 12 of the proposed legislation appropriates \$9,350,000 to the Commissioner of Higher Education for the purpose of repaying the research and development loan. The required loan payment in fiscal year 1997 is \$270,000 of which \$156,600 is interest and \$113,400 is principle. This payment has not been made by the Montana University System.
7. The repayment of the research and development loan is prorated to Montana State University Bozeman (MSU), University of Montana Missoula (UM), and Montana Tech based upon the total of research and development expenses. The fiscal year 1996 loan payment of \$250,000 amounted to \$157,500 for MSU Bozeman \$76,750 for UM Missoula, and \$15,570 for Montana Tech.
8. Loan repayments have primarily come from indirect cost recoveries on grants from federal and private sources.

FISCAL IMPACT:

Science & Technology	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
FTE	(5.00)	(5.00)
Personal Services	(224,891)	(225,176)
Operating Expenses	(119,025)	(118,335)
Debt Service	<u>(11,892)</u>	<u>(15,648)</u>
Total	(355,808)	(359,159)

(Continued)


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


 ROYAL JOHNSON, PRIMARY SPONSOR DATE

Fiscal Note Request, HB0578, as introduced

Page 2

(continued)

	<u>FY98</u>	<u>FY99</u>
Board of Investments (06)	<u>Difference</u>	<u>Difference</u>
FTE	1.00	1.00
Personal Services	51,319	51,319
Operating Expenses	<u>23,000</u>	<u>23,000</u>
Total	74,319	74,319
Economic Development (02)		
FTE	1.00	1.00
Operating Expenses	764	764
Debt Service	<u>11,892</u>	<u>15,648</u>
Total	<u>12,656</u>	<u>16,412</u>
<u>Revenues:</u>		
Economic Dev. JIL Interest	12,656	16,412
Commissioner of Higher Education:		
<u>Expenditures:</u>		
MUS Loan Repayments	(285,000)	(300,000)
<u>Revenues:</u>		
Designated Funds (33)	285,000	300,000
<u>Net Impact:</u>		
FTE	(3.00)	(3.00)
General Fund	262,394	264,740

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

There will be no more seed capital or research and development loans made. When these loans are repaid, the principal will be deposited in the trust where it will be invested by BOI in the same manner it currently invests trust principal. Investment earnings to the state general fund will increase commensurate with any reduction in expenditures resulting from the enactment of this bill.

If the university system repays its research and development loans with an appropriation from the trust, rather than its own funding sources, the trust's principal will be reduced by the amount of the Trust appropriation used to repay the loans.

TECHNICAL NOTES:

Because Section 12 appropriates funds from the trust, that section requires a three-fourths vote of each house. All other sections of the bill require a simple majority vote.

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INTRODUCED BY

House BILL NO. 578

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. (1) Parts 1 and 2 do not apply to the following positions in state government:

- (a) elected officials;
- (b) county assessors and their chief deputy;
- (c) employees of the office of consumer counsel;
- (d) judges and employees of the judicial branch;
- (e) members of boards and commissions appointed by the governor, the legislature, or other elected state officials;
- (f) officers or members of the militia;
- (g) agency heads appointed by the governor;
- (h) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

1 (i) academic and professional administrative personnel and live-in houseparents who have entered
2 into individual contracts with the state school for the deaf and blind under the authority of the state board
3 of public education;

4 (j) teachers under the authority of the department of corrections or the department of public health
5 and human services;

6 (k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional
7 staff positions of the board of investments;

8 (l) four professional staff positions under the board of oil and gas conservation;

9 (m) assistant director for security of the Montana state lottery;

10 ~~(n) executive director and senior investment officer of the Montana board of science and
11 technology development;~~

12 ~~(e)~~(n) executive director and employees of the state compensation insurance fund;

13 ~~(p)~~(o) state racing stewards employed by the executive secretary of the Montana board of
14 horseracing;

15 ~~(q)~~(p) executive director of the Montana wheat and barley committee;

16 ~~(r)~~(q) commissioner of banking and financial institutions; and

17 ~~(s)~~(r) training coordinator for county attorneys.

18 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
19 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
20 branch, other than the office of consumer counsel:

21 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
22 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
23 duties to the legislative services division established by 5-11-111;

24 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

25 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
26 in 17-7-102."

27
28 **Section 2.** Section 17-6-201, MCA, is amended to read:

29 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
30 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

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

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

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

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

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

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

17 (3) (a) This section does not prevent investment in any business activity in Montana, including
18 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

30 (5) The board shall:

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

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

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

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

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

8 (6) The board may:

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

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

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

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

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

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

26

27 **Section 3.** Section 17-6-302, MCA, is amended to read:

28 **"17-6-302. Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

30 (1) "Board" means the board of investments created in 2-15-1808.

1 (2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

2 (3) "Clean and healthful environment" means an environment that is relatively free from pollution
3 that threatens human health, including as a minimum, compliance with federal and state environmental and
4 health standards.

5 ~~(4)~~ (5) "Department" means the department of commerce provided for in 2-15-1801.

6 ~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock,
7 partnership interests, or other ownership interests is owned and controlled by residents of Montana each
8 of whose principal occupation is as an employee, officer, or partner of the enterprise.

9 ~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a
10 savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter
11 4.

12 ~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial
13 institution and does not include the purchase of debentures issued by a capital company.

14 ~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests,
15 or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

16 ~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the
17 Montana economy and that has the potential to maintain and create jobs, increase per capita income, or
18 increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

19 ~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those
20 ~~which~~ that continue existing jobs or create new jobs in Montana.

21 ~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a
22 loan, including amounts charged for collecting payments and remitting amounts to the fund."
23

24 **Section 4.** Section 17-6-305, MCA, is amended to read:

25 **"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy**
26 **-- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to
27 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special
28 emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to
29 this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25%
30 of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

1 the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of
 2 science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5
 3 of this chapter ~~may~~ is not be included in the 25% of the trust fund allocated to the board for in-state
 4 investment under this section.

5 (2) In determining the probable income to be derived from investment of this revenue, the long-term
 6 benefit to the Montana economy must be considered.

7 (3) The legislature may provide additional procedures to implement this section.

8 (4) The board shall include a report on the investments made under this section as a part of the
 9 information required by 17-7-111."

10
 11 **Section 5.** Section 17-6-308, MCA, is amended to read:

12 **"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
 13 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
 14 by rules adopted by the board.

15 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
 16 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
 17 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
 18 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
 19 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
 20 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

21 (3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios
 22 created by the former Montana board of science and technology development, ~~provided for in 2-15-1818,~~
 23 ~~to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine~~
 24 ~~financing loans and \$11.1 million of the permanent coal tax trust fund for research and development project~~
 25 ~~matching funds for projects at Montana public universities. This authority does not extend beyond June~~
 26 ~~30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects.~~
 27 The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments
 28 entered into by the Montana board of science and technology development as part of the seed capital and
 29 research and development loan portfolios. Until the ~~Montana board of science and technology development~~
 30 ~~department~~ makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter 3, the \$2 million in

1 funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As
 2 ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this subsection chapter are repaid,
 3 the ~~Montana board of science and technology development~~ department may reinvest the principal in new
 4 loans pursuant to part 5 of this chapter.

5 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
 6 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
 7 corporations."

8

9 **Section 6.** Section 17-6-503, MCA, is amended to read:

10 **"17-6-503. Definitions.** As used in this part, unless the context requires otherwise, the following
 11 definitions apply:

12 ~~(1) "Board" means the Montana board of science and technology development provided for in~~
 13 ~~2-15-1818.~~

14 ~~(2)(1)~~ "Department" means the department of commerce provided for in 2-15-1801.

15 (2) "Job investment administrative account" means the account established in 17-6-509.

16 (3) "Job investment loan account" means the account established in [section 7].

17 ~~(3)(4)~~ "Loan review committee" means the committee that is established by the department to
 18 consider economic development loan applications for funding by the federal community development block
 19 grant program and that is responsible for reviewing and recommending to the ~~board~~ department the
 20 approval or denial of job investment loans subject to this part and rules implementing this part.

21 ~~(4)(5)~~ "Qualified business" means a business enterprise that either is or will be located in the state
 22 and that produces goods or provides services that will, as a result of receiving a job investment loan, create
 23 jobs for Montana workers."

