

APPROPRIATION AND BUDGET STATUTE REVIEW

A Report Prepared for the
**Budget and Appropriations Subcommittee
of the Legislative Finance Committee**

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INTRODUCTION

One of the top priorities of the Legislative Finance Committee (LFC) for the 2009 interim is the examination of appropriation and budget processes, ranging from budget development, institutional processes, appropriation issues, and statutes governing the appropriation and budget process. This work was divided into five groups. This document reports the findings of the workgroup assigned to review budget and appropriation statutes.

The purpose of the statute review was to identify budget or appropriation statutes that needed correction, clarification, or other types of changes due to errors, disparities between the statute and implementation, conflicting statutes, unclear language, or process or policy issues. The types of changes discussed in this report are housekeeping changes and policy clarification changes. The LFC intended that any substantive policy issues be pursued through the institutional processes workgroup. This report also recommends that statutory issues or changes identified during the study but not brought forth for consideration at this time, be considered by the LFC when it develops its work plan for the 2011 interim. (See Appendix D for a list of these statutes.)

COLLABORATION WITH EXECUTIVE BRANCH

The LFC requested staff collaborate with the Office of Budget and Program Planning (OBPP) to identify statutes for consideration. At the outset of this project, the OBPP agreed to participate and work together to identify areas of common ground. Mid-way through the project however, OBPP decided it would not participate. Therefore the issues and proposed changes in this report are those identified by legislative staff only.

DATA COLLECTION AND ANALYSIS

The study encompassed Title 17, Chapter 7 of the Montana codes, budgeting and appropriation statutes, as well as statutes specific to agency operations that impact the budget and appropriation process. Once identified, the statutes were categorized into one of three types: housekeeping changes, policy clarifications, and substantive policy issues. The legislature's Director of Legal Services and Code Commissioner reviewed the statutes forwarded for LFC consideration and provided legal guidance throughout the study.

Figure 1 notes the definition of the types of changes for purposes of this study and gives examples of each type of change.

HOUSEKEEPING CHANGES

A housekeeping change does not alter the meaning of the statute, other than changes due to obsolescence. Typical examples of this type of change are to repeal obsolete statutes, correct errors, eliminate duplicative language, and specific to this study, correct inaccurate use of the term "appropriate".

POLICY CLARIFICATIONS

Policy clarifications delineate the legislature's meaning in statutes where it may not be clear or changes statutes to conform to current legislative policies and practices. Typical examples of policy clarifications are specifying the use of a state special revenue account, or rewording statute to reflect current legislative policy. Policy clarifications do not change the meaning of a statute, unless there is a contradiction, in which case, the clarification would eliminate one of the contradictions.

SUBSTANTIVE POLICY CHANGES

Substantive policy changes are outside the scope of this study and would include changes with far reaching effects and/or would substantially alter the meaning of current statute. The definition and examples of a substantive change are discussed in this report to provide the LFC a comparison to the types of changes that are forwarded for consideration. An example of a substantive policy change would be to change the statutory requirements for the executive budget.

Figure 1 – Definition and Examples of Proposed Statutory Changes			
Type of Change	Housekeeping Change	Policy Clarification	Substantive Policy Change
Definition	This type of change would include errors, outdated or obsolete statutes, and statutes that would benefit from minor clarification without altering the meaning of the statute	Usually this type of change does not alter the meaning of a statute, but makes the legislative policy more succinct and clear. A policy clarification that changes the meaning of a statute is limited to instances where there is a contradiction.	This type of change would have far reaching effects and/or would substantially alter the meaning of current statute. It could also represent new legislative fiscal or budget policy.
Examples	<ul style="list-style-type: none"> • Delete obsolete statutes • Correct errors • Delete duplicative language • Replace obsolete language with new language • Correct inaccurate use of the term “appropriate” 	<ul style="list-style-type: none"> • Clarify use of oil, gas and coal natural resources state special revenue account • Define capital projects for budgeting purposes 	<ul style="list-style-type: none"> • Change the statutory requirements for the executive budget • Amending statutory appropriation law • Changes with significant stakeholder interest

STUDY FINDINGS

The study identified 145 appropriation and budget statutes in its initial inventory. Of the 145 statutes:

- 29 were forwarded to the LFC in this report for consideration
 - 17 with housekeeping changes
 - 10 with policy clarification
 - 2 with budget issues
- 3 statutory changes will be included in the Code Commissioner’s bill in the 2009 session
- 70 statutes in the inventory were recommended for study in the 2011 biennium and were not included in this report due to time constraints or the determination that the issues with the statutes raised in the study would require substantive changes and therefore were outside the scope of this study
- 43 statutes were eliminated due to duplication or changes that were determined to be unnecessary or have been separately forwarded for LFC consideration.

HOUSEKEEPING CHANGES

Appendix A presents the 17 statutes that are proposed for LFC consideration. Most of these statutes use the terms “appropriate” or “appropriated” in a way that could be construed by a reader to mean that the legislature has established an appropriation. The legislature’s Director of Legal Services has advised that these statutes do not constitute a valid appropriation and this report proposes removing the term “appropriate” or “appropriated” and substitutes other language that does not imply an appropriation is made. Other housekeeping changes include repealing obsolete statutes and clarifying one statute without significant change to substance.

POLICY CLARIFICATIONS

Three policy clarification issues are presented for LFC consideration in this category encompassing 10 statutes. A brief description of each issue is listed below. Appendix B includes more detail on each statute, including an explanation of the issue and the options available to the LFC for addressing the issue.

- Clarify use of oil, gas and coal natural resources state special revenue account
- Define “capital project” for budgeting purposes
- Clarify statute relating to enterprise funds subject to appropriation

OTHER ISSUES

Two issues surfaced in this study and are forwarded to the LFC for review and consideration and relate to two statutes. The first is an issue of noncompliance with current statute relating to the highways nonrestricted account. The second is an invalid appropriation in current law relating to general obligation bonds for aerospace and technology projects. These issues and proposed options for LFC consideration are included in Appendix C.

STUDY IN 2011 BIENNIUM

Appropriation and budget statutes identified in the study but not forwarded to the LFC in this report are listed in Appendix D. The LFC may want to direct the LFD to include these statutes on the LFC work plan for consideration in the 2011 interim.

Appendix A – Housekeeping Changes Identified for Workgroup Review

Use of the Word “Appropriate”

Issue: All of the statutes in this section use the word “appropriate”. The statutes may be construed as appropriating money, but are not valid statutory appropriations.

Option: Replace the word “appropriate” or “appropriated” with phrases such as: “are available for appropriation by the legislature”, “may be appropriated for”, “funds are to be used for”, “available for use by the department”, or “to be used by”.

Table 1

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
20-9-603	Acceptance and expenditure of federal moneys for state public schools	Section 20-9-603(1) states - " The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction."	Current statute not a valid appropriation	Replace the word “appropriated” with terms that do not imply an appropriation is made. The legislature’s Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
		Section 20-9-603(2) states - " The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall	Current statute not a valid appropriation	Replace the word “appropriated” with terms that do not imply an appropriation is made. The legislature’s Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for	<ul style="list-style-type: none"> • Yes • No

Appendix A – Housekeeping Changes Identified for Workgroup Review

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
		be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction."		housekeeping changes.	
39-51-406	Federal unemployment insurance administration account	Section 39-51-406(1) states - "All money that is deposited, appropriated, or paid into this account is appropriated and made available to the department."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
90-4-201	Federal money for energy low-income weatherization assistance program	Section 90-4-201(1) states - "All federal funds and grants available and becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of public health and human services."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
50-19-322	Federal and other aid for the MIAMI project	Section 50-19-322(2) states - "Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with	<ul style="list-style-type: none"> • Yes • No

Appendix A – Housekeeping Changes Identified for Workgroup Review

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
				the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	
53-7-204	Federal and other aid for sheltered workshops programs	Section 53-7-204(2) states - "Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
80-7-908	Deposit and disbursement of funds in state noxious weed forage account	Section 80-7-908(4) states - "Funds received pursuant to this part are appropriated to the department for the administration of the noxious weed seed free forage program and for the purposes of this part."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
80-11-224	Determination of amount and allocation of wheat and barley assessment	Section 80-11-224(2) states - "Money deposited in the wheat and barley account pursuant to 80-11-210 is appropriated to the committee for purposes of carrying out research and marketing under this part."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No
75-10-625	Authorization for sale of CERCLA bonds	Section 75-10-625 states - "Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for	Current statute not a valid appropriation. Proposed change reflects the appropriation	"Proceeds of the bonds or notes are appropriated <u>to be deposited</u> to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as	<ul style="list-style-type: none"> • Yes • No

Appendix A – Housekeeping Changes Identified for Workgroup Review

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
		maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."	principle.	amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes."	
87-1-201	Powers and duties of FWP	Section 87-1-201(3) states - "Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department."	Current statute not a valid appropriation	Replace the word "appropriated" with terms that do not imply an appropriation is made. The legislature's Director of Legal Services has agreed to assist with the selection of an appropriate term if the LFC approves a bill draft for housekeeping changes.	<ul style="list-style-type: none"> • Yes • No

Obsolete Statutes

Issue: The statutes in this section are obsolete.

Option: Repeal a portion of the statute or the entire statute.

Table 2

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
16-11-124	Disposition of cigarette license fees	Section 16-11-124(3) states - "All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports."	Accounting Issue, not a legal issue	The type of information required by this statute to justify expenses is required by standard accounting procedures. Repeal 16-11-124(3)	<ul style="list-style-type: none"> • Yes • No
17-5-506	Deposit and use of bond proceeds for	Section 17-5-506 states in part - "The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of	OK to repeal entire section.	Title 17, Chapter 5, Part 5, enacted in 1975, authorizes general obligation bonds for the purpose of	<ul style="list-style-type: none"> • Yes • No

Appendix A – Housekeeping Changes Identified for Workgroup Review

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
	highway capital projects	acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described."		acquiring a suitable site for and erecting and equipping a department of transportation headquarters building and complex. These bonds were retired in 2003. Proposal is to repeal Title 17, Chapter 5, Part 5.	
17-7-113	Inquiries and investigations by budget director -- travel expenses	Section 17-7-113 states -- " The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state" .	Last sentence is redundant with Section 2-18-501.	The last sentence of the current statute is redundant with Section 2-18-501, which requires state employees be reimbursed for travel expenses while away from the person's headquarters and engaged in official business. The proposal is to amend 17-7-113 to delete last sentence.	<ul style="list-style-type: none"> • Yes • No
17-7-122	Preparation of budget	Section 17-7-122(1) states – “The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to the legislative fiscal analyst in accordance with 17-7-112 for inclusion in the combined governor's budget and budget analysis report.”	A statutory change should be pursued before a statutory directive is disregarded	A joint governor's budget and LFD budget analysis publication does not occur, and the words “combined governor’s budget and” could be deleted.	<ul style="list-style-type: none"> • Yes • No

Other Miscellaneous Issues

Table 3

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
17-7-123	Form of	Section 17-7-123(1) states, “The budget	Proposed change is	This statute defines what is	<ul style="list-style-type: none"> • Yes

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Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
	executive budget	<p>submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:</p> <p style="margin-left: 40px;">(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.</p> <p style="margin-left: 40px;">(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;</p> <p style="margin-left: 40px;">(c) the departmental mission and a statement of goals and objectives for the department;</p> <p style="margin-left: 40px;">(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of</p>	nonsubstantive	<p>included in the executive budget. In subpart (1), existing language uses the term "base level plan" that is unclear and could cause confusion.</p> <p>Option: Amend statute to replace the term "base level plan" with "budget".</p>	<ul style="list-style-type: none"> • No

