

HOUSE BILL NO. 319

INTRODUCED BY T. WINTER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TERM "AGENCY FUND" TO ADHERE TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES; AMENDING THE TERM "AGENCY FUND" TO REFLECT CUSTODIAL FUNDS; AMENDING SECTIONS 2-7-505, 2-18-402, 17-2-102, 17-2-105, 17-2-202, 17-8-101, 20-9-201, 39-3-213, AND 90-6-304, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-7-505, MCA, is amended to read:

"2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.

(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency custodial funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department."

Section 2. Section 2-18-402, MCA, is amended to read:

"2-18-402. Payroll agency custodial fund -- department to determine disbursements and transfers.

(1) A fund in the agency custodial fund type of the state treasury is created, to be known as the state payroll agency custodial fund. The fund may be utilized for the payment of compensation to officers and employees of the state and all amounts withheld from compensation, pursuant to law.

(2) The amount to be disbursed from the state payroll agency custodial fund at any time must be determined by the department of administration and, on order of the department, must be transferred from the

1 fund, account, and appropriation properly chargeable to the state payroll ~~agency~~ custodial fund."

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3 **Section 3.** Section 17-2-102, MCA, is amended to read:

4 **"17-2-102. Fund structure.** For the purpose of ensuring strict accountability for all revenue received and
5 spent, there are in the state treasury only the following fund categories and types:

6 (1) the governmental fund category, which includes:

7 (a) the general fund, which accounts for all financial resources except those required to be accounted
8 for in another fund;

9 (b) the special revenue fund type, which accounts for the proceeds of specific revenue sources (other
10 than private purpose trusts or major capital projects) that are legally restricted to expenditure for specified
11 purposes. The financial activities of the special revenue fund type are subdivided, for operational purposes, into
12 the following funds to serve the purpose indicated:

13 (i) The state special revenue fund consists of money and other proceeds from state and other nonfederal
14 sources deposited in the state treasury that is earmarked for the purposes of defraying particular costs of an
15 agency, program, or function of state government and money and other proceeds from other nonstate or
16 nonfederal sources that is restricted by law or by the terms of an agreement, such as a contract, trust agreement,
17 or donation.

18 (ii) The federal special revenue fund consists of money deposited in the treasury from federal sources,
19 including trust income, that is used for the operation of state government.

20 (c) the capital projects fund type, which accounts for financial resources to be used for the acquisition
21 or construction of major capital facilities, other than those financed by proprietary funds or trust funds;

22 (d) the debt service fund type, which accounts for the accumulation of resources for and the payment
23 of general long-term debt principal and interest; and

24 (e) the permanent fund type, which accounts for financial resources that are legally restricted to the
25 extent that only earnings, but not principal, may be used;

26 (2) the proprietary fund category, which includes:

27 (a) the enterprise fund type, which accounts for operations:

28 (i) that are financed and operated in a manner similar to private business enterprises whenever the intent
29 of the legislature is that costs (i.e., expenses, including depreciation) of providing goods or services to the general
30 public on a continuing basis are to be financed or recovered primarily through user charges; or

- 1 (ii) whenever the legislature has decided that periodic determination of revenue earned, expenses
2 incurred, or net income is appropriate for capital maintenance, public policy, management control, accountability,
3 or other purposes; and
- 4 (b) the internal service fund type, which accounts for the financing of goods or services provided by one
5 department or agency to other departments or agencies of state government or to other governmental entities
6 on a cost-reimbursed basis;
- 7 (3) the fiduciary fund category, which includes trust and agency custodial fund types used to account
8 for assets held by state government in a trustee capacity or as an agent for individuals, private organizations,
9 other governmental entities, or other funds. These include the:
- 10 (a) private purpose trust fund type;
- 11 (b) investment trust fund type;
- 12 (c) pension and other employee benefit trust fund type; and
- 13 (d) agency custodial fund type.
- 14 (4) the higher education funds, which include:
- 15 (a) the current fund, which accounts for money deposited in the state treasury that is used to pay current
16 operating costs relating to instruction, research, public service, and allied support operations and programs
17 conducted within the Montana university system. The financial activities of the current fund are subdivided, for
18 operational purposes, into the four following subfunds to serve the purpose indicated:
- 19 (i) The unrestricted subfund segregates that portion of the current fund's financial resources that can be
20 expended for general operations and is free of externally imposed restrictions, except those imposed by the
21 legislature.
- 22 (ii) The restricted subfund segregates that portion of the current fund's financial resources that can be
23 expended for general operations but only for purposes imposed by sources external to the board of regents and
24 the legislature.
- 25 (iii) The designated subfund segregates that portion of the current fund's financial resources that is
26 associated with general operations but is separately classified in order to accumulate costs that are to be
27 recharged as allocated to other funds or subfunds, identifies financial activities related to special organized
28 activities of educational departments in which the activity is fully supported by supplemental assessments, and
29 identifies special supply and facility fees that are approved for collections beyond normal course fees and their
30 disposition.