24

25 **NEW SECTION. Section 7. Job investment loan account.** There is a job investment loan account.
 26 The department shall deposit all principal payments on loans made pursuant to this part in the account and
 27 may make additional loans pursuant to this part. The department shall make loans from the funds allocated
 28 to the department under 17-6-308.

29

30 **Section 8.** Section 17-6-509, MCA, is amended to read:

1 **"17-6-509. Job investment administrative account.** There is a job investment administrative
 2 account in the state special revenue fund. The department shall deposit up to 20% of interest payments
 3 on job investment loans into the account. Money in the account must be used to pay the costs of
 4 administering this part, including personnel costs, operating costs, and administrative costs. Interest
 5 payments not deposited into the account must be deposited into the coal severance tax income fund
 6 established in 17-5-703."

7

8 **Section 9.** Section 17-6-510, MCA, is amended to read:

9 **"17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department
 10 shall establish a loan review committee to administer this part. The committee shall accept and review loan
 11 applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~
 12 department the approval or disapproval of loans. A loan may not exceed \$500,000.

13 (2) If a member of the committee has a financial interest in a business that submits a job
 14 investment loan application, then the application must be denied.

15 (3) The department ~~shall~~ may contract for the servicing of loans.

16 (4) The department is the successor in interest to all agreements, contracts, loans, notes, or other
 17 instruments entered into under this part."

18

19 **Section 10.** Section 17-7-502, MCA, is amended to read:

20 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 21 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
 22 without the need for a biennial legislative appropriation or budget amendment.

23 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
 24 with both of the following provisions:

25 (a) The law containing the statutory authority must be listed in subsection (3).

26 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 27 statutory appropriation is made as provided in this section.

28 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
 29 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
 30 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;

1 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
 2 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
 3 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
 4 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
 5 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
 6 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
 7 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~
 8 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

9 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 10 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 11 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
 12 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
 13 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
 14 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
 15 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
 16 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
 17 July 1, 2001.)"

18

19 **Section 11.** Section 90-8-201, MCA, is amended to read:

20 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
 21 **investment capital company.** (1) The department shall certify one Montana small business investment
 22 capital company, and from time to time, the department shall certify Montana capital companies. A
 23 company seeking to be certified as a Montana capital company or as the Montana small business
 24 investment capital company shall make written application to the department on forms provided by the
 25 department. The application must contain the information required by 90-8-204 and other information that
 26 the department requires. The application and certificate must specify the level of capitalization that the
 27 company expects to qualify for the tax credits provided for in 90-8-202.

28 (2) The application must show that the applicant's purpose is to increase the general economic
 29 welfare of the state of Montana by:

30 (a) making investment capital available to businesses in Montana; and

1 (b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there
2 is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

3 (3) Certifiable applicants include but are not limited to local and community development
4 corporations, small business administration 503 corporations, and small business investment companies.

5 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
6 capital company or as the qualified Montana small business investment capital company.

7 (5) To be eligible for certification under this section as the Montana small business investment
8 capital company, the applicant shall commit to:

9 (a) ~~utilize~~ using the tax credits to accumulate private capital, with the intention of being designated
10 a small business investment corporation by the United States small business administration as provided in
11 Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

12 (b) ~~target~~ targeting its investments as a small business investment capital company toward
13 commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories,
14 the federal small business innovative research program, the federal cooperative research and development
15 agreement program, Montana university system research and development, ~~the Montana board of science
16 and technology development (second stage)~~, small business incubators, community development block
17 grant programs, and projects emerging from economic development programs of Montana certified
18 communities, with the objective of providing significant investment opportunities in an area where economic
19 development capital is limited;

20 (c) ~~consider~~ considering investment opportunities originating in any Montana county; and

21 (d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital
22 is invested in counties with populations of 20,000 or less."

23
24 **NEW SECTION. Section 12. Appropriation -- loan repayment.** There is appropriated to the office
25 of the commissioner of higher education from the coal severance tax permanent trust fund up to
26 \$9,350,000 for the purpose of repaying the research and development loan made by the Montana board
27 of science and technology development to the university system. The appropriation must be used to repay
28 the loan principal to the board of investments as the successor in interest to the Montana board of science
29 and technology development. The repayment must be deposited in the coal severance tax permanent fund.
30 The principal must be repaid within 30 days after [the effective date of this act].

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INTRODUCED BY

House BILL NO. 578

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB INVESTMENT LOAN LAWS; APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, 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 SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 578

2 INTRODUCED BY LAWSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND
5 TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD
6 OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB
7 INVESTMENT LOAN LAWS; ~~APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE~~
8 ~~OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND~~
9 ~~DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS~~
10 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND
11 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203,
12 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505,
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14 MCA; AND PROVIDING AN EFFECTIVE ~~DATE~~ DATES."

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

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19 **"2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following
20 positions in state government:

- 21 (a) elected officials;
- 22 (b) county assessors and their chief deputy;
- 23 (c) employees of the office of consumer counsel;
- 24 (d) judges and employees of the judicial branch;
- 25 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
26 state officials;
- 27 (f) officers or members of the militia;
- 28 (g) agency heads appointed by the governor;
- 29 (h) academic and professional administrative personnel with individual contracts under the authority
30 of the board of regents of higher education;

1 (i) academic and professional administrative personnel and live-in houseparents who have entered
2 into individual contracts with the state school for the deaf and blind under the authority of the state board
3 of public education;

4 (j) teachers under the authority of the department of corrections or the department of public health
5 and human services;

6 (k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional
7 staff positions of the board of investments;

8 (l) four professional staff positions under the board of oil and gas conservation;

9 (m) assistant director for security of the Montana state lottery;

10 ~~(n) executive director and senior investment officer of the Montana board of science and
11 technology development;~~

12 ~~(e)(n)~~ executive director and employees of the state compensation insurance fund;

13 ~~(p)(o)~~ state racing stewards employed by the executive secretary of the Montana board of
14 horseracing;

15 ~~(q)(p)~~ executive director of the Montana wheat and barley committee;

16 ~~(r)(q)~~ commissioner of banking and financial institutions; and

17 ~~(s)(r)~~ training coordinator for county attorneys.

18 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
19 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
20 branch, other than the office of consumer counsel:

21 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
22 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
23 duties to the legislative services division established by 5-11-111;

24 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

25 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
26 in 17-7-102."

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28 **Section 2.** Section 17-6-201, MCA, is amended to read:

29 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
30 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

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

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

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

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

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

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

17 (3) (a) This section does not prevent investment in any business activity in Montana, including
18 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

30 (5) The board shall:

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

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

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

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

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

8 (6) The board may:

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

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

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

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

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

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

26

27 **Section 3.** Section 17-6-302, MCA, is amended to read:

28 "17-6-302. **Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

30 (1) "Board" means the board of investments created in 2-15-1808.

1 (2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

2 (3) "Clean and healthful environment" means an environment that is relatively free from pollution
3 that threatens human health, including as a minimum, compliance with federal and state environmental and
4 health standards.

5 (4) "Department" means the department of commerce provided for in 2-15-1801.

6 ~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock,
7 partnership interests, or other ownership interests is owned and controlled by residents of Montana each
8 of whose principal occupation is as an employee, officer, or partner of the enterprise.

9 ~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a
10 savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter
11 4.

12 ~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial
13 institution and does not include the purchase of debentures issued by a capital company.

14 ~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests,
15 or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

16 ~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the
17 Montana economy and that has the potential to maintain and create jobs, increase per capita income, or
18 increase Montana tax ~~revenue~~ revenue in the future to the people of Montana, either directly or indirectly.

19 ~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those
20 ~~which~~ that continue existing jobs or create new jobs in Montana.

21 ~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a
22 loan, including amounts charged for collecting payments and remitting amounts to the fund."
23

24 **Section 4.** Section 17-6-305, MCA, is amended to read:

25 **"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy**
26 **-- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to
27 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special
28 emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to
29 this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25%
30 of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

1 the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of
 2 science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5
 3 of this chapter ~~may is~~ not ~~be~~ included in the 25% of the trust fund allocated to the board for in-state
 4 investment under this section.

5 (2) In determining the probable income to be derived from investment of this revenue, the long-term
 6 benefit to the Montana economy must be considered.

