

## 1 SENATE BILL NO. 326

2 INTRODUCED BY C. LARSEN, MOSS, BECK, BRANAE, GALLUS, JENT, FACEY, BELCOURT, O'HARA,  
3 ERICKSON, STEINBEISSER, GREEF, C. WILLIAMS, WANZENRIED, KEANE, SHOCKLEY, BROWN,  
4 MURPHY, BLEWETT, AUGARE, HAMLETT, B. BENNETT, VAN DYK, ZINKE, ARTHUN, HAWKS, FUREY

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6 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE MONTANA VETERANS' HOME LOAN MORTGAGE  
7 PROGRAM WITH MONEY FROM THE PERMANENT COAL TAX TRUST FUND TO BE ADMINISTERED BY  
8 THE BOARD OF HOUSING; AMENDING SECTIONS 17-6-201 AND 17-6-308, MCA; AND PROVIDING AN  
9 EFFECTIVE DATE."

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11 WHEREAS, the Legislature finds that members of the Montana National Guard, residents of Montana  
12 in the federal reserves, and Montana residents serving on active duty in the armed forces have all made sacrifices  
13 of various kinds in order to serve the state and their country in times of war or national emergency; and

14 WHEREAS, the Legislature further finds that while those sacrifices may be difficult to quantify or compare  
15 because they range from loss of time with family and friends due to demands of reserve duty to loss of life in the  
16 service of the country, those sacrifices have in common that they occurred because of the status of the individual  
17 as a member of the armed forces; and

18 WHEREAS, the Legislature further finds that it has the authority pursuant to Article II, section 35, of the  
19 Montana Constitution to recognize and reward this status by providing special consideration to the status of  
20 service members and veterans; and

21 WHEREAS, the Legislature finds that it is appropriate to reward this status and the sacrifices the status  
22 represents by facilitating the fulfillment of the American dream of home ownership for those who serve or have  
23 served in the American armed forces; and

24 WHEREAS, the purpose of the Montana Veterans' Home Loan Mortgage Program Act is not to provide  
25 the most substantial return on the investment of money in the coal tax trust fund used for the program but to use  
26 some of the money in the trust fund for a mortgage loan program so that first-time home buyers who are eligible  
27 veterans can acquire a mortgage loan at a rate lower than prevailing market rates and in this way reward those  
28 eligible veterans who have served this country well and reward the unremarried spouses of eligible veterans who  
29 have made the ultimate sacrifice in service to their country.

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

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3 NEW SECTION. Section 1. Short title. [Sections 1 through 5] may be cited as the "Montana Veterans'  
4 Home Loan Mortgage Program Act".

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6 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], the following definitions  
7 apply:

8 (1) "Board" means the board of housing provided for in section 2-15-1814.

9 (2) "Coal tax trust fund" or "trust fund" means the trust fund created pursuant to Article IX, section 5, of  
10 the Montana constitution.

11 (3) "Eligible veteran" means an individual who is a Montana resident and who:

12 (a) is or has been a member of the Montana national guard;

13 (b) is or has been a member of the federal reserve forces of the armed forces of the United States,  
14 serving pursuant to Title 10 of the United States Code;

15 (c) is serving or has served on federal active duty pursuant to Title 10 of the United States Code;

16 (d) is an unremarried spouse of an individual who was otherwise an eligible veteran and was killed in  
17 the line of duty;

18 (e) is an eligible veteran as defined by the board pursuant to [section 6(2)]; ~~and~~ OR

19 (f) if previously a member of the armed forces, was discharged under honorable conditions.

20 (4) "First-time home buyer" means an individual determined by the board to be a first-time home buyer  
21 pursuant to rules adopted by the board.

22 (5) "Mortgage loan" means a loan for the purchase of real property with any improvements located within  
23 this state that is to be used for residential purposes and that is based upon a written instrument approved by a  
24 federal agency and that is written in the form of a trust indenture.

25 (6) "Participating financial institution" means a corporate lender or other loan originator approved by the  
26 board for originating and servicing loans pursuant to [sections 1 through 5].

27 (7) "Resident" means an individual who maintains a permanent place of abode within Montana and who  
28 has not established a residence elsewhere even though the individual may be temporarily absent from the state.

29 (8) "Trust indenture" has the meaning provided in 71-1-303.

30 (9) (a) "Under honorable conditions" means a discharge or separation from military duty characterized

1 by the armed forces as under honorable conditions. The term includes honorable discharge and general  
2 discharge.

3 (b) The term does not include a dishonorable discharge or another administrative discharge  
4 characterized by military regulation as other than honorable.

