

HOUSE BILL NO. 477

INTRODUCED BY KADAS, ECK, GRINDE, HARPER,  
MAZUREK, DOHERTY, DRISCOLL, STANG, BRADLEY,  
HALLIGAN, S. RICE, BACHINI, VAN VALKENBURG,  
SVRCEK, TOWE, FRITZ, DARKO, CRIPPEN, THOMAS,  
COBB, SWYSGOOD, MERCER, HARP, TVEIT, D. BROWN,  
THAYER, BENEDICT, GRADY  
BY REQUEST OF THE GOVERNOR

IN THE HOUSE

JANUARY 30, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

JANUARY 31, 1991                   FIRST READING.

MARCH 7, 1991                    COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

MARCH 8, 1991                    PRINTING REPORT.

ON MOTION, TAKEN FROM SECOND READING  
AND REREFERRED TO THE COMMITTEE  
ON APPROPRIATIONS.

MARCH 27, 1991                   COMMITTEE RECOMMEND BILL  
DO PASS. REPORT ADOPTED.

MARCH 28, 1991                   PRINTING REPORT.

SECOND READING, DO PASS.

ENGROSSING REPORT.

ON MOTION, RULES SUSPENDED. BILL  
PLACED ON THIRD READING THIS DAY.

THIRD READING, PASSED.  
AYES, 90; NOES, 10.

TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 28, 1991                   INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FIRST READING.

APRIL 5, 1991                    COMMITTEE RECOMMEND BILL BE

CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

APRIL 13, 1991

SECOND READING, CONCURRED IN.

APRIL 15, 1991

THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 17, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 18, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *477*  
 2 INTRODUCED BY *Kadon Cole*  
 3 BY REQUEST OF THE GOVERNOR *Steve Bradley*  
 4 *Richard Delk*  
 5 A BILL FOR AN ACT ENTITLED: AN ACT ESTABLISHING THE  
 6 MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS  
 7 FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY  
 8 COUNCIL; PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
 9 APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; AMENDING  
 10 SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

STATEMENT OF INTENT

11  
 12  
 13 A statement of intent is required for this bill because  
 14 [sections 4 and 7] authorize the department of commerce to  
 15 adopt rules for the administration of the microbusiness  
 16 finance program and for the nomination of candidates to the  
 17 microbusiness advisory council. [This act] is intended to  
 18 provide a significant portion of the capital for a network  
 19 of institutions that will, taken together, provide access  
 20 throughout Montana to small loans for economically sound and  
 21 feasible microbusiness projects that because of the high  
 22 costs and diseconomies of scale of small lending or  
 23 unconventional collateral are unlikely to receive financing  
 24 from conventional public or private sources. The rules must  
 25 ensure that a certified microbusiness development

1 corporation receiving funds under this program:  
 2 (1) is prepared and qualified to provide or furnish  
 3 access to management training and technical assistance to  
 4 loan applicants and to conduct credit investigation and  
 5 analysis and revolving loan fund administration in a prudent  
 6 and professional manner; and  
 7 (2) has identified adequate sources of operating income  
 8 and sufficient prospective business clients.  
 9 Ensuring management training capability, prudent  
 10 revolving loan fund administration, and adequate operating  
 11 income and market base must be balanced against the  
 12 requirement to achieve geographic and rural-to-urban equity  
 13 and equity for minorities, women, and low-income persons.  
 14 The rules must require that applicants to be certified  
 15 as microbusiness development corporations submit cooperative  
 16 proposals that propose to serve a multicounty region of the  
 17 state and incorporate as partners or have the explicit  
 18 approval of a significant number of development institutions  
 19 and service providers within the communities to be served,  
 20 including but not limited to local governments, certified  
 21 community lead organizations, financial institutions,  
 22 business incubators, business assistance groups, women, and  
 23 representatives of low-income and minority populations.  
 24 Interest rates paid to the department by certified  
 25 microbusiness development corporations receiving development

1 loans must be at least sufficient, when the development loan  
 2 fund is fully invested in development loans, to cover the  
 3 department's administrative costs of the microbusiness  
 4 finance program. Rates generally must be kept at the minimum  
 5 necessary to provide for the department's administrative  
 6 costs in order to provide the corporations with an interest  
 7 earnings spread to be used for their own operating expenses.

8 Development loans generally must be interest-only loans,  
 9 renewable at terms not to exceed 8 years. When the  
 10 department chooses not to renew an interest-only development  
 11 loan that has come to term and the corporation receiving the  
 12 loan has administered its funds according to the program's  
 13 criteria, the department shall attempt to negotiate an  
 14 amortization schedule for repaying the loan that does not  
 15 disrupt the operations or earnings of the corporation.

16 For maximum interest rates that certified microbusiness  
 17 development corporations may charge on microbusiness loans,  
 18 the rules must attempt to ensure that microbusiness  
 19 development corporations comply with federal and state usury  
 20 laws and other federal and state statutes and regulations  
 21 regarding maximum rates to be charged by financial  
 22 institutions. The department shall develop guidelines  
 23 designed to reflect prevailing market conditions and  
 24 specific loan risk and portfolio risk and may establish  
 25 specific rate limits based on standard industry benchmarks,

1 such as the New York prime rate, with the objective of  
 2 allowing modest interest premiums, on the order of 1% to 3%  
 3 above prevailing market rates, to be charged.