7 (3) The legislature may provide additional procedures to implement this section.

8 (4) The board shall include a report on the investments made under this section as a part of the
 9 information required by 17-7-111."

10

11 **Section 5.** Section 17-6-308, MCA, is amended to read:

12 **"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
 13 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
 14 by rules adopted by the board.

15 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
 16 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
 17 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
 18 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
 19 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
 20 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

21 (3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios
 22 created by the former Montana board of science and technology development, ~~provided for in 2-15-1818,~~
 23 ~~to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine~~
 24 ~~financing loans and \$11.1 million of the permanent coal tax trust fund for research and development project~~
 25 ~~matching funds for projects at Montana public universities. This authority does not extend beyond June~~
 26 ~~30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects.~~
 27 The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments
 28 entered into by the Montana board of science and technology development as part of the seed capital and
 29 research and development loan portfolios. ~~Until the Montana board of science and technology development~~
 30 ~~department~~ makes a loan pursuant to the provisions of Title 90, part 5 of this chapter 3, the \$2 million in

1 funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As
2 ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this subsection ~~chapter~~ are repaid,
3 the ~~Montana board of science and technology development~~ department may reinvest the principal in new
4 loans pursuant to part 5 of this chapter.

5 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
6 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
7 corporations."

8

9 **SECTION 6. SECTION 17-6-308, MCA, IS AMENDED TO READ:**

10 "17-6-308. **Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
11 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
12 by rules adopted by the board.

13 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
14 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
15 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
16 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
17 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
18 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

19 (3) The board shall allow the Montana board of science and technology development, provided for
20 in 2-15-1818, to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans
21 or mezzanine financing loans and \$11.1 million of the permanent coal tax trust fund for research and
22 development project matching funds for projects at Montana public universities. This authority does not
23 extend beyond June 30, ~~1997~~ 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for
24 research and development projects. Until the Montana board of science and technology development makes
25 a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested
26 by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made
27 pursuant to this subsection are repaid, the Montana board of science and technology development may
28 reinvest the principal in new loans.

29 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
30 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit

1 corporations."

2

3 **Section 7.** Section 17-6-503, MCA, is amended to read:

4 "17-6-503. **Definitions.** As used in this part, unless the context requires otherwise, the following
5 definitions apply:

6 ~~(1) "Board" means the Montana board of science and technology development provided for in~~
7 ~~2-15-1818.~~

8 ~~(2)(1)~~ "Department" means the department of commerce provided for in 2-15-1801.

9 (2) "Job investment administrative account" means the account established in 17-6-509.

10 (3) "Job investment loan account" means the account established in [section 7 8].

11 ~~(3)(4)~~ "Loan review committee" means the committee that is established by the department to
12 consider economic development loan applications for funding by the federal community development block
13 grant program and that is responsible for reviewing and recommending to the ~~board~~ department the
14 approval or denial of job investment loans subject to this part and rules implementing this part.

15 ~~(4)(5)~~ "Qualified business" means a business enterprise that either is or will be located in the state
16 and that produces goods or provides services that will, as a result of receiving a job investment loan, create
17 jobs for Montana workers."

18

19 **NEW SECTION. Section 8. Job investment loan account.** There is a job investment loan account.
20 The department shall deposit all principal payments on loans made pursuant to this part in the account and
21 may make additional loans pursuant to this part. The department shall make loans from the funds allocated
22 to the department under 17-6-308.

23

24 **Section 9.** Section 17-6-509, MCA, is amended to read:

25 "17-6-509. **Job investment administrative account.** There is a job investment administrative
26 account in the state special revenue fund. The department shall deposit up to 20% of interest payments
27 on job investment loans into the account. Money in the account must be used to pay the costs of
28 administering this part, including personnel costs, operating costs, and administrative costs. Interest
29 payments not deposited into the account must be deposited into the coal severance tax income fund
30 established in 17-5-703."

1 **Section 10.** Section 17-6-510, MCA, is amended to read:

2 **"17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department
3 shall establish a loan review committee to administer this part. The committee shall accept and review loan
4 applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~
5 department the approval or disapproval of loans. A loan may not exceed \$500,000.

6 (2) If a member of the committee has a financial interest in a business that submits a job
7 investment loan application, then the application must be denied.

8 (3) The department ~~shall~~ may contract for the servicing of loans.

9 (4) The department is the successor in interest to all agreements, contracts, loans, notes, or other
10 instruments entered into under this part."

11

12 **Section 11.** Section 17-7-502, MCA, is amended to read:

13 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
14 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
15 without the need for a biennial legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
17 with both of the following provisions:

18 (a) The law containing the statutory authority must be listed in subsection (3).

19 (b) The law or portion of the law making a statutory appropriation must specifically state that a
20 statutory appropriation is made as provided in this section.

21 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
22 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
23 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
24 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
25 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
26 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
27 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
28 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
29 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
30 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~

1 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

2 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
3 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
4 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
5 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
6 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
8 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
9 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
10 July 1, 2001.)"

11

12 **Section 12.** Section 90-8-201, MCA, is amended to read:

13 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
14 **investment capital company.** (1) The department shall certify one Montana small business investment
15 capital company, and from time to time, the department shall certify Montana capital companies. A
16 company seeking to be certified as a Montana capital company or as the Montana small business
17 investment capital company shall make written application to the department on forms provided by the
18 department. The application must contain the information required by 90-8-204 and other information that
19 the department requires. The application and certificate must specify the level of capitalization that the
20 company expects to qualify for the tax credits provided for in 90-8-202.

21 (2) The application must show that the applicant's purpose is to increase the general economic
22 welfare of the state of Montana by:

23 (a) making investment capital available to businesses in Montana; and

24 (b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there
25 is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

26 (3) Certifiable applicants include but are not limited to local and community development
27 corporations, small business administration 503 corporations, and small business investment companies.

28 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
29 capital company or as the qualified Montana small business investment capital company.

30 (5) To be eligible for certification under this section as the Montana small business investment

1 capital company, the applicant shall commit to:

2 (a) ~~utilize~~ using the tax credits to accumulate private capital with the intention of being designated
3 a small business investment corporation by the United States small business administration as provided in
4 Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

5 (b) ~~target~~ targeting its investments as a small business investment capital company toward
6 commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories,
7 the federal small business innovative research program, the federal cooperative research and development
8 agreement program, Montana university system research and development, ~~the Montana board of science
9 and technology development (second stage)~~, small business incubators, community development block
10 grant programs, and projects emerging from economic development programs of Montana certified
11 communities, with the objective of providing significant investment opportunities in an area where economic
12 development capital is limited;

13 (c) ~~consider~~ considering investment opportunities originating in any Montana county; and

14 (d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital
15 is invested in counties with populations of 20,000 or less."

16
17 ~~**NEW SECTION. Section 12. Appropriation — loan repayment.** There is appropriated to the office
18 of the commissioner of higher education from the coal severance tax permanent trust fund up to
19 \$9,350,000 for the purpose of repaying the research and development loan made by the Montana board
20 of science and technology development to the university system. The appropriation must be used to repay
21 the loan principal to the board of investments as the successor in interest to the Montana board of science
22 and technology development. The repayment must be deposited in the coal severance tax permanent fund.
23 The principal must be repaid within 30 days after [the effective date of this act].~~

24
25 ~~**NEW SECTION. Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201,
26 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503,
27 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525,
28 and 90-3-901, MCA, are repealed.~~

29
30 ~~**NEW SECTION. Section 14. Saving clause.** [This act] does not affect rights and duties that~~

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

4 NEW SECTION. Section 15. Codification instruction. [Section 7 8] is intended to be codified as
5 an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to
6 [section 7 8].

7

8 ~~NEW SECTION. Section 16. Three-fourths vote required. Because [section 12] statutorily
9 appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana
10 constitution requires a vote of three-fourths of the members of each house of the legislature for passage
11 of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12]
12 is void.~~

13

14 NEW SECTION. Section 16. Effective date DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
15 (2), [This THIS act] is effective July 1, 1997 1999.

16 (2) [SECTION 6] IS EFFECTIVE ON PASSAGE AND APPROVAL.