5 (10) "Veterans' home loan mortgage program" or "program" means the program created in [section 3].  
6

7 **NEW SECTION. Section 3. Veterans' home loan mortgage program created -- use of coal tax trust**  
8 **fund money.** (1) There is a Montana veterans' home loan mortgage program under the direction and  
9 management of the board for eligible veterans who are first-time home buyers.

10 (2) The board of investments shall allow the board to administer ~~\$100~~ \$15 million of the permanent coal  
11 tax trust fund for the purpose of the program. Until the board uses money in the trust fund to purchase a mortgage  
12 loan from a participating financial institution pursuant to [sections 1 through 5], the money under the  
13 administration of the board must remain invested by the board of investments. As a loan made pursuant to  
14 [sections 1 through 5] is repaid, the principal payments on the loan must be deposited in the trust fund until all  
15 of the principal of the loan is repaid. Interest received on the loan may be used by a participating financial  
16 institution and the board, in amounts determined by the board in accordance with [section 5], to pay for the  
17 origination and servicing of a loan by a participating financial institution and to pay the reasonable costs of the  
18 board for the administration of the program. After payment of associated expenses, interest received on the loan  
19 must be deposited into the trust fund.

20 (3) Interest on a home mortgage loan made pursuant to [sections 1 through 5] must be charged at 1%  
21 less than the federal national mortgage association's delivery rate or 1% lower than the lowest interest rate  
22 charged by the board for the purposes of other home loan mortgage programs administered by the board,  
23 whichever is less. If the federal national mortgage association's rate becomes unavailable, the board shall use  
24 another similar rate for the purposes of this subsection. The board may not make a direct loan to an eligible  
25 veteran.  
26

27 **NEW SECTION. Section 4. Additional terms of program.** (1) The maximum amount of a loan made  
28 by the board pursuant to [sections 1 through 5] is 95% of the value of the statewide allowable purchase price  
29 determined by the board pursuant to [section 5].

30 (2) The board shall require as a condition for a loan that an eligible veteran participate in a first-time

1 home buyer education program approved by the board.

2 (3) A loan made by the board must be secured by a government guaranty pursuant to rules adopted by  
3 the board unless the board determines pursuant to [section 5(2)] to allow the use of conventional mortgage  
4 insurance requirements and coverage.

5 (4) An eligible veteran must participate in a loan by contributing a minimum amount of \$2,500 unless the  
6 board determines otherwise pursuant to [section 5(2)].

7 (5) There is no limit on the maximum amount of income that may be earned by an eligible veteran for  
8 the purposes of a loan pursuant to [sections 1 through 5].

9 (6) In order to allow small financial institutions to participate equitably in the program along with large  
10 financial institutions, the board shall adopt rules pursuant to [section 5] to specify the maximum amount of  
11 mortgage loans that may be made by any one participating financial institution.

12 (7) The legislative auditor must be allowed access to all documentation used for the purpose of the  
13 program.

14 (8) A report describing at least the operation and use of the program must be made by the board to the  
15 legislature as provided in 5-11-210. The report may be combined with other reports by the board or the  
16 department of commerce to the legislature.

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18 **NEW SECTION. Section 5. Rules to be adopted by board.** (1) The board shall adopt rules pursuant  
19 to the Montana Administrative Procedure Act necessary for administration of the program, including rules:

20 (a) specifying what financial institutions may be participating financial institutions;

21 (b) specifying underwriting criteria for a program loan, such as minimum down payment, credit score,  
22 ratios of housing expense and of all reoccurring debt as a percentage of income of the borrower, and exceptions  
23 to those criteria;

24 (c) specifying the statewide allowable purchase price of a home for the purposes of the program;

25 (d) specifying the security required for a mortgage loan financed by the program;

26 (e) providing the legislative auditor with access to records of participating financial institutions regarding  
27 loans made pursuant to [sections 1 through 5];

28 (f) governing the loan application process;

29 (g) specifying the maximum servicing fees and origination fee that may be charged by a participating  
30 financial institution; and