4 For minimum interest rates on microbusiness loans, the  
 5 rules must consider prevailing market conditions and  
 6 established industry benchmarks, such as the New York prime  
 7 rate, in attempting to ensure that microbusiness development  
 8 corporations are charging at least a prevailing market rate  
 9 for loans of similar nature, term, and risk.

10  
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 NEW SECTION. **Section 1.** Short title. [Sections 1  
 13 through 9] may be cited as the "Microbusiness Development  
 14 Act".

15 NEW SECTION. **Section 2.** Legislative findings and  
 16 purpose. (1) The legislature finds and declares that:

17 (a) it is the policy of the state to foster and  
 18 encourage economic development within the state in order to  
 19 promote the general welfare of the people;

20 (b) no program exists by which the state encourages and  
 21 assists in the creation, development, and financing of  
 22 businesses with fewer than 10 full-time equivalent employees  
 23 and gross revenues of less than \$500,000 a year, which  
 24 represent a significant component of and potential for  
 25 growth in the state's economy; and

1 (c) neither the public sector nor the private sector  
2 currently satisfies the financial needs of these businesses.

3 (2) The purpose of [sections 1 through 9] is to create  
4 a program to encourage and assist in the creation,  
5 development, and financing of businesses with fewer than 10  
6 full-time equivalent employees and gross revenues of less  
7 than \$500,000 a year.

8 (3) The process of certification of microbusiness  
9 development corporations and selection among competing  
10 proposals for development loans must be open and competitive  
11 and allow access to the competition to all interested  
12 communities and organizations and must provide for selecting  
13 for award of development loans those projects that are best  
14 qualified according to the criteria established under  
15 [sections 4 through 6].

16 NEW SECTION. Section 3. Definitions. As used in  
17 [sections 1 through 9], the following definitions apply:

18 (1) "Certified community lead organization" means an  
19 organization that has sponsored community certification  
20 under the certified communities program of the department.

21 (2) "Certified microbusiness development corporation"  
22 means a microbusiness development corporation certified  
23 pursuant to [section 6].

24 (3) "Council" means the microbusiness advisory council  
25 established in [section 7].

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

3 (5) "Development loan" means money loaned to a  
4 certified microbusiness development corporation by the  
5 department for the purpose of making microbusiness loans  
6 under the provisions of [sections 1 through 9].

7 (6) "Microbusiness development corporation" means a  
8 nonprofit corporation organized and existing under the laws  
9 of the state to provide training, technical assistance, and  
10 access to capital for the startup or expansion of qualified  
11 microbusinesses.

12 (7) "Microbusiness loan" means a loan made from or  
13 guaranteed by a revolving loan fund contributed to by the  
14 microbusiness finance program.

15 (8) "Program" means the microbusiness finance program  
16 established in [section 4].

17 (9) "Qualified microbusiness" means a business  
18 enterprise located in the state that produces goods or  
19 provides services and has fewer than 10 full-time equivalent  
20 employees and annual gross revenues of less than \$500,000.

21 (10) "Revolving loan fund" means a fund required to be  
22 established by a certified microbusiness development  
23 corporation that receives a development loan.

24 NEW SECTION. Section 4. Microbusiness finance program  
25 -- powers and duties of department. There is a microbusiness

1 finance program administered by the department. The  
2 department shall adopt rules to implement the provisions of  
3 [sections 1 through 9], including but not limited to:

4 (1) establishing criteria and procedures for certifying  
5 microbusiness development corporations;

6 (2) establishing criteria and procedures to select from  
7 competing development loan applications and to award  
8 development loans to certified microbusiness development  
9 corporations;

10 (3) establishing criteria and procedures to be followed  
11 by certified microbusiness development corporations that  
12 administer revolving loan funds supported by the program;

13 (4) determining the amount and method of computation  
14 and payment of interest rates charged to recipients of  
15 development loans and specifying amortization schedules and  
16 other terms and conditions for development loans as may be  
17 necessary. However, the rate of interest may not be less  
18 than 3% a year.

19 (5) establishing criteria for determining  
20 nonperformance and declaring default in the administration  
21 of development loans and requiring the refund of defaulted  
22 development loan funds to the microbusiness development loan  
23 account;

24 (6) establishing criteria for satisfactory performance  
25 in development loan administration to determine eligibility

1 for renewal of development loans or for additional  
2 development loans;

3 (7) establishing guidelines for maximum and minimum  
4 interest rates that may be charged by certified  
5 microbusiness development corporations on microbusiness  
6 loans; and

7 (8) dividing the state into not more than 12  
8 multicounty service regions within each of which not more  
9 than one microbusiness development corporation may be  
10 certified or funded at any time. However, a corporation that  
11 is certified as a statewide microbusiness development  
12 corporation under [section 6] may offer specialized services  
13 to constituents within regions having a certified regional  
14 microbusiness development corporation.