17

-END-

1 HOUSE BILL NO. 578

2 INTRODUCED BY LAWSON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND
5 TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD
6 OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE BOARD OF INVESTMENTS; REVISING THE JOB
7 INVESTMENT LOAN LAWS; ~~APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE~~
8 ~~OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND~~
9 ~~DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT; AMENDING SECTIONS~~
10 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND
11 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203,
12 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505,
13 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901,
14 MCA; AND PROVIDING AN EFFECTIVE ~~DATE~~ DATES."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 2-18-103, MCA, is amended to read:

19 **"2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following
20 positions in state government:

- 21 (a) elected officials;
- 22 (b) county assessors and their chief deputy;
- 23 (c) employees of the office of consumer counsel;
- 24 (d) judges and employees of the judicial branch;
- 25 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
26 state officials;
- 27 (f) officers or members of the militia;
- 28 (g) agency heads appointed by the governor;
- 29 (h) academic and professional administrative personnel with individual contracts under the authority
30 of the board of regents of higher education;

1 (i) academic and professional administrative personnel and live-in houseparents who have entered
2 into individual contracts with the state school for the deaf and blind under the authority of the state board
3 of public education;

4 (j) teachers under the authority of the department of corrections or the department of public health
5 and human services;

6 (k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional
7 staff positions of the board of investments;

8 (l) four professional staff positions under the board of oil and gas conservation;

9 (m) assistant director for security of the Montana state lottery;

10 ~~(n) executive director and senior investment officer of the Montana board of science and
11 technology development;~~

12 ~~(n)~~ (n) executive director and employees of the state compensation insurance fund;

13 ~~(o)~~ (o) state racing stewards employed by the executive secretary of the Montana board of
14 horseracing;

15 ~~(p)~~ (p) executive director of the Montana wheat and barley committee;

16 ~~(q)~~ (q) commissioner of banking and financial institutions; and

17 ~~(r)~~ (r) training coordinator for county attorneys.

18 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
19 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
20 branch, other than the office of consumer counsel:

21 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
22 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
23 duties to the legislative services division established by 5-11-111;

24 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

25 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
26 in 17-7-102."

27

28 **Section 2.** Section 17-6-201, MCA, is amended to read:

29 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
30 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be

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

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

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

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

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

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

17 (3) (a) This section does not prevent investment in any business activity in Montana, including
18 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

30 (5) The board shall:

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

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

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

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

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

8 (6) The board may:

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

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

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

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

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

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

26
27 **Section 3.** Section 17-6-302, MCA, is amended to read:

28 "17-6-302. **Definitions.** As used in this part, unless the context requires otherwise, the following
29 definitions apply:

30 (1) "Board" means the board of investments created in 2-15-1808.

1 (2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

2 (3) "Clean and healthful environment" means an environment that is relatively free from pollution
3 that threatens human health, including as a minimum, compliance with federal and state environmental and
4 health standards.

5 (4) "Department" means the department of commerce provided for in 2-15-1801.

6 ~~(4)~~(5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock,
7 partnership interests, or other ownership interests is owned and controlled by residents of Montana each
8 of whose principal occupation is as an employee, officer, or partner of the enterprise.

9 ~~(5)~~(6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a
10 savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter
11 4.

12 ~~(6)~~(7) "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial
13 institution and does not include the purchase of debentures issued by a capital company.

14 ~~(7)~~(8) "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests,
15 or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

16 ~~(8)~~(9) "Long-term benefit to the Montana economy" means an activity that strengthens the
17 Montana economy and that has the potential to maintain and create jobs, increase per capita income, or
18 increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

19 ~~(9)~~(10) "Montana economy" means any business activity in the state of Montana, including those
20 ~~which~~ that continue existing jobs or create new jobs in Montana.

21 ~~(10)~~(11) "Service fees" means the fees normally charged by a financial institution for servicing a
22 loan, including amounts charged for collecting payments and remitting amounts to the fund."
23

24 **Section 4.** Section 17-6-305, MCA, is amended to read:

25 **"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy**
26 **-- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to
27 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special
28 emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to
29 this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25%
30 of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of

1 the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of
 2 science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5
 3 of this chapter ~~may is not be~~ included in the 25% of the trust fund allocated to the board for in-state
 4 investment under this section.

5 (2) In determining the probable income to be derived from investment of this revenue, the long-term
 6 benefit to the Montana economy must be considered.

7 (3) The legislature may provide additional procedures to implement this section.

8 (4) The board shall include a report on the investments made under this section as a part of the
 9 information required by 17-7-111."

10

11 **Section 5.** Section 17-6-308, MCA, is amended to read:

12 "**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
 13 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
 14 by rules adopted by the board.

15 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
 16 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
 17 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
 18 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
 19 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
 20 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

21 (3) The board shall ~~allow~~ manage the seed capital and research and development loan portfolios
 22 created by the former Montana board of science and technology development, ~~provided for in 2-15-1818,~~
 23 ~~to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans or mezzanine~~
 24 ~~financing loans and \$11.1 million of the permanent coal tax trust fund for research and development project~~
 25 ~~matching funds for projects at Montana public universities. This authority does not extend beyond June~~
 26 ~~30, 1997, for seed capital project loans and beyond June 30, 1997, for research and development projects.~~
 27 The board is the successor in interest to all agreements, contracts, loans, notes, or other instruments
 28 entered into by the Montana board of science and technology development as part of the seed capital and
 29 research and development loan portfolios. Until the ~~Montana board of science and technology development~~
 30 ~~department~~ makes a loan pursuant to the provisions of ~~Title 90,~~ part 5 of this chapter ~~3,~~ the \$2 million in

1 funds under its administration must be invested by the board pursuant to the provisions of 17-6-201. As
 2 ~~seed capital and mezzanine financing~~ loans made pursuant to part 5 of this subsection ~~chapter~~ are repaid,
 3 the ~~Montana board of science and technology development~~ department may reinvest the principal in new
 4 loans pursuant to part 5 of this chapter.

5 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
 6 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
 7 corporations."

8
 9 **SECTION 6. SECTION 17-6-308, MCA, IS AMENDED TO READ:**

10 **"17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
 11 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
 12 by rules adopted by the board.

13 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
 14 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
 15 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
 16 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
 17 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
 18 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

19 (3) The board shall allow the Montana board of science and technology development, provided for
 20 in 2-15-1818, to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans
 21 or mezzanine financing loans and \$11.1 million of the permanent coal tax trust fund for research and
 22 development project matching funds for projects at Montana public universities. This authority does not
 23 extend beyond June 30, ~~1997~~ 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for
 24 research and development projects. Until the Montana board of science and technology development makes
 25 a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested
 26 by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing loans made
 27 pursuant to this subsection are repaid, the Montana board of science and technology development may
 28 reinvest the principal in new loans.

29 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
 30 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit

1 corporations."

2

3 **Section 7.** Section 17-6-503, MCA, is amended to read:

4 "17-6-503. **Definitions.** As used in this part, unless the context requires otherwise, the following
5 definitions apply:

6 ~~(1) "Board" means the Montana board of science and technology development provided for in
7 2-15-1818.~~

8 ~~(2)(1)~~ "Department" means the department of commerce provided for in 2-15-1801.

9 ~~(2)~~ "Job investment administrative account" means the account established in 17-6-509.

10 ~~(3)~~ "Job investment loan account" means the account established in [section 7 8].

11 ~~(3)(4)~~ "Loan review committee" means the committee that is established by the department to
12 consider economic development loan applications for funding by the federal community development block
13 grant program and that is responsible for reviewing and recommending to the ~~board~~ department the
14 approval or denial of job investment loans subject to this part and rules implementing this part.

15 ~~(4)(5)~~ "Qualified business" means a business enterprise that either is or will be located in the state
16 and that produces goods or provides services that will, as a result of receiving a job investment loan, create
17 jobs for Montana workers."

18

19 **NEW SECTION. Section 8. Job investment loan account.** There is a job investment loan account.
20 The department shall deposit all principal payments on loans made pursuant to this part in the account and
21 may make additional loans pursuant to this part. The department shall make loans from the funds allocated
22 to the department under 17-6-308.

23

24 **Section 9.** Section 17-6-509, MCA, is amended to read:

25 "17-6-509. **Job investment administrative account.** There is a job investment administrative
26 account in the state special revenue fund. The department shall deposit up to 20% of interest payments
27 on job investment loans into the account. Money in the account must be used to pay the costs of
28 administering this part, including personnel costs, operating costs, and administrative costs. Interest
29 payments not deposited into the account must be deposited into the coal severance tax income fund
30 established in 17-5-703."