1 (iv) The auxiliary subfund segregates that portion of the current fund's financial resources that is devoted
 2 to providing essential on-campus services primarily to students, faculty, or staff in which a fee that is directly
 3 related to but does not necessarily equal the cost of the service provided is charged to the consumer.

4 (b) the student loan fund, which accounts for money deposited in the state treasury that may be loaned
 5 to students, faculty, or staff for purposes related to education, organized research, or public services by the
 6 Montana university system;

7 (c) the endowment fund, which accounts for money deposited in the state treasury by the Montana
 8 university system in which the principal portion of the amount received is nonexpendable but is available for
 9 investment. Expendable earnings on endowment funds are to be transferred to appropriate operating funds
 10 pursuant to prevailing administrative requirements.

11 (d) the annuity and life income fund, which accounts for money deposited in the state treasury by the
 12 Montana university system under an agreement by which the money is made available on the condition that the
 13 receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor
 14 or others designated by the donor over a specified period of time;

15 (e) the plant fund, which accounts for those financial resources allocated to or received by the Montana
 16 university system for capital outlay purposes or to retire long-term debts associated with construction or
 17 acquisition of fixed assets and the net accumulative results of these activities; and

18 (f) the ~~agency~~ custodial fund, which accounts for money deposited in the state treasury for which the
 19 Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff,
 20 and qualified organizations."

21

22 **Section 4.** Section 17-2-105, MCA, is amended to read:

23 **"17-2-105. Maintenance of fund and account records and interfund loans.** (1) The state treasurer
 24 shall record receipts and disbursements for treasury funds and shall maintain fund records in a manner that
 25 reflects the total cash and invested balance of each fund. The state treasurer shall also maintain records of
 26 individual funds within the debt service, ~~agency~~ custodial, capital projects, and trust fund types in a manner that
 27 reflects the total cash and invested balance of each fund. When necessary to meet federal or other requirements
 28 that money be segregated in the treasury, the state treasurer may establish accounts, funds, or subfunds within
 29 any fund type listed in 17-2-102.

30 (2) (a) For the purpose of supplying deficiencies in the general fund, the state treasurer may temporarily

1 borrow from other treasury funds, excluding pension trust funds, providing that the loan is recorded in the state
 2 accounting records. Except as provided in subsection (2)(b), the loan does not bear interest. A fund may not be
 3 so impaired that all proper demands on the fund cannot be met.

4 (b) If a loan to the general fund is made from a fund that retains its own interest, the department shall
 5 repay the loan with interest at a rate established by the state treasurer based on the estimated interest rate the
 6 funds would have earned if the funds had not been borrowed."

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8 **Section 5.** Section 17-2-202, MCA, is amended to read:

9 **"17-2-202. Retention of agency money.** The department of administration may, in its discretion, permit
 10 any state agency to retain in its possession, under conditions the department of administration may prescribe,
 11 ~~moneys~~ money that would otherwise be deposited in the ~~agency~~ custodial fund as defined in 17-2-102. The
 12 department of administration may cancel this permission and require the deposit of the ~~moneys~~ money with the
 13 state treasurer. However, the state treasurer, with the consent of the board of investments, shall designate
 14 depositories for the ~~moneys~~ money and securities and require indemnifying bonds or pledged securities sufficient
 15 to adequately and properly secure the amounts deposited in the depositories."

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17 **Section 6.** Section 17-8-101, MCA, is amended to read:

18 **"17-8-101. Appropriation and disbursement of money from treasury.** (1) For purposes of complying
 19 with Article VIII, section 14, of the Montana constitution, money deposited in the general fund, the special revenue
 20 fund type (except money deposited in the treasury from nonstate and nonfederal sources restricted by law or by
 21 the terms of an agreement, such as a contract, trust agreement, or donation), and the capital projects fund type,
 22 with the exception of refunds authorized in subsection (4), may be paid out of the treasury only on appropriation
 23 made by law.

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

28 (a) by appropriation; or

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

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

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

7 (5) Authority to expend appropriated money may be transferred from one state agency to another,
8 provided that the original purpose of the appropriation is maintained.

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

12 (7) The creation of accounts in the enterprise fund or the internal service fund must be approved by the
13 department, using conformity with generally accepted accounting principles as the primary approval criteria. The
14 department shall report annually to the office of budget and program planning and the legislative fiscal analyst
15 on the nature, status, and justification for all new accounts in the enterprise fund and the internal service fund.
16 The report must be provided in an electronic format.

17 (8) Enterprise and internal service funds must be appropriated if they are used as a part of a program
18 that is not an enterprise or internal service function and that otherwise requires an appropriation. An enterprise
19 fund that is required by law to transfer money to the general fund or to any other appropriated fund is subject to
20 appropriation. The payment of funds into an internal service fund must be authorized by law."

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22 **Section 7.** Section 20-9-201, MCA, is amended to read:

23 **"20-9-201. Definitions and application.** (1) As used in this title, unless the context clearly indicates
24 otherwise, "fund" means a separate detailed account of receipts and expenditures for a specific purpose as
25 authorized by law or by the superintendent of public instruction under the provisions of subsection (2). Funds are
26 classified as follows:

27 (a) A "budgeted fund" means any fund for which a budget must be adopted in order to expend money
28 from the fund. The general fund, transportation fund, bus depreciation reserve fund, tuition fund, retirement fund,
29 debt service fund, building reserve fund, adult education fund, nonoperating fund, and any other funds designated
30 by the legislature are budgeted funds.