Appendix A – Housekeeping Changes Identified for Workgroup Review

Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
		<p>the department;</p> <p style="padding-left: 20px;">(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:</p> <p style="padding-left: 40px;">(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;</p> <p style="padding-left: 40px;">(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and</p> <p style="padding-left: 40px;">(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;</p> <p style="padding-left: 20px;">(f) a report on:</p> <p style="padding-left: 40px;">(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and</p> <p style="padding-left: 40px;">(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in</p>			

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		<p>the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.</p> <p style="padding-left: 40px;">(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.</p>			
53-22-104	DPHHS annual budget for the Interstate Compact on Mental Health	<p>Section 53-22-104 states - "The department of public health and human services in its annual budget shall include amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate sums necessary for carrying out the purposes of the compact."</p>	<p style="color: blue;">Proposed change unlikely to have any impact on the obligation of the legislature. The compact is a contract between the enacting states and must be funded so as not to impair contracts.</p>	<p>"The department of public health and human services in its annual budget shall include amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate sums necessary for carrying out the purposes of the compact."</p>	<ul style="list-style-type: none"> • Yes • No
67-2-403	Federal aid for airports and other air navigation facilities	<p>Section 67-2-403(4) states – "All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance</p>	<p style="color: blue;">Current statute not a valid appropriation</p>	<p>Proposal is to strike the sentence in bold print in the "Current" column. Legal counsel has advised that the current statute is not a valid appropriation. The remaining bolded language is superfluous.</p>	<ul style="list-style-type: none"> • Yes • No

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Cite	Tag Line	Current	Legal Review	Proposed Change	LFC Action
		<p>with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.</p>			
75-10-626	<p>Agreement with DEQ and Board of Examiners for debt service payments on CERCLA bonds</p>	<p>Section 76-15-626 states - "For the proceeds of bonds or notes authorized and appropriated by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under the bonds."</p>	<p>Proposed change is OK</p>	<p>Proposed Change -- "For the proceeds of bonds or notes authorized and appropriated by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under the bonds."</p>	<ul style="list-style-type: none"> • Yes • No

CLARIFY USE OF OIL, GAS AND COAL NATURAL RESOURCES STATE SPECIAL REVENUE ACCOUNT

STATUTES

15-35-108(7) – Disposal of severance taxes, 2.9% to oil, gas, and coal natural resource account

15-36-304 – Production tax rates imposed on oil and natural gas -- exemption

15-36-331 – Distribution of [oil and natural gas production] taxes

15-36-332 – Distribution of [oil and natural gas production] taxes to taxing units – appropriation

90-6-1001 – Oil, gas, and coal natural resource account

BACKGROUND

The 2005 Legislature amended the first four statutes listed above and created the last statute via HB 758, a bill intended to earmark funding for local government (counties, cities and towns) to address local impacts caused by oil, gas and coal resource development. The legislation redirected a portion of the coal tax shared account and identified oil and gas production taxes to be deposited to the newly created oil, gas, and coal natural resource account (codified in 90-6-1001).

Although revenues from two different sources are deposited into one account, it was the intent of the legislature that the revenues retain separate identities within the account. The oil and gas production taxes were intended to be used for distribution to counties (one-third) and incorporated cities and towns (two-thirds) impacted by oil and gas production. The coal severance tax was intended to be used as it had historically for local impact grants as determined by the Coal Board that is administratively attached to the Department of Commerce. Testimony presented to the House and Senate Taxation Committees during the 2005 session clearly indicate the intent of the bill sponsor and proponents was to earmark the redirected coal tax shared account for local impact grants.

HB 758 allocated the oil and gas tax revenues to local governments and established a statutory appropriation for this distribution. However, there was no language in the bill that restricted the use of the coal severance tax funds. According to the legislature's Director of Legal Services, the bill did not ever include a provision for how the coal severance tax revenue deposited to the newly created oil, gas, and coal natural resource account should be spent. Technically, since statute does not restrict the use of the coal severance tax deposited to the new account, the legislature could use the funds for any purpose. The 2007 Legislature appropriated these coal severance tax funds to the Coal Board for local impact grants in HB 2. Under current statute, a future legislature could opt to use the funds for another purpose. If the LFC wants to preserve the intent of the original legislation, it may want to amend statute to identify the use of the coal severance tax funds for local impact grants.

If the LFC moves forward with a bill draft to earmark the coal tax deposited to the oil, gas, and coal natural resource account, it may also want to consider allocating the two revenue streams to two separate state special revenue accounts, since the revenues are from two different sources (oil and gas/CST) and the use of the funds is for two different purposes (local governments impacted by oil and gas development/local governmental units, state agencies, and governing bodies of federally recognized Indian tribes impacted by coal development). This action would require establishing a second state special revenue account in statute.

SUBCOMMITTEE OPTIONS

1. Request draft legislation to allocate the coal severance tax revenue to the Coal Board for local impact grants.
2. Request draft legislation to separate the revenue streams into two accounts and specify the distribution and use of each revenue stream.
3. Take no action

DEFINE “CAPITAL PROJECT” FOR BUDGETING PURPOSES

STATUTE

17-7-201 – Definitions of building and construction

BACKGROUND

Throughout the Long-Range Building Program (LRBP) section of the Montana code, Title 17, Chapter 7, there are references to capital projects. Section 17-7-212 states: “The remaining balances on capital projects previously approved by the legislature are re-appropriated for the purposes of the original appropriation until the projects are completed.” The lack of a clear definition of “capital project” makes the statute ambiguous and provides the potential for improper use of the statutory condition. Defining “capital project” would end the ambiguity and improve the legislative budget process.

Long-range budgets fund projects that cannot be completed in one biennium. For example, the planning and construction of a new building or the extensive remodeling of an existing building may take several biennia to complete. The language of 17-7-212 allows the legislature to appropriate all the necessary funding for “capital projects” at one time.

Since the formation of the LRBP, the program has expanded to include new types of projects and programs. The LRBP bill (HB 5) includes not just new state buildings and major repair/remodel projects, but also major highway construction, the purchase of parcels of land, and the funding of numerous maintenance type programs. State programs are generally funded in the general appropriations act (HB 2), which permits the legislature to oversee the functions of the program. However, with the expansion of the LRBP certain maintenance type programs have avoided biennial legislative oversight by adopting the designation of a capital project. Consequently, such programs are able to take advantage of the conditions provided in 17-7-212.

Defining “capital project” would reduce the ability to designate any project or program as a “capital project”, without regard to whether the project or program is a capital creating/enhancing function. Defining “capital project” would reduce or eliminate the potential for abuse of the condition provided in 17-7-212. *Note:* A definition for information technology capital projects could also be considered and corrections could be made to the definition of capital projects fund found in 17-2-102 (may be corrected in proposed Department of Administration housekeeping legislation).

SUBCOMMITTEE OPTIONS

1. Request the Long Range Building Subcommittee of the LFC work with stakeholders to develop a definition of capital project that will acceptably limit the types of projects that can be designated as “capital projects”, conform to the Generally Accepted Accounting Principles (GAAP), and meet the needs of the LRBP program; and report to the October 2008 LFC.
2. Take no action

CLARIFY STATUTE RELATING TO ENTERPRISE FUNDS SUBJECT TO APPROPRIATION

STATUTES

17-8-101 – Appropriation and disbursement of money from treasury
17-7-111 – Preparation of state budget – agency program budgets – form and distribution
17-7-123 – Form of executive budget

BACKGROUND

Three sections of current law relate to enterprise funds subject to appropriation. However, two definitions are used in current law. Creating and using just one definition of enterprise funds subject to appropriation in statute could reduce confusion.

Section 17-8-101(8) states – “Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its **ending fund balance to the general fund** is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.” (Emphasis added)

The above definition requires that the enterprise funds be appropriated if it transfers its ending fund balance to the general fund.

Section 17-7-111(3)(a) states, – “a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer **profits to the general fund or to an account subject to appropriation** for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;” (emphasis added)

Section 17-7-123(1) states, in part – “(1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer **profits to the general fund or to accounts subject to appropriation** for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of: ”. (Emphasis added)

These two definitions require specific information be included in the executive budget for appropriated funds and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation.

The legislature’s Director of Legal Services advised the study group that using consistent terminology would increase the comprehension of law in this area.

SUBCOMMITTEE OPTIONS

1. Amend the statutory definition of 17-8-101(8) of enterprise funds subject to appropriation as those enterprise funds that are required by law to transfer money to the general fund or to any other fund subject to appropriation, as follows:

“Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that ~~transfers its ending fund balance to the general fund~~ is required by law to transfer

Appendix B – Policy Clarifications Identified for Workgroup Review

money to the general fund or to any other appropriated fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.”

2. Delete reference to enterprise funds in 17-7-111(3)(a) and 17-7-123(1). Enterprise funds that are required by law to transfer money to the general fund or to any other fund subject to appropriation would be considered “funds subject to appropriation. These two statutes would be amended as follows:

Section 17-7-111(3)(a) states, – “a consolidated agency budget summary of funds subject to appropriation ~~or enterprise funds that transfer profits to the general fund or to an account subject to appropriation~~, as provided in 17-8-101, for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;”

Section 17-7-123(1) states, in part – “(1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation ~~and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation~~ as provided in 17-8-101, for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of: ”

NONCOMPLIANCE ISSUE

ISSUE

The transfer of money out of the highway nonrestricted account to the highways state special revenue account (HSRA) violates Section 15-70-125, MCA.

STATUTE

Section 15-70-125, MCA states: “There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 17-2-124, be placed in the highway nonrestricted account. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.”

BACKGROUND

The Montana Department of Transportation highway nonrestricted account was established in 15-70-125, MCA, by the 1995 legislature as a result of the statutorily required review of dedicated revenue provisions enacted by SB 378 in the 1993 session. The revenue in the highway nonrestricted account can be appropriated for any purpose as determined by the legislature.

Prior to the creation of the highway nonrestricted account, all revenues currently deposited to the highway nonrestricted account and the HSRA were deposited to the HSRA. The highway nonrestricted account was created to separate constitutionally protected fuel tax revenue in the HSRA from revenue that was not constitutionally protected. Despite this statutory separation of revenue, the Department of Transportation continues to treat the two accounts as one when tracking expenditures, by transferring most of the revenue in the highway nonrestricted account not appropriated to other agencies (i.e. Commerce) to the HSRA, and then spending the money from that account.

Since the creation of the highway nonrestricted account, the executive has combined the revenue and expenditure estimates for the HSRA and highway nonrestricted accounts into one estimate for presentation to the legislature. The legislature has then provided an appropriation from the state special revenue fund in HB 2 for the Department of Transportation. The HB 2 appropriation for the Department of Transportation from the state special revenue fund is sufficient to cover anticipated department expenditures from both the HSRA and the highway nonrestricted account. However, the Department of Transportation has historically transferred revenue in the highway nonrestricted account to the HSRA and recorded expenditures only from the HSRA, instead of from both accounts.

The legislature’s Director of Legal Services has advised that the transfer of money out of the nonrestricted account violates 15-70-125, MCA. Since FY 1996 to date, \$134,151,382 has been transferred from the highway nonrestricted account to the HSRA.

In order for the Department of Transportation to comply with the statute, all revenues deposited to the highway nonrestricted account would stay in the account until expended from the account via a legislative appropriation.