1 **Section 10.** Section 17-6-510, MCA, is amended to read:

2 **"17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department
3 shall establish a loan review committee to administer this part. The committee shall accept and review loan
4 applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~
5 department the approval or disapproval of loans. A loan may not exceed \$500,000.

6 (2) If a member of the committee has a financial interest in a business that submits a job
7 investment loan application, then the application must be denied.

8 (3) The department ~~shall~~ may contract for the servicing of loans.

9 (4) The department is the successor in interest to all agreements, contracts, loans, notes, or other
10 instruments entered into under this part."

11

12 **Section 11.** Section 17-7-502, MCA, is amended to read:

13 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
14 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
15 without the need for a biennial legislative appropriation or budget amendment.

16 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
17 with both of the following provisions:

18 (a) The law containing the statutory authority must be listed in subsection (3).

19 (b) The law or portion of the law making a statutory appropriation must specifically state that a
20 statutory appropriation is made as provided in this section.

21 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
22 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
23 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
24 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
25 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
26 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
27 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
28 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
29 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
30 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~

1 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

2 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
3 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
4 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
5 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
6 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
7 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
8 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
9 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
10 July 1, 2001.)"

11

12 **Section 12.** Section 90-8-201, MCA, is amended to read:

13 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
14 **investment capital company.** (1) The department shall certify one Montana small business investment
15 capital company, and from time to time, the department shall certify Montana capital companies. A
16 company seeking to be certified as a Montana capital company or as the Montana small business
17 investment capital company shall make written application to the department on forms provided by the
18 department. The application must contain the information required by 90-8-204 and other information that
19 the department requires. The application and certificate must specify the level of capitalization that the
20 company expects to qualify for the tax credits provided for in 90-8-202.

21 (2) The application must show that the applicant's purpose is to increase the general economic
22 welfare of the state of Montana by:

23 (a) making investment capital available to businesses in Montana; and

24 (b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there
25 is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

26 (3) Certifiable applicants include but are not limited to local and community development
27 corporations, small business administration 503 corporations, and small business investment companies.

28 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
29 capital company or as the qualified Montana small business investment capital company.

30 (5) To be eligible for certification under this section as the Montana small business investment

1 capital company, the applicant shall commit to:

2 (a) ~~utilize~~ using the tax credits to accumulate private capital with the intention of being designated
3 a small business investment corporation by the United States small business administration as provided in
4 Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

5 (b) ~~target~~ targeting its investments as a small business investment capital company toward
6 commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories,
7 the federal small business innovative research program, the federal cooperative research and development
8 agreement program, Montana university system research and development, ~~the Montana board of science
9 and technology development (second stage)~~, small business incubators, community development block
10 grant programs, and projects emerging from economic development programs of Montana certified
11 communities, with the objective of providing significant investment opportunities in an area where economic
12 development capital is limited;

13 (c) ~~consider~~ considering investment opportunities originating in any Montana county; and

14 (d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital
15 is invested in counties with populations of 20,000 or less."

16

17 ~~**NEW SECTION. Section 12. Appropriation -- loan repayment.** There is appropriated to the office
18 of the commissioner of higher education from the coal severance tax permanent trust fund up to
19 \$9,350,000 for the purpose of repaying the research and development loan made by the Montana board
20 of science and technology development to the university system. The appropriation must be used to repay
21 the loan principal to the board of investments as the successor in interest to the Montana board of science
22 and technology development. The repayment must be deposited in the coal severance tax permanent fund.
23 The principal must be repaid within 30 days after [the effective date of this act].~~

24

25 **NEW SECTION. Section 13. Repealer.** Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201,
26 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503,
27 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525,
28 and 90-3-901, MCA, are repealed.

29

30 **NEW SECTION. Section 14. Saving clause.** [This act] does not affect rights and duties that

1 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
2 act].

3

4 NEW SECTION. Section 15. Codification instruction. [Section 7 8] is intended to be codified as
5 an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to
6 [section 7 8].

7

8 ~~NEW SECTION. Section 16. Three fourths vote required. Because [section 12] statutorily~~
9 ~~appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana~~
10 ~~constitution requires a vote of three fourths of the members of each house of the legislature for passage~~
11 ~~of [section 12]. If a vote of three fourths of the members of each house is not received, then [section 12]~~
12 ~~is void.~~

13

14 NEW SECTION. Section 16. Effective date DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
15 (2). [This THIS act] is effective July 1, ~~1997~~ 1999.

16 (2) [SECTION 6] IS EFFECTIVE ON PASSAGE AND APPROVAL.

17

-END-



FREE CONFERENCE COMMITTEE

on House Bill 578

Report No. 1, April 23, 1997

Page 1 of 4

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 578** (reference copy -- salmon) and recommend that **House Bill 578** be amended as follows:

1. Title, line 6.

Strike: "BOARD OF INVESTMENTS"

Insert: "DEPARTMENT OF COMMERCE"

2. Title, line 9.

Following: "~~REPAYMENT,~~"

Insert: "REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD;
TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE
SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A
GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM;"

3. Title, line 10.

Following: line 9

Insert: "2-15-1818,"

4. Title, line 14.

Following: "DATES"

Insert: "AND A RETROACTIVE APPLICABILITY DATE"

5. Page 1, line 17.

Insert: "Section 1. Section 2-15-1818, MCA, is amended to read:

"2-15-1818. **Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers.** (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and

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experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least three members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

(6) A member of the board appointed after [the effective date of this section] may not be an officer or an employee of an entity that has received funding from the board."

Renumber: subsequent sections

6. Page 6, line 3.

Strike: "not"

7. Page 6, line 21.

Strike: "board"

Insert: "department"

8. Page 6, line 27.

Following: line 26

Insert: "The department shall establish an appropriate repayment schedule for all outstanding research and development loans made to the university system. The department shall report the schedule to the 56th legislature. The department shall develop a business investment strategy for investing in Montana business and shall present the proposal to the 56th legislature."

Strike: "board" on line 27

Insert: "department"

9. Page 6, line 30.

Strike: "\$2 million"

Insert: "\$915,000"

10. Page 7, line 8.

Following: line 7

Insert: "(5) Beginning July 1, 1999, all repayments proceeds in excess of \$4.395 million must be deposited in the coal severance tax permanent fund. In the fiscal year ending June 30, 1998, the department shall transfer \$250,000 from the interest and earnings from job investment loans to the Montana supreme court to be used to fund the judges' retirement system."

11. Page 7, line 22.

Following: "."

Insert: "[The board may grant up to \$2 million of interest and income from investments to research and development projects at Montana public universities. The research and development projects may include grant matching fund purposes.]"

12. Page 7, line 24.

Following: "."

Insert: "Except for \$915,000, all uncommitted seed capital funds must revert to the coal severance tax permanent fund. The department may use up to \$75,000 each year of the seed capital funds for administrative purposes. The board of science and technology development, with the concurrence of the director of the department, may extend an additional loan to an existing seed capital portfolio company by up to \$700,000. In the fiscal year ending June 30, 1998, the department shall transfer \$250,000 of interest and earnings to the Montana Supreme Court to be used to fund the judges' retirement system."

13. Page 7, lines 27 and 28.

Following: "repaid," on line 27

Strike: remainder of line 27 through "loans" on line 28

Insert: "the proceeds of the seed capital portion of the Montana board of science and technology development loans must be deposited in the coal severance tax permanent fund until all loans have been repaid plus the amount of 7% simple interest for the years that the loans have been outstanding. The board shall calculate the amount of the interest charge. The board may use up to \$25,000 of the repayments for administrative costs in the fiscal year ending June 30, 1997"

14. Page 8, line 10.

Strike: subsection (3) in its entirety

Re-number: subsequent subsections

15. Page 8, lines 19 through 22.

Strike: section 8 in its entirety

Re-number: subsequent sections

16. Page 8, line lines 26 through 28.

Following: "." on line 26

Strike: remainder of line 26 through "." on line 28

17. Page 8, line 29.

Strike: "not deposited into the account"

18. Page 12, lines 4 through 6.

Strike: section 15 in its entirety

Renumber: subsequent section

19. Page 12, line 13.

Insert: "NEW SECTION. Section 15. Coordination instruction.