- 1 (h) other loan conditions determined to be necessary by the board.
- 2 (2) The board may adopt rules pursuant to the Montana Administrative Procedure Act changing any of  
3 the following provisions if the board determines a change is necessary to carry out the purposes of the program:
- 4 (a) the definition of eligible veteran in [section 2];  
5 (b) the security for a loan provided in [section 4]; and  
6 (c) the requirements for minimum participation for the eligible veteran provided for in [section 4].  
7
- 8 **Section 6.** Section 17-6-201, MCA, is amended to read:
- 9 **"17-6-201. Unified investment program -- general provisions.** (1) The unified investment program  
10 directed by Article VIII, section 13, of the Montana constitution to be provided for public funds must be  
11 administered by the board of investments in accordance with the prudent expert principle, which requires an  
12 investment manager to:
- 13 (a) discharge the duties with the care, skill, prudence, and diligence, under the circumstances then  
14 prevailing, that a prudent person acting in a like capacity with the same resources and familiar with like matters  
15 exercises in the conduct of an enterprise of a like character with like aims;
- 16 (b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss  
17 and to maximize the rate of return unless, under the circumstances, it is clearly prudent not to do so; and  
18 (c) discharge the duties solely in the interest of and for the benefit of the funds forming the unified  
19 investment program.
- 20 (2) (a) Retirement funds may be invested in common stocks of any corporation.  
21 (b) Other public funds may not be invested in private corporate capital stock. "Private corporate capital  
22 stock" means only the common stock of a corporation.
- 23 (3) (a) This section does not prevent investment in any business activity in Montana, including activities  
24 that continue existing jobs or create new jobs in Montana.
- 25 (b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in  
26 venture capital companies. Whenever possible, preference should be given to investments in those venture  
27 capital companies that demonstrate an interest in making investments in Montana.
- 28 (c) In discharging its duties, the board shall consider the preservation of purchasing power of capital  
29 during periods of high monetary inflation.
- 30 (d) The board may not make a direct loan to an individual borrower. The purchase of a loan or a portion

1 of a loan originated by a financial institution is not considered a direct loan.

2 (e) This section does not prevent investment in home loan mortgages under the provisions of the  
3 Montana veterans' home loan mortgage program provided for in [sections 1 through 5].

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

8 (5) The board shall:

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

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

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

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

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

16 (6) The board may:

17 (a) execute deeds of conveyance transferring real property obtained through investments. Prior to the  
18 transfer of real property directly purchased and held as an investment, the board shall obtain an appraisal by a  
19 qualified appraiser.

20 (b) direct the withdrawal of funds deposited by or for the state treasurer pursuant to 17-6-101 and  
21 17-6-105;

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

24 (7) The cost of administering and accounting for each investment fund must be deducted from the  
25 income from each fund, other than the fund derived from land granted to the state pursuant to the Morrill Act of  
26 1862, 7 U.S.C. 301 through 308, and the Morrill Act of 1890, 7 U.S.C. 321 through 329. An appropriation to pay  
27 the costs of administering and accounting for the Morrill Act fund is provided for in 77-1-108."

28

29 **Section 7.** Section 17-6-308, MCA, is amended to read:

30 "**17-6-308. Authorized investments.** (1) Except as provided in subsections (2) through ~~(4)~~ (5) and

1 subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized  
2 by rules adopted by the board.

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

9 (3) The board shall manage the seed capital and research and development loan portfolios created by  
10 the former Montana board of science and technology development. The board shall establish an appropriate  
11 repayment schedule for all outstanding research and development loans made to the university system. The  
12 board is the successor in interest to all agreements, contracts, loans, notes, or other instruments entered into by  
13 the Montana board of science and technology development as part of the seed capital and research and  
14 development loan portfolios, except agreements, contracts, loans, notes, or other instruments funded with coal  
15 tax permanent trust funds. The board shall administer the agreements, contracts, loans, notes, or other  
16 instruments funded with coal tax permanent trust funds. As loans made by the former Montana board of science  
17 and technology development are repaid, the board shall deposit the proceeds or loans made from the coal  
18 severance tax trust fund in the coal severance tax permanent fund until all investments are paid back with 7%  
19 interest.

20 (4) The board shall allow the Montana facility finance authority to administer \$15 million of the permanent  
21 coal tax trust fund for capital projects. Until the authority makes a loan pursuant to the provisions of Title 90,  
22 chapter 7, the funds under its administration must be invested by the board pursuant to the provisions of  
23 17-6-201. As loans for capital projects made pursuant to this subsection are repaid, the principal and interest  
24 payments on the loans must be deposited in the coal severance tax permanent fund until all principal and interest  
25 have been repaid. The board and the authority shall calculate the amount of the interest charge. Individual loan  
26 amounts may not exceed 10% of the amount administered under this subsection.

27 (5) The board shall allow the board of housing to administer \$100 \$15 million of the permanent coal tax  
28 trust fund for the purposes of the Montana veterans' home loan mortgage program provided for in [sections 1  
29 through 5].

30 ~~(5)~~(6) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The

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

3 ~~(6)~~(7) All repayments of proceeds pursuant to subsection (3) of investments made from the coal  
4 severance tax trust fund must be deposited in the coal severance tax permanent fund."

5  
6 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 5] are intended to be codified  
7 as an integral part of Title 90, chapter 6, and the provisions of Title 90, chapter 6, apply to [sections 1 through 5].

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9 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2011.

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