In addition, if the highway nonrestricted account revenues and expenditures were properly recorded, the legislature would be better positioned to evaluate its options for appropriating the funds available in the account, whether it’s for highway construction, strengthening the economic base of local communities, or any other purpose as determined by the legislature

SUBCOMMITTEE OPTIONS

1. Request the OBPP:
 - a. Direct Department of Transportation to stop transferring money from the highway nonrestricted account and comply with 15-70-125, MCA
 - b. Report statutory compliance status at the October 2008 LFC meeting

GENERAL OBLIGATION BONDS FOR AEROSPACE AND TECHNOLOGY PROJECTS

ISSUE

The statute appropriating bond proceeds to the department of commerce for aerospace and technology projects is no longer valid.

STATUTE

Section 17-5-820(2) states, in part - "The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed \$20 million. Bond proceeds are appropriated to the department of commerce, and the department of commerce is authorized to acquire or construct the infrastructure improvements, to contract with the city or county in which a project is located, to contract with an airport authority, as defined in 67-1-101, a local port authority, as described in 7-14-1101, or a regional port authority, as described in 7-14-1102, to contract with a certified regional development corporation, as defined in 90-1-116, or upon a determination that it is in the best interest of the project to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement."

BACKGROUND

Section 17-5-820 was enacted by the 1999 Legislature to provide general obligation bond authority for the venture star project. The May 2000 special legislative session amended the statute to appropriate the bond proceeds, not to exceed \$20 million. The use of the bond proceeds has been expanded over the years, via statutory amendment, to include the purposes listed in the current statute. No bonds have been issued under the authorization in 17-5-820.

The legislature's Director of Legal Services advised that the appropriation in 17-5-820 is no longer valid. It was valid for the biennium in which the appropriation was made, in the same way that other "cat and dog" appropriations are valid under 17-7-501(1). The Montana Supreme Court has determined that an appropriation of public money cannot be made for a longer term than two years.

In order for the Department of Commerce to spend any bond proceeds, if bonds are ever issued, the legislature will have to provide the appropriation authority. This could be accomplished in a couple of ways:

1. When in session, the legislature could pass a bill containing a \$20 million appropriation for the purposes specified in law, and reappropriate the bond proceeds each regular session. This is how bond proceeds are usually handled. Bond proceeds for other programs and projects are appropriated in "cat and dog" bills, such as the long range building bill. In addition to proposed new capital construction projects, the long range building bill typically reappropriates bond proceeds from previous sessions for projects that are either yet to be undertaken or are in the midst of completion. The legislature, therefore, has the opportunity to review the project when it is first proposed and authorized, and kept apprised of its status by virtue of reappropriating the bond proceeds in future legislative sessions.
2. The legislature could pass a bill containing a \$20 million appropriation for the purposes specified in law, and create a statutory appropriation that reappropriates the bond proceeds. This would ensure the bond proceeds are appropriated, but since statutory appropriations typically receive little legislative scrutiny, this option could result in less legislative oversight of how and when the bond proceeds are spent.

Appendix C – Other Issues

In either case, the legislature would also want to repeal the invalid appropriation currently in statute.

The LFC could also opt to request a bill draft that deletes this section of statute, since the authorization has been in statute for 9 years but no bonds have been issued.

SUBCOMMITTEE OPTIONS

Request a bill draft that includes one or more of the following objectives:

1. Authorizes and appropriates bond proceeds for the 2011 biennium for the same amount and purpose as current statute
2. Creates a statutory appropriation to reauthorize unspent bond proceeds for future biennia
3. Deletes the invalid appropriation in current statute
4. Deletes the entire section 17-5-820

APPENDIX D

The pages contained in this Appendix list appropriation and budget statutes identified in the study that were not forwarded to the LFC in this report due to either time constraints or it was determined that the issues with the statutes raised in the study would require substantive changes and therefore outside the scope of this study.

The LFC may want to direct the LFD to include these statutes on the LFC work plan for consideration in the 2011 interim.

1. Request the LFA to review the statutes in Appendix D and determine those to be included in the draft 2011 biennium work plan presented to the LFC.
2. Take no action.

Legislative Fiscal Division: Study in 2011 Biennium

Statutory Citation	Short description
10-3-302	Governor's emergency declaration process
10-3-311	Statutes governing maximum expenditure by governor in emergency conflict
10-3-312	Statutes governing maximum expenditure by governor in emergency conflict
15-1-122	Transfer of general fund to various state agency state special revenue accounts
15-36-331	Distribution of oil and natural gas production taxes
15-39-110	Distribution of bentonite taxes
15-39-110	Distribution of bentonite taxes
17-3-222	Apportionment of Taylor Grazing Act money to counties
17-5-1312	Allocation by DofA of volume cap bonds to issuers
17-5-2201	Fee for issuance of bonds
17-6-603	Tobacco settlement trust fund
17-6-606	Tobacco settlement accounts - purpose - uses
17-6-606	Tobacco settlement accounts - purpose - uses -- CHIP funding
17-7-102	Subsection (10). (Temporary) Definitions of present law
17-7-102	Definition of present law
17-7-111	Preparation of state budget -- 5% reduction provisions
17-7-111	Preparation of the state budget - mission, goals, objectives
17-7-112	Executive budget submission deadlines -- statute does not match current practice
17-7-112	Executive budget submission deadlines -- budgeting schedule
17-7-123	Form of executive budget
17-7-123	Form of executive budget
17-7-131	Legislative action for a positive ending general fund balance
17-7-138	Operating plan changes
17-7-139	Program transfers
17-7-151	Budget performance, budget comparisons
17-7-160	Vacancy savings exemption for highway patrol
17-7-161	Vacancy savings exemption for game wardens
17-8-101	Appropriation and disbursement of money from treasury -- appropriation transfer from agency to age
17-8-105	and 17-8-106. Definitions applicable to the expenditure limitation
17-8-106	and 17-8-105. Expenditure limitation
20-9-331	(c). Basic county tax for elementary equalization and other revenue for county equalization of elemen
20-9-332	Fines and penalties proceeds for elementary county equalization
20-9-360	State equalization aid levy
2-1-405	Agencies to report on potential cost reductions related to federal mandates may not be occurring
2-15-112	Duties and powers of department heads -- specific authority for OBPP to transfer appropriations
2-18-106	No limitation on legislative authority -- unexpended appropriations transferred to second year of bienr
2-18-204	Determination of number and occupations of employees in each agency
2-19-102	Closing out defunct state agencies directs supplemental request if funds are insufficient
2-8-304	OBPP to refer programs to legislative auditor for privatization review
3-1-317	User surcharge for court information technology
3-5-211	District Court judges salary
37-1-106	Biennial report-POL boards
44-1-504	SSR account to partially fund MHP salaries
46-18-236	Imposition of charge upon conviction of criminal conduct or bond forfeiture
5-11-210	Clearing house for reports to legislature - is process followed/necessary

Legislative Fiscal Division: Study in 2011 Biennium

Statutory Citation	Short description
53-24-108	Use of funds generated by taxation on alcoholic beverages
53-24-108	Use of funds generated by taxation on alcoholic beverages -- allowable uses are unclear
53-24-206	Allowable uses of state special revenue account for chemical dependency is unclear
53-24-207	Comprehensive program for treatment for chemically dependent persons
53-2-903	53-2-903 and 904 employment, training, income exclusions use FAIM instead of TANF
53-4-1012	Establish state special revenue account for excess premium payments for CHIP
53-4-201	Statute uses Families Achieving Independence in Montana (FAIM) instead of Temporary Assistance
53-6-1101	Prevention and stabilization fund - funding priority not followed
53-6-1201	Special revenue fund -- health and Medicaid initiatives -- nonsupplantation language is unclear
7-35-2125	Cemetery district not responsible for excess expenditures
75-10-621	Hazardous waste / CERCLA account restrictions not followed
75-10-704	Budget amendment for unexpended environmental quality protection funds conflicts with budget ame
75-10-743	Not all orphan share funds used for statutory purpose; some are shifted to other uses
75-2-220	Air quality fees appropriated for uses not authorized by statute
75-5-516	Statutory conflict: discharge permits, water fees must to cover all costs; general fund offset should b
75-5-517	Discharge permits, water, fund
76-13-111	Allowable uses of fire protection assessments intermingled with other fees
76-13-209	No guidance on disposition of fire protection assessments
76-15-904	Coal bed methane protection account
77-1-130	Right of way fees do not cover costs; trust lands pick up difference; unconstitutional
77-5-204	Fee for forest improvement
80-7-823	Transfer of funds from highway non-restricted account
Title 53	Tobacco settlement accounts - purpose - uses
Title 77	Trust Funding
Title 87	Fish and game fees -- simplify revenue streams

Appendix E – Full Text of Statutes in this Report

15-35-108. (Temporary) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) (a) Subject to subsection (9)(b), all other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

(b) The interest income from \$140 million of the coal severance tax permanent fund that is deposited in the general fund is statutorily appropriated, as provided in 17-7-502, on an annual basis as follows:

(i) \$65,000 to the cooperative development center;

(ii) \$1.25 million for the growth through agriculture program provided for in Title 90, chapter 9;

(iii) \$3.65 million to the research and commercialization state special revenue account created in 90-3-1002;

(iv) to the department of commerce:

(A) \$125,000 for a small business development center;

(B) \$50,000 for a small business innovative research program;

(C) \$425,000 for certified regional development corporations;

(D) \$200,000 for the Montana manufacturing extension center at Montana state university-Bozeman;

and

(E) \$300,000 for export trade enhancement. (*Terminates June 30, 2010--sec. 6, Ch. 481, L. 2003.*)

15-35-108. (Effective July 1, 2010) Disposal of severance taxes. Severance taxes collected under this chapter must, in accordance with the provisions of 17-2-124, be allocated as follows:

(1) Fifty percent of total coal severance tax collections is allocated to the trust fund created by Article IX, section 5, of the Montana constitution. The trust fund money must be deposited in the fund established under 17-6-203(6) and invested by the board of investments as provided by law.

(2) The amount of 12% of coal severance tax collections is allocated to the long-range building program account established in 17-7-205.

(3) The amount of 5.46% must be credited to an account in the state special revenue fund to be allocated by the legislature for provision of basic library services for the residents of all counties through library federations and for payment of the costs of participating in regional and national networking, conservation

Appendix E – Full Text of Statutes in this Report

districts, and the Montana Growth Through Agriculture Act. Expenditures of the allocation may be made only from this account. Money may not be transferred from this account to another account other than the general fund. Any unreserved fund balance at the end of each fiscal year must be deposited in the general fund.

(4) The amount of 1.27% must be allocated to a permanent fund account for the purpose of parks acquisition or management. Income from this permanent fund account, excluding unrealized gains and losses, must be appropriated for the acquisition, development, operation, and maintenance of any sites and areas described in 23-1-102.

(5) The amount of 0.95% must be allocated to the debt service fund type to the credit of the renewable resource loan debt service fund.

(6) The amount of 0.63% must be allocated to a trust fund for the purpose of protection of works of art in the capitol and for other cultural and aesthetic projects. Income from this trust fund account, excluding unrealized gains and losses, must be appropriated for protection of works of art in the state capitol and for other cultural and aesthetic projects.

(7) The amount of 2.9% must be credited to the oil, gas, and coal natural resource account established in 90-6-1001.

(8) After the allocations are made under subsections (2) through (7), \$250,000 for the fiscal year must be credited to the coal and uranium mine permitting and reclamation program account established in 82-4-244.

(9) All other revenue from severance taxes collected under the provisions of this chapter must be credited to the general fund of the state.