(1) If House Bill No. 2 is vetoed, then the bracketed language in [section 7] is void.

(2) If the bracketed language in [section 7] is effective, then the \$1 million for each fiscal year appropriated from the state special revenue account for university system research contained in House Bill No. 2 is void."

Renumber: subsequent section

20. Page 12, line 16.

Strike: "SECTION 6"

Insert: "Sections 1, 6(5), and 7"

Strike: "IS"

Insert: "are"

Following: "APPROVAL"

Insert: ", and [section 7] applies retroactively, within the meaning of 1-2-109, to investment payments received on or after April 1, 1997"

And this FREE Conference Committee report be adopted.

For the House:

LARRY GRINDE
Representative Grinde, Chair

R. Johnson
Representative R. Johnson

Representative Raney
ARR-NO

For the Senate:

Sen Devlin
Senator Devlin, Chair

Senator Taylor
Senator Taylor

Greg Ferguson
Senator Ferguson

HOUSE BILL NO. 578

INTRODUCED BY LAWSON

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A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT IN 1999; TRANSFERRING THE PORTFOLIOS OF THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT TO THE ~~BOARD OF INVESTMENTS~~ DEPARTMENT OF COMMERCE; REVISING THE JOB INVESTMENT LOAN LAWS; ~~APPROPRIATING COAL SEVERANCE TAX PERMANENT FUNDS TO THE OFFICE OF THE COMMISSIONER OF HIGHER EDUCATION TO REPAY THE RESEARCH AND DEVELOPMENT LOAN; PROVIDING FOR THE DEPOSIT OF THE LOAN REPAYMENT;~~ REVISING THE CONDITIONS FOR MEMBERSHIP ON THE BOARD; TRANSFERRING A PORTION OF THE INTEREST EARNINGS TO THE SUPREME COURT TO FUND JUDGES' RETIREMENT; AUTHORIZING A GRANT OF INTEREST EARNINGS TO THE UNIVERSITY SYSTEM; AMENDING SECTIONS 2-15-1818, 2-18-103, 17-6-201, 17-6-302, 17-6-305, 17-6-308, 17-6-503, 17-6-509, 17-6-510, 17-7-502, AND 90-8-201, MCA; REPEALING SECTIONS 2-15-1818, 90-3-101, 90-3-102, 90-3-201, 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525, AND 90-3-901, MCA; AND PROVIDING AN EFFECTIVE DATE DATES AND A RETROACTIVE APPLICABILITY DATE."

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

SECTION 1. SECTION 2-15-1818, MCA, IS AMENDED TO READ:

"2-15-1818. Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers. (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

- 1 (a) at least three members with knowledge of early stage financing of private businesses;
- 2 (b) at least one member with expertise in applied technology development; and
- 3 (c) at least five members from the private sector.
- 4 (5) The board is designated a quasi-judicial board for purposes of 2-15-124.
- 5 (6) A member of the board appointed after [the effective date of this section] may not be an officer
- 6 or an employee of an entity that has received funding from the board."

7

8 **Section 2.** Section 2-18-103, MCA, is amended to read:

9 **"2-18-103. Officers and employees excepted.** (1) Parts 1 and 2 do not apply to the following

10 positions in state government:

- 11 (a) elected officials;
- 12 (b) county assessors and their chief deputy;
- 13 (c) employees of the office of consumer counsel;
- 14 (d) judges and employees of the judicial branch;
- 15 (e) members of boards and commissions appointed by the governor, the legislature, or other elected
- 16 state officials;
- 17 (f) officers or members of the militia;
- 18 (g) agency heads appointed by the governor;
- 19 (h) academic and professional administrative personnel with individual contracts under the authority
- 20 of the board of regents of higher education;
- 21 (i) academic and professional administrative personnel and live-in houseparents who have entered
- 22 into individual contracts with the state school for the deaf and blind under the authority of the state board
- 23 of public education;
- 24 (j) teachers under the authority of the department of corrections or the department of public health
- 25 and human services;
- 26 (k) investment officer, assistant investment officer, executive director, and ~~three~~ five professional
- 27 staff positions of the board of investments;
- 28 (l) four professional staff positions under the board of oil and gas conservation;
- 29 (m) assistant director for security of the Montana state lottery;
- 30 ~~(n) executive director and senior investment officer of the Montana board of science and~~

1 ~~technology development;~~

2 ~~(n)~~ executive director and employees of the state compensation insurance fund;

3 ~~(o)~~ state racing stewards employed by the executive secretary of the Montana board of
4 horseracing;

5 ~~(p)~~ executive director of the Montana wheat and barley committee;

6 ~~(q)~~ commissioner of banking and financial institutions; and

7 ~~(r)~~ training coordinator for county attorneys.

8 (2) Employees of an entity of the legislative branch, other than the office of consumer counsel, are
9 exempt from the application of 2-18-1011 through 2-18-1013. With respect to entities of the legislative
10 branch, other than the office of consumer counsel:

11 (a) as used in parts 1 through 3 of this chapter, references to the "department of administration"
12 or "department" apply to the legislative council established by 5-11-101, which may delegate administrative
13 duties to the legislative services division established by 5-11-111;

14 (b) as used in 2-18-102, the term "governor" applies to the legislature; and

15 (c) as used in 2-18-204, the term "budget director" applies to the "approving authority" as defined
16 in 17-7-102."

17

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

19 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program
20 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be
21 administered by the board of investments in accordance with the prudent expert principle, which requires
22 any investment manager to:

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

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

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

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

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

7 (3) (a) This section does not prevent investment in any business activity in Montana, including
 8 activities that continue existing jobs or create new jobs in Montana.

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

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

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

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

20 (5) The board shall:

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

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

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

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

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

28 (6) The board may:

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

1 property;

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

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

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

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

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

16

17 **Section 4.** Section 17-6-302, MCA, is amended to read:

18 "17-6-302. **Definitions.** As used in this part, unless the context requires otherwise, the following
19 definitions apply:

20 (1) "Board" means the board of investments created in 2-15-1808.

21 (2) "Capital company" means a Montana capital company created pursuant to Title 90, chapter 8.

22 (3) "Clean and healthful environment" means an environment that is relatively free from pollution
23 that threatens human health, including as a minimum, compliance with federal and state environmental and
24 health standards.

25 (4) "Department" means the department of commerce provided for in 2-15-1801.

26 ~~(4)(5)~~ (5) "Employee-owned enterprise" means any enterprise at least 51% of whose stock,
27 partnership interests, or other ownership interests is owned and controlled by residents of Montana each
28 of whose principal occupation is as an employee, officer, or partner of the enterprise.

29 ~~(5)(6)~~ (6) "Financial institution" includes but is not limited to a state- or federally chartered bank or a
30 savings and loan association, credit union, or development corporation created pursuant to Title 32, chapter

1 4.

2 ~~(6)(7)~~ "Loan participation" means loans or portions ~~thereof~~ of loans bought from a financial
3 institution and does not include the purchase of debentures issued by a capital company.

4 ~~(7)(8)~~ "Locally owned enterprise" means any enterprise 51% of whose stock, partnership interests,
5 or other ownership interests ~~are~~ is owned and controlled by residents of Montana.

6 ~~(8)(9)~~ "Long-term benefit to the Montana economy" means an activity that strengthens the
7 Montana economy and that has the potential to maintain and create jobs, increase per capita income, or
8 increase Montana tax ~~revenues~~ revenue in the future to the people of Montana, either directly or indirectly.

9 ~~(9)(10)~~ "Montana economy" means any business activity in the state of Montana, including those
10 ~~which~~ that continue existing jobs or create new jobs in Montana.

11 ~~(10)(11)~~ "Service fees" means the fees normally charged by a financial institution for servicing a
12 loan, including amounts charged for collecting payments and remitting amounts to the fund."