1 (b) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend money
 2 on deposit in the fund. The school food services fund, miscellaneous programs fund, building fund, lease or rental
 3 agreement fund, traffic education fund, interlocal cooperative fund, internal service fund, impact aid fund,
 4 enterprise fund, ~~agency~~ custodial fund, extracurricular fund, metal mines tax reserve fund, endowment fund,
 5 litigation reserve fund, and any other funds designated by the legislature are nonbudgeted funds.

6 (2) The school financial administration provisions of this title apply to all money of any elementary or high
 7 school district. Elementary and high school districts shall record the receipt and disbursement of all money in
 8 accordance with generally accepted accounting principles. The superintendent of public instruction has general
 9 supervisory authority as prescribed by law over the school financial administration provisions, as they relate to
 10 elementary and high school districts. The superintendent of public instruction shall adopt rules necessary to
 11 secure compliance with the law.

12 (3) Except as otherwise provided by law, whenever the trustees of a district determine that a fund is
 13 inactive and will no longer be used, the trustees shall close the fund by transferring all cash and other account
 14 balances to any fund considered appropriate by the trustees if the fund does not have a cash or fund balance
 15 deficit."

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17 **Section 8.** Section 39-3-213, MCA, is amended to read:

18 **"39-3-213. Disposition of wages.** (1) The commissioner of labor may deposit wages collected under
 19 parts 2 and 4 of this chapter into the wage collection fund and with respect to wages deposited into the fund shall
 20 attempt to make payment of wages to the entitled person. Wages deposited into the wage collection fund do not
 21 bear interest. The wage collection fund is ~~an agency~~ a custodial fund as provided in 17-2-102(3)(d). The payment
 22 of wages collected may be made by means of state warrants.

23 (2) A warrant issued pursuant to subsection (1) that remains unclaimed for more than 6 months from the
 24 date of issuance must be returned to the state treasurer to be stale-dated in accordance with 17-8-303."

25

26 **Section 9.** Section 90-6-304, MCA, is amended to read:

27 **"90-6-304. (Temporary) Accounts established.** (1) There is within the state ~~agency~~ custodial fund type
 28 a hard-rock mining impact account. Money is payable into this account from payments made by a mining
 29 developer in compliance with the written guarantee from the developer to meet the increased costs of public
 30 services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall draw

1 warrants from this account upon order of the board.

2 (2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this
3 trust account, there is established a reserve amount not to exceed \$100,000.

4 (a) Money within the hard-rock mining impact trust account may be used:

5 (i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

6 (ii) to establish and maintain the reserve amount; and

7 (iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

8 (b) Money within the hard-rock mining impact trust account may be used for the administrative and
9 operating expenses of the board if:

10 (i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the
11 administrative and operating expenses of the board; or

12 (ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial
13 responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

14 (3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117.
15 After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then
16 establishing and maintaining the reserve amount of \$100,000, as provided in subsection (2) of this section, the
17 remaining money must be segregated within the account by county of origin. (Terminates June 30, 2027--sec.
18 1, Ch. 213, L. 2017.)

19 **90-6-304. (Effective July 1, 2027) Accounts established.** (1) There is within the state ~~agency custodial~~
20 fund type a hard-rock mining impact account. Money is payable into this account from payments made by a
21 mining developer in compliance with the written guarantee from the developer to meet the increased costs of
22 public services and facilities as specified in the impact plan provided for in 90-6-307. The state treasurer shall
23 draw warrants from this account upon order of the board.

24 (2) There is within the state special revenue fund a hard-rock mining impact trust account. Within this
25 trust account, there is established a reserve amount not to exceed \$100,000.

26 (a) Money within the hard-rock mining impact trust account may be used:

27 (i) for the administrative and operating expenses of the board, as provided by 90-6-303(4);

28 (ii) to establish and maintain the reserve amount; and

29 (iii) for distribution to the counties of origin, as provided by 90-6-331 and this section.

30 (b) Money within the hard-rock mining impact trust account may be used for the administrative and

1 operating expenses of the board if:

2 (i) the revenue provided under 15-37-117(1)(b) is less than the amount appropriated for the
3 administrative and operating expenses of the board; or

4 (ii) the use of the reserve amount of revenue is necessary to allow the board to meet its quasi-judicial
5 responsibilities under 90-6-307, 90-6-311, or 90-6-403(3).

6 (3) Money is payable into the hard-rock mining impact trust account under the provisions of 15-37-117.
7 After first deducting the administrative and operating expenses of the board, as provided in 90-6-303, and then
8 establishing and maintaining the reserve amount of \$100,000, as provided in subsection (2) of this section, the
9 remaining money must be segregated within the account by county of origin. The state treasurer shall draw
10 warrants from this account upon order of the board."

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12 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 2019.

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- END -