History: En. 84-1309.1 by Sec. 2, Ch. 432, L. 1973; amd. Sec. 1, Ch. 250, L. 1974; amd. Sec. 4, Ch. 501, L. 1975; amd. Sec. 3, Ch. 502, L. 1975; amd. and redes. 84-1319 by Sec. 8, Ch. 525, L. 1975; amd. Sec. 2, Ch. 156, L. 1977; amd. Sec. 1, Ch. 540, L. 1977; amd. Sec. 2, Ch. 549, L. 1977; R.C.M. 1947, 84-1319; amd. Sec. 1, Ch. 653, L. 1979; amd. Sec. 1, Ch. 694, L. 1979; amd. Sec. 1, Ch. 479, L. 1981; amd. Sec. 43, Ch. 505, L. 1981; amd. Sec. 3, Ch. 281, L. 1983; amd. Sec. 5, Ch. 541, L. 1983; amd. Sec. 1, Ch. 246, L. 1985; amd. Sec. 1, Ch. 715, L. 1985; amd. Sec. 1, Ch. 3, Sp. L. June 1986; amd. Sec. 1, Ch. 19, Sp. L. June 1986; amd. Sec. 1, Ch. 662, L. 1987; amd. Sec. 17, Ch. 83, L. 1989; amd. Sec. 1, Ch. 626, L. 1989; amd. Sec. 4, Ch. 11, Sp. L. June 1989; amd. Sec. 13, Ch. 16, L. 1991; amd. Sec. 3, Ch. 191, L. 1991; amd. Sec. 1, Ch. 615, L. 1991; amd. Sec. 1, Ch. 8, Sp. L. January 1992; amd. Sec. 1, Ch. 16, Sp. L. January 1992; amd. Sec. 5, Ch. 455, L. 1993; amd. Sec. 1, Ch. 536, L. 1993; amd. Sec. 12, Ch. 18, L. 1995; amd. Sec. 1, Ch. 442, L. 1995; amd. Sec. 1, Ch. 456, L. 1995; amd. Sec. 7, Ch. 509, L. 1995; amd. Sec. 9, Ch. 422, L. 1997; amd. Sec. 10, Ch. 469, L. 1997; amd. Sec. 8, Ch. 389, L. 1999; amd. Secs. 1, 2, Ch. 10, Sp. L. May 2000; amd. Secs. 3, 38, Ch. 34, L. 2001; amd. Sec. 1, Ch. 61, L. 2001; amd. Sec. 41, Ch. 483, L. 2001; amd. Sec. 2, Ch. 9, Sp. L. August 2002; amd. Sec. 1, Ch. 12, Sp. L. August 2002; amd. Sec. 7, Ch. 13, Sp. L. August 2002; amd. Sec. 1, Ch. 32, L. 2003; amd. Sec. 2, Ch. 351, L. 2003; amd. Secs. 1, 4, Ch. 481, L. 2003; amd. Sec. 1, Ch. 589, L. 2005; amd. Secs. 2, 8(1), Ch. 603, L. 2005; amd. Sec. 1, Ch. 280, L. 2007; amd. Sec. 2, Ch. 475, L. 2007.

15-36-304. Production tax rates imposed on oil and natural gas -- exemption. (1) The production of oil and natural gas is taxed as provided in this section. The tax is distributed as provided in 15-36-331 and 15-36-332.

(2) Natural gas is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

Working	Nonworking
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Interest	Interest
----------	----------

(a) (i) first 12 months of qualifying production	0.5%	14.8%
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(ii) after 12 months:		
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(A) pre-1999 wells	14.8%	14.8%
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(B) post-1999 wells	9%	14.8%
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(b) stripper natural gas pre-1999 wells	11%	14.8%
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(c) horizontally completed well production:		
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(i) first 18 months of qualifying production	0.5%	14.8%
--	------	-------

(ii) after 18 months	9%	14.8%
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(3) The reduced tax rates under subsection (2)(a)(i) on production for the first 12 months of natural gas production from a well begins following the last day of the calendar month immediately preceding the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(4) The reduced tax rate under subsection (2)(c)(i) on production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding

Appendix E – Full Text of Statutes in this Report

the month in which natural gas is placed in a natural gas distribution system, provided that notification has been given to the department.

(5) Oil is taxed on the gross taxable value of production based on the type of well and type of production according to the following schedule for working interest and nonworking interest owners:

Working Interest Nonworking Interest

Interest Interest

(a) primary recovery production:

(i) first 12 months of qualifying production 0.5% 14.8%

(ii) after 12 months:

(A) pre-1999 wells 12.5% 14.8%

(B) post-1999 wells 9% 14.8%

(b) stripper oil production:

(i) first 1 through 10 barrels a day production 5.5% 14.8%

(ii) more than 10 barrels a day production 9.0% 14.8%

(c) (i) stripper well exemption production 0.5% 14.8%

(ii) stripper well bonus production 6.0% 14.8%

(d) horizontally completed well production:

(i) first 18 months of qualifying production 0.5% 14.8%

(ii) after 18 months:

(A) pre-1999 wells 12.5% 14.8%

(B) post-1999 wells 9% 14.8%

(e) incremental production:

(i) new or expanded secondary recovery production 8.5% 14.8%

(ii) new or expanded tertiary production 5.8% 14.8%

(f) horizontally recompleted well:

(i) first 18 months 5.5% 14.8%

(ii) after 18 months:

(A) pre-1999 wells 12.5% 14.8%

(B) post-1999 wells 9% 14.8%

(6) (a) The reduced tax rates under subsection (5)(a)(i) for the first 12 months of oil production from a well begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows, provided that notification has been given to the department.

(b) (i) The reduced tax rates under subsection (5)(d)(i) on oil production from a horizontally completed well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally completed well to the department by the board.

(ii) The reduced tax rate under subsection (5)(f)(i) on oil production from a horizontally recompleted well for the first 18 months of production begins following the last day of the calendar month immediately preceding the month in which oil is pumped or flows if the well has been certified as a horizontally recompleted well to the department by the board.

(c) Incremental production is taxed as provided in subsection (5)(e) only if the average price for each barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$30 a barrel. If the price of oil is equal to or greater than \$30 a barrel in a calendar quarter as determined in subsection (6)(d), then incremental production from pre-1999 wells and from post-1999 wells is taxed at the rate imposed on primary recovery production under subsections (5)(a)(ii)(A) and (5)(a)(ii)(B), respectively, for production occurring in that quarter, other than exempt stripper well production.

(d) (i) Stripper well exemption production is taxed as provided in subsection (5)(c)(i) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is less than \$38 a barrel. If the price of oil is equal to or greater than \$38 a barrel, there is no stripper well exemption tax rate and oil produced from a well that produces 3 barrels a day or less is taxed as stripper well bonus production.

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(ii) Stripper well bonus production is subject to taxation as provided in subsection (5)(c)(ii) only if the average price for a barrel of oil as reported in the Wall Street Journal for west Texas intermediate crude oil during a calendar quarter is equal to or greater than \$38 a barrel.

(e) For the purposes of subsections (6)(c) and (6)(d), the average price for each barrel must be computed by dividing the sum of the daily price for west Texas intermediate crude oil as reported in the Wall Street Journal for the calendar quarter by the number of days on which the price was reported in the quarter.

(7) (a) The tax rates imposed under subsections (2) and (5) on working interest owners and nonworking interest owners must be adjusted to include the total of the privilege and license tax adopted by the board of oil and gas conservation pursuant to 82-11-131 and the derived rate for the oil, gas, and coal natural resource account as determined under subsection (7)(b).

(b) The total of the privilege and license tax and the tax for the oil, gas, and coal natural resource account may not exceed 0.3%. The base rate for the tax for oil, gas, and coal natural resource account funding is 0.08%, but when the rate adopted pursuant to 82-11-131 by the board of oil and gas conservation for the privilege and license tax:

(i) exceeds 0.22%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.3%; or

(ii) is less than 0.18%, the rate for the tax to fund the oil, gas, and coal natural resource account is equal to the difference between the rate adopted by the board of oil and gas conservation and 0.26%.

(c) The board of oil and gas conservation shall give the department at least 90 days' notice of any change in the rate adopted by the board. Any rate change of the tax to fund the oil, gas, and coal natural resource account is effective at the same time that the board of oil and gas conservation rate is effective.

(8) Any interest in production owned by the state or a local government is exempt from taxation under this section.

History: En. Sec. 4, Ch. 451, L. 1995; amd. Sec. 3, Ch. 571, L. 1995; amd. Sec. 2, Ch. 573, L. 1995; amd. Sec. 4, Ch. 581, L. 1995; amd. Sec. 8, Ch. 466, L. 1997; amd. Sec. 2, Ch. 488, L. 1999; amd. Sec. 2, Ch. 530, L. 1999; amd. Secs. 3, 4, 17(3), Ch. 554, L. 1999; amd. Sec. 2, Ch. 421, L. 2001; amd. Sec. 5, Ch. 522, L. 2003; amd. Sec. 2, Ch. 592, L. 2005; amd. Sec. 3, Ch. 603, L. 2005; amd. Sec. 1, Ch. 286, L. 2007.

15-36-331. Distribution of taxes. (1) (a) For each calendar quarter, the department shall determine the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%

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Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%
Prairie	40.38%
Richland	47.47%
Roosevelt	45.71%
Rosebud	39.33%
Sheridan	47.99%
Stillwater	53.51%
Sweet Grass	61.24%
Teton	46.1%
Toole	57.61%
Valley	51.43%
Wibaux	49.16%
Yellowstone	46.74%
All other counties	50.15%

(b) The oil and natural gas production taxes allocated to each county must be deposited in the state special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

(4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as follows:

(a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

(i) 1.23% to the coal bed methane protection account established in 76-15-904;

(ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

(iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

(iv) 2.99% to the orphan share account established in 75-10-743;

(v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(vi) all remaining proceeds to the state general fund;

(b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

(i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

(ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

(iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) all remaining proceeds to the state general fund.

History: En. Sec. 1, Ch. 522, L. 2003; amd. Sec. 18, Ch. 522, L. 2003; amd. Sec. 2, Ch. 5, L. 2005; amd. Sec. 3, Ch. 527, L. 2005; amd. Sec. 4, Ch. 603, L. 2005; amd. Sec. 1, Ch. 432, L. 2007; amd. Sec. 3, Ch. 475, L. 2007.

15-36-332. Distribution of taxes to taxing units -- appropriation. (1) (a) By the dates referred to in subsection (6), the department shall distribute oil and natural gas production taxes allocated under 15-36-331(3) to each eligible county.

(b) By the dates referred to in subsection (6), the department shall distribute the amount deposited in the oil, gas, and coal natural resource account under 15-36-331(2)(b) as provided in subsection (8).