13

14 **Section 5.** Section 17-6-305, MCA, is amended to read:

15 **"17-6-305. Investment of up to twenty-five percent of coal tax trust fund in Montana economy**
16 **-- report by board.** (1) Subject to the provisions of 17-6-201(1), the board shall endeavor to invest up to
17 25% of the permanent coal tax trust fund established in 17-6-203(6) in the Montana economy, with special
18 emphasis on investments in new or expanding locally owned enterprises. Investments made pursuant to
19 this section do not include investments made pursuant to 17-6-309(2). For purposes of calculating the 25%
20 of the permanent coal tax trust fund, the board shall include all funds listed in 17-5-703(1). The portion of
21 the permanent coal tax trust fund contained in portfolios formerly administered by the Montana board of
22 science and technology development and administered by the department pursuant to ~~17-6-308(3)~~ part 5
23 of this chapter ~~may is not be~~ included in the 25% of the trust fund allocated to the board for in-state
24 investment under this section.

25 (2) In determining the probable income to be derived from investment of this revenue, the long-term
26 benefit to the Montana economy must be considered.

27 (3) The legislature may provide additional procedures to implement this section.

28 (4) The board shall include a report on the investments made under this section as a part of the
29 information required by 17-7-111."

30

1 **Section 6.** Section 17-6-308, MCA, is amended to read:

2 "**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) and (3) and subject
3 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
4 by rules adopted by the board.

5 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
6 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
7 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
8 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
9 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
10 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

11 (3) ~~The board~~ DEPARTMENT shall ~~allow~~ manage the seed capital and research and development
12 loan portfolios created by the former Montana board of science and technology development, provided for
13 in 2-15-1818, to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans
14 or mezzanine financing loans and \$11.1 million of the permanent coal tax trust fund for research and
15 development project matching funds for projects at Montana public universities. This authority does not
16 extend beyond June 30, 1997, for seed capital project loans and beyond June 30, 1997, for research and
17 development projects. THE DEPARTMENT SHALL ESTABLISH AN APPROPRIATE REPAYMENT SCHEDULE
18 FOR ALL OUTSTANDING RESEARCH AND DEVELOPMENT LOANS MADE TO THE UNIVERSITY SYSTEM.
19 THE DEPARTMENT SHALL REPORT THE SCHEDULE TO THE 56TH LEGISLATURE. THE DEPARTMENT
20 SHALL DEVELOP A BUSINESS INVESTMENT STRATEGY FOR INVESTING IN MONTANA BUSINESS AND
21 SHALL PRESENT THE PROPOSAL TO THE 56TH LEGISLATURE. The board DEPARTMENT is the successor
22 in interest to all agreements, contracts, loans, notes, or other instruments entered into by the Montana
23 board of science and technology development as part of the seed capital and research and development
24 loan portfolios. Until the Montana board of science and technology development department makes a loan
25 pursuant to the provisions of Title 90, part 5 of this chapter 3, the \$2 million \$915,000 in funds under its
26 administration must be invested by the board pursuant to the provisions of 17-6-201. As seed capital and
27 mezzanine financing loans made pursuant to part 5 of this subsection chapter are repaid, the Montana
28 board of science and technology development department may reinvest the principal in new loans pursuant
29 to part 5 of this chapter.

30 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.

1 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
2 corporations.

3 (5) BEGINNING JULY 1, 1999, ALL REPAYMENTS PROCEEDS IN EXCESS OF \$4.395 MILLION
4 MUST BE DEPOSITED IN THE COAL SEVERANCE TAX PERMANENT FUND. IN THE FISCAL YEAR ENDING
5 JUNE 30, 1998, THE DEPARTMENT SHALL TRANSFER \$250,000 FROM THE INTEREST AND EARNINGS
6 FROM JOB INVESTMENT LOANS TO THE MONTANA SUPREME COURT TO BE USED TO FUND THE
7 JUDGES' RETIREMENT SYSTEM."

8
9 SECTION 7. SECTION 17-6-308, MCA, IS AMENDED TO READ:

10 "17-6-308. Authorized investments. (1) Except as provided in subsections (2) and (3) and subject
11 to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized
12 by rules adopted by the board.

13 (2) The board may make loans from the permanent coal tax trust fund to the capital reserve
14 account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The
15 board may agree in connection with the issuance of bonds or notes secured by the account or fund to make
16 the loans. Loans must be on terms and conditions determined by the board and must be repaid from
17 revenue realized from the exercise of the board's powers under 17-5-1501 through 17-5-1518 and
18 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenue to the bonds and notes.

19 (3) The board shall allow the Montana board of science and technology development, provided for
20 in 2-15-1818, to administer \$12.5 million of the permanent coal tax trust fund for seed capital project loans
21 or mezzanine financing loans and \$11.1 million of the permanent coal tax trust fund for research and
22 development project matching funds for projects at Montana public universities. [THE BOARD MAY GRANT
23 UP TO \$2 MILLION OF INTEREST AND INCOME FROM INVESTMENTS TO RESEARCH AND DEVELOPMENT
24 PROJECTS AT MONTANA PUBLIC UNIVERSITIES. THE RESEARCH AND DEVELOPMENT PROJECTS MAY
25 INCLUDE GRANT MATCHING FUND PURPOSES.] This authority does not extend beyond June 30, ~~1997~~
26 1999, for seed capital project loans and beyond June 30, ~~1997~~ 1999, for research and development
27 projects. EXCEPT FOR \$915,000, ALL UNCOMMITTED SEED CAPITAL FUNDS MUST REVERT TO THE
28 COAL SEVERANCE TAX PERMANENT FUND. THE DEPARTMENT MAY USE UP TO \$75,000 EACH YEAR
29 OF THE SEED CAPITAL FUNDS FOR ADMINISTRATIVE PURPOSES. THE BOARD OF SCIENCE AND
30 TECHNOLOGY DEVELOPMENT, WITH THE CONCURRENCE OF THE DIRECTOR OF THE DEPARTMENT,

1 MAY EXTEND AN ADDITIONAL LOAN TO AN EXISTING SEED CAPITAL PORTFOLIO COMPANY BY UP
 2 TO \$700,000. IN THE FISCAL YEAR ENDING JUNE 30, 1998, THE DEPARTMENT SHALL TRANSFER
 3 \$250,000 OF INTEREST AND EARNINGS TO THE MONTANA SUPREME COURT TO BE USED TO FUND
 4 THE JUDGES' RETIREMENT SYSTEM. Until the Montana board of science and technology development
 5 makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be
 6 invested by the board pursuant to the provisions of 17-6-201. As seed capital and mezzanine financing
 7 loans made pursuant to this subsection are repaid, ~~the Montana board of science and technology~~
 8 ~~development may reinvest the principal in new loans~~ THE PROCEEDS OF THE SEED CAPITAL PORTION OF
 9 THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY DEVELOPMENT LOANS MUST BE DEPOSITED
 10 IN THE COAL SEVERANCE TAX PERMANENT FUND UNTIL ALL LOANS HAVE BEEN REPAYED PLUS THE
 11 AMOUNT OF 7% SIMPLE INTEREST FOR THE YEARS THAT THE LOANS HAVE BEEN OUTSTANDING. THE
 12 BOARD SHALL CALCULATE THE AMOUNT OF THE INTEREST CHARGE. THE BOARD MAY USE UP TO
 13 \$25,000 OF THE REPAYMENTS FOR ADMINISTRATIVE COSTS IN THE FISCAL YEAR ENDING JUNE 30,
 14 1997.

15 (4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance.
 16 The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit
 17 corporations."

18
 19 **Section 8.** Section 17-6-503, MCA, is amended to read:

20 "17-6-503. **Definitions.** As used in this part, unless the context requires otherwise, the following
 21 definitions apply:

22 ~~(1) "Board" means the Montana board of science and technology development provided for in~~
 23 ~~2-15-1818.~~

24 ~~(2)(1)~~ (1) "Department" means the department of commerce provided for in 2-15-1801.

25 (2) "Job investment administrative account" means the account established in 17-6-509.

26 ~~(3) "Job investment loan account" means the account established in [section 7 8].~~

27 ~~(3)(4)(3)~~ (3) "Loan review committee" means the committee that is established by the department to
 28 consider economic development loan applications for funding by the federal community development block
 29 grant program and that is responsible for reviewing and recommending to the ~~board~~ department the
 30 approval or denial of job investment loans subject to this part and rules implementing this part.

1 ~~(4)(5)(4)~~ "Qualified business" means a business enterprise that either is or will be located in the
2 state and that produces goods or provides services that will, as a result of receiving a job investment loan,
3 create jobs for Montana workers."
4

5 ~~**NEW SECTION. Section 8. Job investment loan account.** There is a job investment loan account.
6 The department shall deposit all principal payments on loans made pursuant to this part in the account and
7 may make additional loans pursuant to this part. The department shall make loans from the funds allocated
8 to the department under 17-6-308.~~

9
10 **Section 9.** Section 17-6-509, MCA, is amended to read:

11 **"17-6-509. Job investment administrative account.** There is a job investment administrative
12 account in the state special revenue fund. ~~The department shall deposit up to 20% of interest payments~~
13 ~~on job investment loans into the account. Money in the account must be used to pay the costs of~~
14 ~~administering this part, including personnel costs, operating costs, and administrative costs. Interest~~
15 ~~payments not deposited into the account must be deposited into the coal severance tax income fund~~
16 ~~established in 17-5-703."~~

17
18 **Section 10.** Section 17-6-510, MCA, is amended to read:

19 **"17-6-510. Loan review committee -- conflict of interest -- servicing of loans.** (1) The department
20 shall establish a loan review committee to administer this part. The committee shall accept and review loan
21 applications pursuant to rules adopted by the department. The committee shall recommend to the ~~board~~
22 ~~department~~ the approval or disapproval of loans. A loan may not exceed \$500,000.

23 (2) If a member of the committee has a financial interest in a business that submits a job
24 investment loan application, then the application must be denied.

25 (3) The department ~~shall~~ may contract for the servicing of loans.

26 (4) The department is the successor in interest to all agreements, contracts, loans, notes, or other
27 instruments entered into under this part."

28
29 **Section 11.** Section 17-7-502, MCA, is amended to read:

30 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory

1 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
2 without the need for a biennial legislative appropriation or budget amendment.

3 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
4 with both of the following provisions:

5 (a) The law containing the statutory authority must be listed in subsection (3).

6 (b) The law or portion of the law making a statutory appropriation must specifically state that a
7 statutory appropriation is made as provided in this section.

8 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
9 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
10 15-30-195; 15-31-702; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411;
11 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 17-6-101; 17-6-201; 17-7-304;
12 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-17-301; 19-18-512; 19-18-513; 19-18-606; 19-19-205;
13 19-19-305; 19-19-506; 20-8-107; 20-8-111; 20-9-361; 20-26-1503; 23-5-136; 23-5-306; 23-5-409;
14 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 32-1-537; 37-43-204; 37-51-501; 39-71-503;
15 39-71-907; 39-71-2321; 39-71-2504; 44-12-206; 44-13-102; 50-4-623; 50-5-232; 50-40-206; 53-6-150;
16 53-6-703; 53-24-206; 60-2-220; 67-3-205; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 76-12-123;
17 80-2-103; 80-2-222; 80-4-416; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; ~~90-3-301;~~
18 90-4-215; 90-6-331; 90-7-220; 90-7-221; and 90-9-306.

19 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
20 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
21 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
22 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
23 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
24 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec.
25 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
26 supplemental benefit; and pursuant to sec. 7(2), Ch. 29, L. 1995, the inclusion of 15-30-195 terminates
27 July 1, 2001.)"

28
29 **Section 12.** Section 90-8-201, MCA, is amended to read:

30 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**

1 **investment capital company.** (1) The department shall certify one Montana small business investment
2 capital company, and from time to time, the department shall certify Montana capital companies. A
3 company seeking to be certified as a Montana capital company or as the Montana small business
4 investment capital company shall make written application to the department on forms provided by the
5 department. The application must contain the information required by 90-8-204 and other information that
6 the department requires. The application and certificate must specify the level of capitalization that the
7 company expects to qualify for the tax credits provided for in 90-8-202.

8 (2) The application must show that the applicant's purpose is to increase the general economic
9 welfare of the state of Montana by:

10 (a) making investment capital available to businesses in Montana; and

11 (b) allowing for investment of up to 25% of its capital base in businesses outside Montana if there
12 is a substantial likelihood that ~~such~~ the investment will produce a qualified investment in Montana.

13 (3) Certifiable applicants include but are not limited to local and community development
14 corporations, small business administration 503 corporations, and small business investment companies.

15 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
16 capital company or as the qualified Montana small business investment capital company.

17 (5) To be eligible for certification under this section as the Montana small business investment
18 capital company, the applicant shall commit to:

19 (a) ~~utilize~~ using the tax credits to accumulate private capital with the intention of being designated
20 a small business investment corporation by the United States small business administration as provided in
21 Title III of the Small Business Investment Act of 1958, as amended, and as implemented under 13 CFR 107;

22 (b) ~~target~~ targeting its investments as a small business investment capital company toward
23 commercialization projects emerging from centers of excellence and entrepreneurship, federal laboratories,
24 the federal small business innovative research program, the federal cooperative research and development
25 agreement program, Montana university system research and development, ~~the Montana board of science
26 and technology development (second stage),~~ small business incubators, community development block
27 grant programs, and projects emerging from economic development programs of Montana certified
28 communities, with the objective of providing significant investment opportunities in an area where economic
29 development capital is limited;

30 (c) ~~consider~~ considering investment opportunities originating in any Montana county; and

1 (d) ~~adopt~~ adopting investment guidelines that ensure that not less than 10% of its available capital
2 is invested in counties with populations of 20,000 or less."
3

4 ~~NEW SECTION. Section 12. Appropriation—loan repayment. There is appropriated to the office
5 of the commissioner of higher education from the coal severance tax permanent trust fund up to
6 \$9,350,000 for the purpose of repaying the research and development loan made by the Montana board
7 of science and technology development to the university system. The appropriation must be used to repay
8 the loan principal to the board of investments as the successor in interest to the Montana board of science
9 and technology development. The repayment must be deposited in the coal severance tax permanent fund.
10 The principal must be repaid within 30 days after [the effective date of this act].~~

11
12 NEW SECTION. Section 13. Repealer. Sections 2-15-1818, 90-3-101, 90-3-102, 90-3-201,
13 90-3-202, 90-3-203, 90-3-204, 90-3-301, 90-3-303, 90-3-304, 90-3-305, 90-3-501, 90-3-502, 90-3-503,
14 90-3-504, 90-3-505, 90-3-506, 90-3-519, 90-3-520, 90-3-521, 90-3-522, 90-3-523, 90-3-524, 90-3-525,
15 and 90-3-901, MCA, are repealed.

16
17 NEW SECTION. Section 14. Saving clause. [This act] does not affect rights and duties that
18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
19 act].

20
21 ~~NEW SECTION. Section 15. Codification instruction. [Section 7 8] is intended to be codified as
22 an integral part of Title 17, chapter 6, part 5, and the provisions of Title 17, chapter 6, part 5, apply to
23 [section 7 8].~~

24
25 ~~NEW SECTION. Section 16. Three-fourths vote required. Because [section 12] statutorily
26 appropriates money from the coal severance tax trust fund, Article IX, section 5, of the Montana
27 constitution requires a vote of three-fourths of the members of each house of the legislature for passage
28 of [section 12]. If a vote of three-fourths of the members of each house is not received, then [section 12]
29 is void.~~

30

1 NEW SECTION. SECTION 15. COORDINATION INSTRUCTION. (1) IF HOUSE BILL NO. 2 IS
 2 VETOED, THEN THE BRACKETED LANGUAGE IN [SECTION 7] IS VOID.

3 (2) IF THE BRACKETED LANGUAGE IN [SECTION 7] IS EFFECTIVE, THEN THE \$1 MILLION FOR
 4 EACH FISCAL YEAR APPROPRIATED FROM THE STATE SPECIAL REVENUE ACCOUNT FOR UNIVERSITY
 5 SYSTEM RESEARCH CONTAINED IN HOUSE BILL NO. 2 IS VOID.

6
 7 NEW SECTION. Section 16. Effective date DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
 8 (2), [This THIS act] is effective July 1, 1997 1999.

9 (2) [SECTION 6 SECTIONS 1, 6(5), AND 7] IS ARE EFFECTIVE ON PASSAGE AND APPROVAL,
 10 AND [SECTION 7] APPLIES RETROACTIVELY, WITHIN THE MEANING OF 1-2-109, TO INVESTMENT
 11 PAYMENTS RECEIVED ON OR AFTER APRIL 1, 1997.

12 -END-