(2) (a) Each county treasurer shall distribute the amount of oil and natural gas production taxes designated under subsection (1)(a), including the amounts referred to in subsection (2)(b), to the countywide

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elementary and high school retirement funds, countywide transportation funds, and eligible school districts according to the following schedule:

	Elementary Retirement	High School Retirement	Countywide Transportation	School Districts
Big Horn	14.81%	10.36%	2.99%	26.99%
Blaine	5.86%	2.31%	2.71%	24.73%
Carbon	3.6%	6.62%	1.31%	49.18%
Chouteau	8.1%	4.32%	3.11%	23.79%
Custer	6.9%	3.4%	1.19%	31.25%
Daniels	0	7.77%	3.92%	48.48%
Dawson	5.53%	2.5%	1.11%	35.6%
Fallon	0	7.63%	1.24%	42.58%
Fergus	7.88%	4.84%	2.08%	53.25%
Garfield	4.04%	3.13%	5.29%	26.19%
Glacier	11.2%	4.87%	3.01%	46.11%
Golden Valley	0	11.52%	2.77%	54.65%
Hill	6.7%	4.07%	1.59%	49.87%
Liberty	4.9%	4.56%	1.15%	35.22%
McCone	4.18%	3.19%	2.58%	43.21%
Musselshell	5.98%	4.07%	3.53%	32.17%
Petroleum	0	11.92%	4.59%	55.48%
Phillips	0.43%	6.6%	1.08%	41.29%
Pondera	6.96%	5.06%	1.94%	45.17%
Powder River	3.96%	2.97%	4.57%	22.25%
Prairie	0	8.88%	1.63%	36.9%
Richland	4.1%	3.92%	2.26%	43.77%
Roosevelt	9.93%	7.37%	2.74%	40.94%
Rosebud	3.87%	2.24%	1.05%	72.97%
Sheridan	0	3.39%	2.22%	47.63%
Stillwater	6.87%	4.86%	1.63%	41.16%
Sweet Grass	6.12%	6.5%	2.4%	37.22%
Teton	6.88%	8.19%	3.8%	29.43%
Toole	2.78%	4.78%	1.3%	43.56%
Valley	2.26%	12.61%	4.63%	41.11%
Wibaux	0	4.1%	0.77%	31.46%
Yellowstone	7.98%	4.56%	1.07%	52.77%
All other counties	3.81%	7.84%	1.81%	41.04%

(b) (i) The county treasurer shall distribute 9.8% of the Custer County share to the countywide community college district in Custer County.

(ii) The county treasurer shall distribute 14.5% of the Dawson County share to the countywide community college district in Dawson County.

(3) The remaining oil and natural gas production taxes for each county must be used for the exclusive use and benefit of the county, including districts within the county established by the county.

(4) (a) The county treasurer shall distribute oil and natural gas production taxes to school districts in each county referred to in subsection (2) as provided in subsections (4)(b) through (4)(d).

(b) The amount distributed to each K-12 district within the county is equal to oil and natural gas production taxes in the county multiplied by the ratio that oil and natural gas production taxes attributable to oil and natural gas production in the K-12 school district bear to total oil and natural gas production taxes

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attributable to total oil and natural gas production in the county and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(c) For the amount to be distributed to each elementary school district and to each high school district under subsection (4)(d), the department shall first determine the amount of oil and natural gas taxes in the high school district that is attributable to oil and natural gas production in each elementary school district that is located in whole or in part within the exterior boundaries of a high school district and multiply that amount by the school district percentage figure for the county referred to in subsection (2)(a).

(d) (i) The amount distributed to each elementary school district that is located in whole or in part within the exterior boundaries of a high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the elementary school district bear to the sum of the total mills of the elementary school district and the total mills of the high school district.

(ii) The amount distributed to the high school district is equal to the amount determined in subsection (4)(c) multiplied by the ratio that the total mills of the high school district bear to the sum of the total mills of each elementary school district referred to in subsection (4)(c) and the total mills of the high school district.

(5) (a) Oil and natural gas production taxes calculated for each school district under subsections (4)(b) through (4)(d) must be distributed to each school district in the relative proportion of the mill levy for each fund.

(b) If a distribution under subsection (5)(a) exceeds the total budget for a school district fund, the board of trustees of an elementary or high school district may reallocate the excess to any budgeted fund of the school district.

(6) The department shall remit the amounts to be distributed in this section to the county treasurer by the following dates:

(a) On or before August 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending March 31 of the current year.

(b) On or before November 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending June 30 of the current year.

(c) On or before February 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending September 30 of the previous year.

(d) On or before May 1 of each year, the department shall remit to the county treasurer oil and natural gas production tax payments received for the calendar quarter ending December 31 of the previous year.

(7) The department shall provide to each county by May 31 of each year the amount of gross taxable value represented by all types of production taxed under 15-36-304 for the previous calendar year multiplied by 60%. The resulting value must be treated as taxable value for county classification purposes under 7-1-2111.

(8) The department shall distribute the funds received under 15-36-331(2)(b) to counties based on county oil and gas production. Of the distribution to a county, one-third must be distributed to the county government and two-thirds must be distributed to incorporated cities and towns within the county. If there is more than one incorporated city or town within the county, the city and town allocation must be distributed to the cities and towns based on their relative populations.

(9) The distributions to taxing units and to counties and incorporated cities and towns under this section are statutorily appropriated, as provided in 17-7-502, from the state special revenue fund.

History: En. Sec. 2, Ch. 522, L. 2003; amd. Sec. 5, Ch. 603, L. 2005.

15-70-125. Highway nonrestricted account. There is a highway nonrestricted account in the state special revenue fund. All interest and penalties collected under this chapter, except those collected by a justice's court, must, in accordance with the provisions of 17-2-124, be placed in the highway nonrestricted account. All interest and income earned on the account must be deposited to the credit of the account and any unexpended balance in the account must remain in the account.

History: En. Sec. 12, Ch. 509, L. 1995; amd. Sec. 83, Ch. 42, L. 1997; amd. Sec. 12, Ch. 422, L. 1997; amd. Sec. 13, Ch. 515, L. 1999; amd. Sec. 16, Ch. 475, L. 2007.

16-11-124. Disposition of license fees. (1) All license fees collected under the provisions of this part must be deposited with the state treasurer in the general fund.

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(2) Each biennium, there must be appropriated to the department and the department of justice an amount justified and reasonable to operate the cigarette enforcement responsibilities of each department.

(3) All expenses charged against the appropriation must be justified by itemized claims coupled with standard accounting reports.

History: En. Sec. 5, Ch. 140, L. 1969; amd. Sec. 208, Ch. 516, L. 1973; amd. Sec. 6, Ch. 286, L. 1977; R.C.M. 1947, 84-5606.6(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 351, L. 1989; amd. Sec. 19, Ch. 414, L. 1993.

17-5-501. Authority for general obligation highway bonds. The board of examiners is authorized to issue and sell general obligation highway bonds of the state for the purpose of acquiring a suitable site for and erecting and equipping a department of transportation headquarters building and complex at or near Helena, Montana, to replace the present laboratory and administration buildings which are declared to be inadequate for such purpose. The full faith and credit and taxing powers of the state shall be pledged for the payment of all bonds issued pursuant to this part.

History: En. Sec. 1, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.

17-5-502. Site acquisition and construction authorized. Upon the sale of the bonds, the department of administration, acting under the supervision and with the approval of the board of examiners, is empowered and directed to acquire the site for and to proceed with the erection and equipping of a building of suitable construction and design for use as a headquarters building and necessary supporting structures for laboratories and storage for the Montana department of transportation.

History: En. Sec. 2, Ch. 477, L. 1975; amd. Sec. 3, Ch. 512, L. 1991.

17-5-503. Amount authorized and reservation of future authorizations -- payment. The aggregate amount of highway bonds authorized by this part for the purpose expressed in 17-5-501 shall not exceed the sum of \$7,400,000. The state reserves the privilege of issuing additional highway bonds, when and if authorized by law, for this purpose and for any other purpose for which money derived from the sources described in Article VIII, section 6, of the constitution is authorized by that section to be expended. The board of examiners is also authorized to issue additional highway bonds for the purpose of refunding bonds issued pursuant to or as contemplated in this chapter, in amounts not exceeding the principal amount of the bonds refunded, when the board determines that the refunding of any outstanding bonds is in the best interests of the state. All bonds issued for the purposes contemplated in this section shall be payable from the same debt service account on a parity as to both principal and interest with the bonds authorized in 17-5-501, provided that in the issuance of each series of such bonds the amount, maturities, and interest rates thereof shall be fixed in such manner that the maximum amount of principal and interest to become due in any subsequent fiscal year on such bonds then outstanding (except bonds refunded) and on the series so to be issued will not exceed 25% of the amount collected during the then next preceding fiscal year from the tax or taxes pledged by law to the debt service account at the time of such issuance. The provisions of this section shall not constitute a covenant with the holders of any bonds issued hereunder.

History: En. Sec. 3, Ch. 477, L. 1975; amd. Sec. 12, Ch. 298, L. 1983.

17-5-504. Forms, interest, and maturity. Such bonds shall be issued by the board, upon request of the department of administration, in such denominations and form, whether payable to bearer or registered as to principal or both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the execution and delivery of definitive bonds, bearing interest, maturing at such times not exceeding 20 years from date of issue, subject to redemption at such earlier times and prices and upon such notice, and payable at the office of such fiscal agent of the state, as the board shall determine, subject to the limitations contained herein.

History: En. Sec. 4, Ch. 477, L. 1975.

17-5-505. Board of examiners to prescribe form and employ fiscal agent. In all other respects, the board is authorized to prescribe the form and terms of the bonds and shall do whatever is lawful and necessary for their issuance and payment. The board is authorized to employ a fiscal agent to assist it in the performance of its duties hereunder. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the board of examiners, and the bonds shall be issued under the great seal of the state. The bonds and coupons

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may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

History: En. Sec. 5, Ch. 477, L. 1975.

17-5-506. Deposit and use of proceeds. All proceeds of bonds issued hereunder shall be deposited in a separate highway capital projects fund which is created within the capital projects fund type established by 17-2-102, referred to herein as the "highway capital projects fund", and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury. The proceeds of the bonds authorized in 17-5-501 shall be used only to pay costs of acquiring land for and erecting and equipping the buildings herein referred to, upon order of the department of administration acting within the limits of the authority conferred upon it by the legislature and said proceeds are appropriated for the purpose of the capital items herein described. The proceeds of any additional bonds authorized as contemplated in 17-5-503, except refunding bonds, shall be used only for purposes authorized under the provisions of Article VIII, section 6, of the constitution, upon order of the department acting within the limits of the authority conferred upon it by the legislature.

History: En. Sec. 6, Ch. 477, L. 1975; amd. Sec. 13, Ch. 298, L. 1983.

17-5-507. State pledge of gasoline tax -- use. (1) The state pledges, appropriates, and directs to be credited as received to the debt service account that portion of the net proceeds from the collection of gasoline taxes that may from time to time be needed to comply with the principal and interest and reserve requirements stated in subsection (2). The pledge and appropriation made in this section must remain at all times a first and prior charge upon all money received as net proceeds from the collection of gasoline taxes.

(2) Money in the debt service account must be used to:

(a) pay interest and principal when due on highway bonds;

(b) accumulate a reserve, in the amount required in subsection (2)(c), for the further security of those payments; and

(c) maintain a reserve in an amount at least equal, after each interest and principal payment, to the maximum amount of interest and principal that will become due on all bonds that are then outstanding in any subsequent fiscal year.

(3) Money received in the debt service account in excess of the principal, interest, and reserve requirements stated in subsection (2) must be transferred by the treasurer to the highway revenue account in the state special revenue fund. If the balance at any time on hand in the debt service account is not sufficient for compliance with subsection (2), the treasurer shall credit to that account an amount sufficient to restore the balance from the next receipts of net proceeds from the collection of gasoline taxes.

(4) As used in this section:

(a) "debt service account" means a separate highway fund that is created within the debt service fund type established by 17-2-102 and must be segregated by the treasurer from all other money in that or any other fund in the treasury and used only to pay highway bonds and interest on those bonds when due, so long as the bonds or interest remain unpaid; and

(b) "net proceeds" means all funds in the state treasury as of any date, derived from the collection of the license tax imposed on gasoline distributors by 15-70-204, less the amount of all refunds of those taxes for which applications have been made pursuant to law but that have not yet been paid or rejected.

History: En. Sec. 7, Ch. 477, L. 1975; amd. Sec. 14, Ch. 298, L. 1983; amd. Sec. 24, Ch. 130, L. 2005; amd. Sec. 19, Ch. 44, L. 2007.

17-5-820. Authorization of bonds. (1) The board of examiners is authorized to issue and sell general obligation bonds in an amount not exceeding \$20 million in accordance with the terms and in the manner required by Title 17, chapter 5, part 8, for the purpose of financing and acquiring infrastructure improvements as enumerated in 7-15-4288 for aerospace transportation and technology projects recommended by the department of commerce in accordance with the authority granted to the board by this section. The bonds are in addition to any other authorization to the board to issue and sell general obligation bonds and subject to the conditions set forth in this section.

(2) The department of commerce may request the board of examiners to issue the bonds for one or more specified projects in one or more series, but the total amount of bonds issued may not exceed \$20 million. Bond proceeds are appropriated to the department of commerce, and the department of commerce is authorized

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to acquire or construct the infrastructure improvements, to contract with the city or county in which a project is located, to contract with an airport authority, as defined in 67-1-101, a local port authority, as described in 7-14-1101, or a regional port authority, as described in 7-14-1102, to contract with a certified regional development corporation, as defined in 90-1-116, or upon a determination that it is in the best interest of the project to contract with the developer of an approved project for the acquisition or construction of the infrastructure improvement. The plans and specifications for the infrastructure to be financed from the proceeds of the bonds must be prepared by an engineer or architect, licensed and bonded in Montana, and the state must be named as an additional insured under any contract, performance bond, or other documents for the design of any improvements to be financed by the state. The plans and specifications must be reviewed and approved by the department of commerce after consultation with the architecture and engineering division of the department of administration. The design and acquisition or construction of the infrastructure for approved projects are not, with the exception of Title 18, chapter 2, part 4, subject to the public procurement requirements contained in Title 18. All construction contracts entered into for the construction of improvements to be financed under this section must name the state as an additional insured if the state is not otherwise party to the contract. All improvements financed with bond proceeds must be owned by the state, and the use must be governed by a development agreement between the state and the developer of the project. The agreement may provide for the lease or the use of the infrastructure at less than fair market value, taking into consideration the number of jobs to be created by the project, the salary range of the jobs, the amount of capital contributed by the developer, and the projected tax revenue to be received by the state and local governments from the project over the term of the lease or use agreement. The agreement must require the contractor to insure for liability and workers' compensation claims during construction and must provide the project developer with the right of first refusal for the purchase of any real property and improvements financed by the bonds at fair market value. Fair market value must be determined by a certified appraiser. For purposes of this section, state and local governments may not provide telecommunications or other services in competition with private providers unless private providers cannot provide the services.

(3) It is the intent of the legislature that state individual and corporate income taxes and state property taxes generated by the aerospace transportation and technology infrastructure development projects will be at least equal to the projected amount of the debt service to be paid by the state for the bonds authorized by this section over the term of the bonds. Prior to requesting the board of examiners to issue the bonds, the department of commerce shall determine that the developer of a proposed project has the financial ability to implement the project based upon the audited financial statements of the developer. When requesting the board to issue the bonds, the department of commerce shall present to the department of administration for presentation to the board the following:

(a) evidence satisfactory to the board that each aerospace transportation and technology infrastructure development project has committed itself to locate its project in Montana; and

(b) a certificate signed by the director of the office of budget and program planning that the proposed project will, over the term of the bonds, generate state individual and corporate income taxes and state property taxes at least equal to the total aggregate amount of principal and interest on the bonds over the term of the bonds. In preparing the analysis for the report on the projected tax revenue from the project, the multiplier effect may be taken into account, using the number of jobs, the salary levels for the jobs, and the estimated date of hire for each position that the developer will commit to create as part of the development agreement. The development agreement must provide that if the developer has not created the total number of jobs at the estimated salaries by the date specified in the development agreement and assumed for purposes of meeting the projections, the state may terminate the lease or use of the improvements upon 30 days' notice. If the department of commerce is unable to enter into a new lease or use agreement for the improvements that is advantageous to the state, the state may sell the facility to the highest and best bidder and use the proceeds of the sale to redeem the outstanding bonds.

(4) In determining whether to recommend to the board of examiners that improvements should be constructed by the state from the proceeds of the bonds for a project, the department of commerce may take into consideration only the following factors:

(a) whether the project is eligible for financing;

(b) whether there is sufficient evidence to demonstrate the developer's ability to implement the project;

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- (c) the projected tax revenue report;
- (d) whether the project as proposed and situated can obtain the necessary zoning, building, and environmental permits required; and
- (e) whether the project is in the public interest.

(5) In recommending the amount of bonds to be issued for a qualified project, the department of commerce shall independently determine that the proposed estimated cost of the project is not in excess of what is required for the project and independently verify the projected costs of designing and constructing the improvements proposed to be financed exclusive of any development fee to the developer. The authorized bond proceeds must be used for projects on a first-come, first-served basis.

History: En. Sec. 5, Ch. 269, L. 1999; amd. Sec. 1, Ch. 6, Sp. L. May 2000; amd. Sec. 1, Ch. 589, L. 2001; amd. Sec. 1, Ch. 295, L. 2003; amd. Sec. 1, Ch. 590, L. 2005.

17-7-111. Preparation of state budget -- agency program budgets -- form distribution and contents. (1) (a) To prepare a state budget, the executive branch, the legislature, and the citizens of the state need information that is consistent and accurate. Necessary information includes detailed disbursements by fund type for each agency and program for the appropriate time period, recommendations for creating a balanced budget, and recommended disbursements and estimated receipts by fund type and fund category.

(b) Subject to the requirements of this chapter, the budget director and the legislative fiscal analyst shall by agreement:

- (i) establish necessary standards, formats, and other matters necessary to share information between the agencies and to ensure that information is consistent and accurate for the preparation of the state's budget; and
- (ii) provide for the collection and provision of budgetary and financial information that is in addition to or different from the information otherwise required to be provided pursuant to this section.

(2) In the preparation of a state budget, the budget director shall, not later than the date specified in 17-7-112(1), distribute to all agencies the proper forms and instructions necessary for the preparation of budget estimates by the budget director. These forms must be prescribed by the budget director to procure the information required by subsection (3). The forms must be submitted to the budget director by the date provided in 17-7-112(2)(a) or the agency's budget is subject to preparation based upon estimates as provided in 17-7-112(5). The budget director may refuse to accept forms that do not comply with the provisions of this section or the instructions given for completing the forms.

(3) The agency budget request must set forth a balanced financial plan for the agency completing the forms for each fiscal year of the ensuing biennium. The plan must consist of:

(a) a consolidated agency budget summary of funds subject to appropriation or enterprise funds that transfer profits to the general fund or to an account subject to appropriation for the current base budget expenditures, including statutory appropriations, and for each present law adjustment and new proposal request setting forth the aggregate figures of the full-time equivalent personnel positions (FTE) and the budget, showing a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress;

(b) a schedule of the actual and projected receipts, disbursements, and solvency of each fund for the current biennium and estimated for the subsequent biennium;

(c) a statement of the agency mission and a statement of goals and objectives for each program of the agency. The goals and objectives must include, in a concise form, sufficient specific information and quantifiable information to enable the legislature to formulate an appropriations policy regarding the agency and its programs and to allow a determination, at some future date, on whether the agency has succeeded in attaining its goals and objectives.

(d) actual FTE and disbursements for the completed fiscal year of the current biennium, estimated FTE and disbursements for the current fiscal year, and the agency's request for the ensuing biennium, by program;

(e) actual disbursements for the completed fiscal year of the current biennium, estimated disbursements for the current fiscal year, and the agency's recommendations for the ensuing biennium, by disbursement category;

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(f) for only agencies with more than 20 FTE, a plan to reduce the proposed base budget for the general appropriations act and the proposed state pay plan to 95% of the current base budget or lower if directed by the budget director. Each agency plan must include base budget reductions that reflect the required percentage reduction by fund type for the general fund and state special revenue fund types. Exempt from the calculations of the 5% target amounts are legislative audit costs, administratively attached entities that hire their own staff under 2-15-121, and state special revenue accounts that do not transfer their investment earnings or fund balances to the general fund. The plan must include:

- (i) a prioritized list of services that would be eliminated or reduced;
 - (ii) for each service included in the prioritized list, the savings that would result from the elimination or reduction; and
 - (iii) the consequences or impacts of the proposed elimination or reduction of each service.
- (g) a reference for each new information technology proposal stating whether the new proposal is included in the approved agency information technology plan as required in 2-17-523; and
- (h) other information the budget director feels is necessary for the preparation of a budget.
- (4) The budget director shall prepare and submit to the legislative fiscal analyst in accordance with 17-7-112:

(a) detailed recommendations for the state long-range building program. Each recommendation must be presented by institution, agency, or branch, by funding source, with a description of each proposed project.

(b) a statewide project budget summary as provided in 2-17-526;

(c) the proposed pay plan schedule for all executive branch employees at the program level by fund, with the specific cost and funding recommendations for each agency. Submission of a pay plan schedule under this subsection is not an unfair labor practice under 39-31-401.

(d) agency proposals for the use of cultural and aesthetic project grants under Title 22, chapter 2, part 3, the renewable resource grant and loan program under Title 85, chapter 1, part 6, the reclamation and development grants program under Title 90, chapter 2, part 11, and the treasure state endowment program under Title 90, chapter 6, part 7.

(5) The board of regents shall submit, with its budget request for each university unit in accordance with 17-7-112, a report on the university system bonded indebtedness and related finances as provided in this subsection (5). The report must include the following information for each year of the biennium, contrasted with the same information for the last-completed fiscal year and the fiscal year in progress:

(a) a schedule of estimated total bonded indebtedness for each university unit by bond indenture;

(b) a schedule of estimated revenue, expenditures, and fund balances by fiscal year for each outstanding bond indenture, clearly delineating the accounts relating to each indenture and the minimum legal funding requirements for each bond indenture; and

(c) a schedule showing the total funds available from each bond indenture and its associated accounts, with a list of commitments and planned expenditures from such accounts, itemized by revenue source and project for each year of the current and ensuing bienniums.

(6) (a) The department of revenue shall make Montana individual income tax information available by removing names, addresses, and social security numbers and substituting in their place a state accounting record identifier number. Except for the purposes of complying with federal law, the department may not alter the data in any other way.

(b) The department of revenue shall provide the name and address of a taxpayer on written request of the budget director when the values on the requested return, including estimated payments, are considered necessary by the budget director to properly analyze state revenue and are of a sufficient magnitude to materially affect the analysis and when the identity of the taxpayer is necessary to evaluate the effect of the return or payments on the analysis being performed.

History: En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; R.C.M. 1947, 79-1013(part); amd. Sec. 1, Ch. 666, L. 1983; amd. Sec. 1, Ch. 343, L. 1985; amd. Sec. 4, Ch. 5, Sp. L. July 1992; amd. Sec. 3, Ch. 20, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 1, Ch. 13, Sp. L. November 1993; amd. Sec. 6, Ch. 347, L. 1997; amd. Sec. 1, Ch. 20, L. 1999; amd. Sec. 1, Ch. 332, L. 1999; amd. Sec. 37, Ch. 313, L. 2001; amd. Sec. 3, Ch. 569, L. 2001; amd. Sec. 3, Ch. 332, L. 2003; amd. Sec. 2, Ch. 106, L. 2005; amd. Sec. 6, Ch. 70, L. 2007.

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17-7-113. Inquiries and investigations by budget director. The budget director or his designated representative shall make such further inquiries and investigations as he considers necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his travel expenses as provided for in 2-18-501 through 2-18-503, as amended, in visiting any institution or department in the state.

History: En. Sec. 5, Ch. 158, L. 1959; amd. Sec. 5, Ch. 282, L. 1974; amd. Sec. 18, Ch. 453, L. 1977; R.C.M. 1947, 79-1016(part).

17-7-122. Preparation of budget. (1) The governor shall, following the receipt of the preliminary budget from the budget director, have prepared a budget for the ensuing biennium and shall submit the budget to the legislative fiscal analyst in accordance with 17-7-112 for inclusion in the combined governor's budget and budget analysis report.

(2) Legislative branch budget proposals must be included in the budget submitted by the governor without changes.

(3) Judicial branch budget proposals must be included in the budget submitted by the governor, but expenditures above the current base budget need not be part of the balanced financial plan pursuant to 17-7-123.

History: (1)En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; Sec. 79-1015, R.C.M. 1947; (2)En. Sec. 2, Ch. 158, L. 1959; amd. Sec. 1, Ch. 91, L. 1961; amd. Sec. 1, Ch. 223, L. 1969; amd. Sec. 2, Ch. 282, L. 1974; Sec. 79-1013, R.C.M. 1947; R.C.M. 1947, 79-1015(part), 79-1013(part); amd. Sec. 1, Ch. 657, L. 1991; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 57, Ch. 545, L. 1995; amd. Sec. 9, Ch. 347, L. 1997.

17-7-123. Form of executive budget. (1) The budget submitted must set forth a balanced financial plan for funds subject to appropriation and enterprise funds that transfer profits to the general fund or to accounts subject to appropriation for each accounting entity and for the state government for each fiscal year of the ensuing biennium. The base level plan must consist of:

(a) a consolidated budget summary setting forth the aggregate figures of the budget in a manner that shows a balance between the total proposed disbursements and the total anticipated receipts, together with the other means of financing the budget for each fiscal year of the ensuing biennium, contrasted with the corresponding figures for the last-completed fiscal year and the fiscal year in progress. The consolidated budget summary must be supported by explanatory schedules or statements.

(b) budget and full-time equivalent personnel position comparisons by agency, program, and appropriated funds for the current and subsequent biennium;

(c) the departmental mission and a statement of goals and objectives for the department;

(d) base budget disbursements for the completed fiscal year of the current biennium, estimated comparable disbursements for the current fiscal year, and the proposed present law base budget plus new proposals, if any, for each department and each program of the department;

(e) a statement containing recommendations of the governor for the ensuing biennium by program and disbursement category, including:

(i) explanations of appropriation and revenue measures included in the budget that involve policy changes;

(ii) matters not included as a part of the budget bill but included as a part of the executive budget, such as the state employee pay plan, programs funded through separate appropriations measures, and other matters considered necessary for comprehensive public and legislative consideration of the state budget; and

(iii) a summary of budget requests that include proposed expenditures on information technology resources. The summary must include funding, program references, and a decision package reference;

(f) a report on:

(i) enterprise funds not subject to the requirements of subsections (1)(a) through (1)(e), including retained earnings and contributed capital, projected operations and charges, and projected fund balances; and

(ii) fees and charges in the internal service fund type, including changes in the level of fees and charges, projected use of the fees and charges, and projected fund balances. Fees and charges in the internal service fund type must be approved by the legislature in the general appropriations act. Fees and charges in a biennium may not exceed the level approved by the legislature in the general appropriations act effective for that biennium.

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(g) any other financial or budgetary material agreed to by the budget director and the legislative fiscal analyst.

(2) The statement of departmental goals and objectives and the schedule for each fund required in 17-7-111(3)(b) of the executive budget are not required to be printed but must be available in the office of budget and program planning and on the internet.

History: En. Sec. 4, Ch. 158, L. 1959; amd. Sec. 15, Ch. 147, L. 1963; amd. Sec. 4, Ch. 282, L. 1974; R.C.M. 1947, 79-1015(part); amd. Sec. 2, Ch. 596, L. 1983; amd. Sec. 22, Ch. 349, L. 1993; amd. Sec. 3, Ch. 12, Sp. L. November 1993; amd. Sec. 2, Ch. 13, Sp. L. November 1993; amd. Sec. 10, Ch. 347, L. 1997; amd. Sec. 2, Ch. 20, L. 1999; amd. Sec. 39, Ch. 313, L. 2001; amd. Sec. 4, Ch. 569, L. 2001.

17-7-201. Definitions of building and construction. In this part the following definitions apply:

(1) "Building" includes a:

(a) building, facility, or structure constructed or purchased wholly or in part with state moneys;

(b) building, facility, or structure at a state institution;

(c) building, facility, or structure owned or to be owned by a state agency, including the department of transportation.

(2) "Building" does not include a:

(a) building, facility, or structure owned or to be owned by a county, city, town, school district, or special improvement district;

(b) facility or structure used as a component part of a highway or water conservation project.

(3) "Construction" includes construction, repair, alteration, and equipping and furnishing during construction, repair, or alteration.

History: En. Sec. 14, Ch. 271, L. 1963; amd. Sec. 1, Ch. 24, L. 1973; amd. Sec. 81, Ch. 326, L. 1974; R.C.M. 1947, 82-3314; amd. Sec. 3, Ch. 512, L. 1991.

17-8-101. Appropriation and disbursement of money from treasury. (1) For purposes of complying with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type, with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation made by law.

(2) Subject to the provisions of subsection (8), money deposited in the enterprise fund type, debt service fund type, internal service fund type, private purpose trust fund type, agency fund type, and state special revenue fund from nonstate and nonfederal sources restricted by law or by the terms of an agreement, such as a contract, trust agreement, or donation, may be paid out of the treasury:

(a) by appropriation; or

(b) under general laws, or contracts entered into in pursuance of law, permitting the disbursement if a subclass is established on the state financial system.

(3) The pension trust fund type is not considered a part of the state treasury for appropriation purposes. Money deposited in the pension trust fund type may be paid out of the treasury pursuant to general laws, trust agreement, or contract.

(4) Money paid into the state treasury through error or under circumstances such that the state is not legally entitled to retain it and a refund procedure is not otherwise provided by law may be refunded upon the submission of a verified claim approved by the department.

(5) Authority to expend appropriated money may be transferred from one state agency to another, provided that the original purpose of the appropriation is maintained. The office of budget and program planning shall report semiannually to the legislative finance committee concerning all appropriations transferred under the provisions of this section.

(6) Fees and charges for services deposited in the internal service fund type must be based upon commensurate costs. The legislative auditor, during regularly scheduled audits of state agencies, shall audit and report on the reasonableness of internal service fund type fees and charges and on the fund equity balances.

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(7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the department, using conformity with generally accepted accounting principles as the primary approval criteria. The department shall report annually to the office of budget and program planning and the legislative finance committee on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.

(8) Enterprise and internal service funds must be appropriated if they are used as a part of a program that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise fund that transfers its ending fund balance to the general fund is subject to appropriation. The payment of funds into an internal service fund must be authorized by law.

History: En. Sec. 7, Ch. 147, L. 1963; amd. Sec. 2, Ch. 268, L. 1971; amd. Sec. 2, Ch. 321, L. 1973; amd. Sec. 98, Ch. 326, L. 1974; R.C.M. 1947, 79-415(1) thru (3); amd. Sec. 1, Ch. 29, L. 1981; amd. Sec. 13, Ch. 281, L. 1983; amd. Sec. 5, Ch. 433, L. 1993; amd. Sec. 4, Ch. 556, L. 1995; amd. Sec. 99, Ch. 42, L. 1997; amd. Sec. 18, Ch. 347, L. 1997; amd. Sec. 16, Ch. 532, L. 1997; amd. Sec. 3, Ch. 20, L. 1999; amd. Sec. 11, Ch. 34, L. 2001; amd. Sec. 10, Ch. 569, L. 2001.

20-9-603. Acceptance and expenditure of federal moneys for state. (1) The governor and the superintendent of public instruction are authorized on behalf of the state of Montana to request and accept such moneys as are now or will be made available under any act of congress of the United States or otherwise for purposes of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be expended for the purpose of public school building construction or for any other purposes of public schools and public education as permitted under the laws of the state of Montana and as authorized by the grants from the federal government.

(2) The governor and superintendent of public instruction are further authorized on behalf of the state of Montana to accept moneys provided from federal sources for the express purpose of distribution to nonpublic education. Such moneys shall be deposited by the governor and superintendent of public instruction in the state treasury and are appropriated and made available to the superintendent of public instruction. All such moneys shall be distributed in the manner provided by the laws of the state of Montana and as authorized or expressed by grants from the federal government.

(3) All expenditures of moneys from federal sources under this section shall be made under the supervision and in the discretion of the superintendent of public instruction. Any balance in the account in which such moneys are maintained shall not lapse at any time but shall be continuously available to the superintendent of public instruction for expenditures consistent with this title and acts of the federal government.

History: En. 75-7303 by Sec. 358, Ch. 5, L. 1971; amd. Sec. 1, Ch. 34, L. 1973; (amd. Sec. 7, Ch. 434, L. 1975 -- [unconstitutional, 167 M 261]; Sec. 7, Ch. 434, L. 1975 repealed by Sec. 1, Ch. 4, L. 1977); R.C.M. 1947, 75-7303.

39-51-406. Unemployment insurance administration account. (1) There is an account in the federal special revenue fund to be known as the unemployment insurance administration account. All money that is deposited, appropriated, or paid into this account is appropriated and made available to the department. All money in the account must be expended solely for the purpose of defraying the costs of administration of this chapter and costs of administration of other legislation specifically delegated by the legislature to the department for administration.

(2) All money received and deposited in the account from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, 42 U.S.C. 502, must be expended solely for the purpose and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this chapter.

(3) The account consists of:

(a) all money received from the United States or any agency of the United States pursuant to section 302, Title III, of the Social Security Act, 42 U.S.C. 502, as amended; and

(b) all money, trust funds, supplies, facilities, or services furnished, deposited, paid, and received from the United States or any agency of the United States.

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(4) Notwithstanding any provisions of this section, all money requisitioned and deposited in this account pursuant to 39-51-403 through 39-51-405 must remain part of the unemployment insurance fund and must be used only in accordance with the conditions specified in 39-51-403 through 39-51-405.

(5) All money in this account must be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other accounts. The balance in this account may not lapse at any time but must be continuously available to the department for expenditure consistent with this chapter.

(6) Any reference to the unemployment insurance administration fund in this code means the unemployment insurance administration account in the federal special revenue fund.

History: En. Subd. (a), Sec. 13, Ch. 137, L. 1937; amd. Sec. 7, Ch. 164, L. 1941; amd. Sec. 4, Ch. 190, L. 1945; amd. Sec. 4, Ch. 164, L. 1955; amd. Sec. 9, Ch. 171, L. 1957; amd. Sec. 208, Ch. 147, L. 1963; amd. Sec. 22, Ch. 368, L. 1975; R.C.M. 1947, 87-133; amd. Sec. 2, Ch. 57, L. 1979; amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 24, Ch. 281, L. 1983; amd. Sec. 1, Ch. 369, L. 1983; amd. Sec. 2, Ch. 15, Sp. L. January 1992; amd. Sec. 61, Ch. 10, L. 1993; amd. Sec. 7, Ch. 52, L. 2007.

50-19-322. Federal and other aid. (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 8, Ch. 649, L. 1989.

53-7-204. Federal and other aid. (1) The department may apply for and receive federal aid money or other funding available for the programs provided for under this part.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 4, Ch. 322, L. 1973; R.C.M. 1947, 41-819; amd. Sec. 4, Ch. 267, L. 1989.

53-22-104. Annual budget. The department of public health and human services in its annual budget shall include amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate sums necessary for carrying out the purposes of the compact.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(4)); amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 502, Ch. 546, L. 1995.

67-2-403. Federal aid. (1) The department may cooperate with the government of the United States and any agency or department thereof in the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities in this state and may comply with the laws of the United States and any regulations made under those laws for the expenditure of federal moneys upon airports and other navigation facilities.

(2) The department may accept, receive, and receipt for federal moneys and other moneys, either public or private, for and in behalf of this state or a municipality of this state, for the acquisition, construction, improvement, maintenance, and operation of airports and other air navigation facilities, whether the work is to be done by the state or by the municipalities or jointly, aided by grants of aid from the United States upon terms and conditions prescribed by the laws of the United States and any rules made under them. The department may act as agent of a municipality of this state upon the request of the municipality in accepting, receiving, and receipting for moneys in its behalf for airports or other air navigation facility purposes and in contracting for the acquisition, construction, improvement, maintenance, or operation of airports or other air navigation facilities financed either in whole or in part by federal moneys. The governing body of a municipality may designate the department as its agent for those purposes and enter into an agreement with it prescribing the terms and conditions of the agency in accordance with federal laws and rules. Moneys paid by the United States government shall be retained by the state or paid to the municipalities under terms and conditions imposed by the United States government in making the grants.

(3) All contracts for the acquisition, construction, improvement, maintenance, and operation of airports or other air navigation facilities made by the department, either as the agent of this state or as the agent of a

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municipality, shall be made under the laws of this state governing the making of like contracts by the state or by municipalities. However, where the acquisition, construction, improvement, maintenance, and operation of an airport, landing strip, or other air navigation facility is financed wholly or partially with federal moneys, the department, as agent of the state or of a municipality of the state, may let contracts in the manner prescribed by the federal authorities, acting under the laws of the United States and any rules made under them.

(4) All moneys accepted for disbursement by the department under subsection (2) of this section shall be deposited in the state treasury and, unless otherwise prescribed by the authority from which the money is received, kept in separate funds, designated according to the purposes for which the moneys were made available, and held by the state in trust for those purposes. All those moneys are appropriated for the purposes for which they were made available, to be spent in accordance with federal laws and regulations and with this title. The department may, whether acting for this state or as the agent of any of its municipalities or when requested by the United States government or an agency or department of the United States, disburse the moneys for the designated purposes, but this does not preclude any other authorized method of disbursement.

History: En. Sec. 8, Ch. 152, L. 1945; amd. Sec. 9, Ch. 348, L. 1974; R.C.M. 1947, 1-205.

75-10-625. Authorization for sale of CERCLA bonds. The board of examiners is authorized to issue and sell CERCLA general obligation bonds in an amount not exceeding \$10 million upon the request of the department of environmental quality, as provided for in 75-10-623. Proceeds of the bonds or notes are appropriated to the hazardous waste/CERCLA special revenue account provided for in 75-10-621 to fund state participation in remedial action under section 104 of CERCLA, as amended, state costs for maintenance of sites at which remedial action under CERCLA has been completed, the state share required to obtain matching federal funds for underground storage tank corrective action, and costs of issuance of the bonds or notes.

History: En. Sec. 1, Ch. 435, L. 1987; amd. Sec. 201, Ch. 418, L. 1995.

75-10-626. Agreement with department of environmental quality. For the proceeds of bonds or notes authorized and appropriated by this part, the board of examiners and the department of environmental quality may enter into an agreement under the terms of which the department shall pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes from which the appropriation was made and to accumulate and maintain reserves as may be required under the bonds. The agreement must further provide that income from the investment of bond proceeds and the reserves not required for the purposes presented in 75-10-625 must be credited against the department's payment obligation. The agreement must also allow for the accumulation of reserves during the first year that the bonds are outstanding, if required. Payments by the department must be made from available funds.

History: En. Sec. 2, Ch. 435, L. 1987; amd. Sec. 202, Ch. 418, L. 1995.

80-7-908. Deposit and disbursement of funds -- records -- investment. (1) There is a state noxious weed forage account in the state special revenue account. All funds received by the department from fees or penalties collected or received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) and all other related funds received must be deposited in the state noxious weed forage account.

(2) The department may by contract allow for the collection of fees authorized under 80-7-907. A portion of the fees collected may be retained by the collector, and the portion of the fees assigned to the department must be submitted to the department. The contract must require:

- (a) a record of the name of the person collecting fees;
- (b) a record of fees collected;
- (c) a record of the amounts submitted to the department;
- (d) a record of the amount retained by the collector; and
- (e) that all records be kept in accordance with generally accepted accounting principles.

(3) Funds received under 80-7-905 through 80-7-907, 80-7-921, and 80-7-922(1) that are not immediately required for the purposes of this part must be invested under provisions of the unified investment program established in Title 17, chapter 6, part 2. The income from the investments must be deposited in the state special revenue fund and credited to the department.

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(4) Funds received pursuant to this part are appropriated to the department for the administration of the noxious weed seed free forage program and for the purposes of this part.

History: En. Sec. 8, Ch. 521, L. 1995.

80-11-224. Determination of amount and allocation of assessment. (1) The committee shall set the amount of the assessment each year in accordance with 80-11-206.

(2) Money deposited in the wheat and barley account pursuant to 80-11-210 is appropriated to the committee for purposes of carrying out research and marketing under this part.

(3) The committee may be assessed costs by the department for the services it provides upon request or pursuant to 2-15-121. However, the costs charged must have a substantial relationship to the cost of services supplied.

History: En. Sec. 1, Ch. 615, L. 1981; amd. Sec. 6, Ch. 48, L. 1987.

87-1-201. Powers and duties. (1) The department shall supervise all the wildlife, fish, game, game and nongame birds, waterfowl, and the game and fur-bearing animals of the state and may implement voluntary programs that encourage hunting access on private lands and that promote harmonious relations between landowners and the hunting public. It possesses all powers necessary to fulfill the duties prescribed by law and to bring actions in the proper courts of this state for the enforcement of the fish and game laws and the rules adopted by the department.

(2) The department shall enforce all the laws of the state respecting the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds within the state.

(3) The department has the exclusive power to spend for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds all state funds collected or acquired for that purpose, whether arising from state appropriation, licenses, fines, gifts, or otherwise. Money collected or received from the sale of hunting and fishing licenses or permits, from the sale of seized game or hides, from fines or damages collected for violations of the fish and game laws, or from appropriations or received by the department from any other sources is appropriated to and under control of the department.

(4) The department may discharge any appointee or employee of the department for cause at any time.

(5) The department may dispose of all property owned by the state used for the protection, preservation, management, and propagation of fish, game, fur-bearing animals, and game and nongame birds that is of no further value or use to the state and shall turn over the proceeds from the sale to the state treasurer to be credited to the fish and game account in the state special revenue fund.

(6) The department may not issue permits to carry firearms within this state to anyone except regularly appointed officers or wardens.

(7) The department is authorized to make, promulgate, and enforce reasonable rules and regulations not inconsistent with the provisions of chapter 2 that in its judgment will accomplish the purpose of chapter 2.

(8) The department is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or outside of the state.

(9) (a) The department shall implement programs that:

(i) manage wildlife, fish, game, and nongame animals in a manner that prevents the need for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq.;

(ii) manage listed species, sensitive species, or a species that is a potential candidate for listing under 87-5-107 or under the federal Endangered Species Act, 16 U.S.C. 1531, et seq., in a manner that assists in the maintenance or recovery of those species; and

(iii) manage elk, deer, and antelope populations based on habitat estimates determined as provided in 87-1-322 and maintain elk, deer, and antelope population numbers at or below population estimates as provided in 87-1-323. In implementing an elk management plan, the department shall, as necessary to achieve harvest and population objectives, request that land management agencies open public lands and public roads to public access during the big game hunting season.

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(b) In maintaining or recovering a listed species, a sensitive species, or a species that is a potential candidate for listing, the department shall seek, to the fullest extent possible, to balance maintenance or recovery of those species with the social and economic impacts of species maintenance or recovery.

(c) Any management plan developed by the department pursuant to this subsection (9) is subject to the requirements of Title 75, chapter 1, part 1.

(d) This subsection (9) does not affect the ownership or possession, as authorized under law, of a privately held listed species, a sensitive species, or a species that is a potential candidate for listing.

(10) The department shall publish an annual game count, estimating to the department's best ability the numbers of each species of game animal, as defined in 87-2-101, in the hunting districts and administrative regions of the state. In preparing the publication, the department may incorporate field observations, hunter reporting statistics, or any other suitable method of determining game numbers. The publication must include an explanation of the basis used in determining the game count.

History: Ap. p. Sec. 4, Ch. 193, L. 1921; re-en. Sec. 3653, R.C.M. 1921; amd. Sec. 2, Ch. 77, L. 1923; amd. Sec. 2, Ch. 192, L. 1925; amd. Sec. 1, Ch. 200, L. 1935; re-en. Sec. 3653, R.C.M. 1935; amd. Sec. 1, Ch. 157, L. 1941; amd. Sec. 1, Ch. 40, L. 1951; amd. Sec. 1, Ch. 157, L. 1955; amd. Sec. 1, Ch. 151, L. 1957; amd. Sec. 1, Ch. 36, L. 1959; amd. Sec. 1, Ch. 96, L. 1959; amd. Sec. 1, Ch. 173, L. 1965; amd. Sec. 1, Ch. 344, L. 1969; amd. Sec. 1, Ch. 279, L. 1971; amd. Sec. 1, Ch. 364, L. 1973; amd. Sec. 3, Ch. 511, L. 1973; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-104, R.C.M. 1947; Ap. p. Sec. 4, Ch. 267, L. 1955; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.4, R.C.M. 1947; Ap. p. Sec. 1, Ch. 239, L. 1965; amd. Sec. 2, Ch. 319, L. 1967; amd. Sec. 4, Ch. 9, L. 1977; amd. Sec. 13, Ch. 417, L. 1977; Sec. 26-202.5, R.C.M. 1947; R.C.M. 1947, 26-104, 26-202.4, 26-202.5(2); amd. Sec. 2, Ch. 44, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 459, L. 1995; amd. Sec. 1, Ch. 369, L. 1999; amd. Sec. 1, Ch. 454, L. 2003; amd. Sec. 1, Ch. 461, L. 2003; amd. Sec. 6, Ch. 553, L. 2003; amd. Sec. 1, Ch. 262, L. 2007.

90-4-201. Weatherization money sources -- consolidation. (1) All federal funds and grants available and becoming eligible to Montana under the provisions of the U.S. department of energy low-income weatherization assistance program, the U.S. department of health and human services low-income home energy assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act, are to be coordinated and are appropriated to the department of public health and human services.

(2) The department of public health and human services shall allocate and spend for home weatherization programs under this part at least 5% of the funds received from the U.S. department of health and human services low-income home energy assistance program if federal law permits this allocation.

History: En. 35-601 by Sec. 2, Ch. 583, L. 1977; R.C.M. 1947, 35-601; amd. Sec. 9, Ch. 274, L. 1981; amd. Sec. 1, Ch. 390, L. 1985; amd. Sec. 562, Ch. 546, L. 1995.

90-6-1001. Oil, gas, and coal natural resource account. There is an oil, gas, and coal natural resource account in the state special revenue fund. The collections allocated to the account from 15-35-108(7) and 15-36-331(2)(b) must be deposited in the account.

History: En. Sec. 1, Ch. 603, L. 2005.