15 NEW SECTION. **Section 5. Microbusiness development loan**  
16 **account and finance program administrative account --**  
17 **criteria -- limitations.** (1) There is in the state special  
18 revenue fund a microbusiness development loan account into  
19 which the funds appropriated pursuant to [section 11] must  
20 be deposited. The department may make development loans from  
21 the account in amounts not to exceed \$250,000 a loan to a  
22 certified microbusiness development corporation.

23 (2) There is in the state special revenue fund a  
24 microbusiness finance program administrative account into  
25 which all interest received on development loans, service

1 charges or fees received from certified microbusiness  
 2 development corporations, grants, donations, and private or  
 3 public income, including general fund appropriations for  
 4 administrative costs, must be deposited. Money in the  
 5 administrative account may be transferred to the development  
 6 loan account or be used to pay the costs of the program,  
 7 including personnel, travel, equipment, supplies, consulting  
 8 costs, and other operating expenses of the program.

9 (3) Subject to subsection (1), a certified  
 10 microbusiness development corporation that receives a  
 11 development loan may apply for an additional loan after 1  
 12 year following approval of the previous loan, if the  
 13 applicant meets the performance criteria established by the  
 14 department.

15 (4) To establish the criteria for making development  
 16 loans, the department shall consider:

17 (a) the plan for providing services to microbusinesses;

18 (b) the scope of services to be provided by the  
 19 certified microbusiness development corporation;

20 (c) geographic representation of all regions of the  
 21 state, including both urban and rural communities;

22 (d) the plan for providing service to minorities,  
 23 women, and low-income persons;

24 (e) the ability of the corporation to provide business  
 25 training and technical assistance to microbusiness clients;

1 (f) the ability of the corporation, with its plan, to:  
 2 (i) monitor and provide financial oversight of  
 3 recipients of microbusiness loans;  
 4 (ii) administer a revolving loan fund; and  
 5 (iii) investigate and qualify financing proposals and to  
 6 service credit accounts;  
 7 (g) sources and sufficiency of operating funds for the  
 8 certified microbusiness development corporation; and  
 9 (h) the intent of the corporation, with its plan and  
 10 written indications of local institutional support, to  
 11 provide services to a designated multicounty region of the  
 12 state.

13 (5) Development loan funds may be used by a certified  
 14 microbusiness development corporation to:

15 (a) satisfy matching fund requirements for other state,  
 16 federal, or private grants;

17 (b) establish a revolving loan fund from which the  
 18 certified microbusiness development corporation may make  
 19 loans to qualified microbusinesses, provided that a single  
 20 loan does not exceed \$20,000 and the outstanding balance of  
 21 all loans to a microbusiness or a project participated in by  
 22 more than one microbusiness or to two or more  
 23 microbusinesses in which any one person holds more than a  
 24 20% equity share does not exceed \$20,000;

25 (c) establish a guarantee fund from which the certified

1 microbusiness development corporation may guarantee loans  
 2 made by financial institutions to qualified microbusinesses.  
 3 However, a single guarantee may not exceed \$20,000, and the  
 4 aggregate of all guarantees to a microbusiness or a project  
 5 participated in by more than one microbusiness or to two or  
 6 more microbusinesses in which any one person holds more than  
 7 a 20% equity share may not exceed \$20,000.

8 (6) Development loan funds may not be:

9 (a) loaned for relending or investment in stocks,  
 10 bonds, or other securities or for property not intended for  
 11 use in production by the recipient of the loan; or

12 (b) used to pay the operating costs of a certified  
 13 microbusiness development corporation. However, interest  
 14 income earned from the proceeds of a development loan may be  
 15 used to pay operating expenses.

16 (7) Certified microbusiness development corporations  
 17 are required to match development loans from the program  
 18 with contributions to their revolving loan fund from other  
 19 sources on a ratio of at least \$1 from other sources for  
 20 each \$3 from the program. Matching contributions may come  
 21 from a public or private source other than the program and  
 22 may be in the form of equity capital, loans, or grants.

23 (8) Development loans must be made pursuant to a  
 24 development loan agreement and may be amortization or term  
 25 loans, bear interest at less than the market rate, be

1 renewable or callable, and contain other terms and  
 2 conditions considered appropriate by the department that are  
 3 consistent with the purposes of and with rules promulgated  
 4 to implement [sections 1 through 9].

5 (9) (a) Unless subject to federal law or rule, each  
 6 certified microbusiness development corporation that  
 7 receives a development loan under [sections 1 through 9]  
 8 shall pay the cost of an audit of its operations to be  
 9 conducted at least once every 2 years. The department shall  
 10 designate an auditor to conduct the audit.

11 (b) If an audit is performed under a requirement of  
 12 federal law or rule, the department shall waive the audit  
 13 required in subsection (9)(a) with respect to all issues  
 14 addressed by the federal audit report. However, the  
 15 department may require an audit of matters that are not, in  
 16 the department's judgment, addressed by the federal  
 17 report--for example, verification of compliance with  
 18 requirements specific to the program, such as job-generation  
 19 standards and reporting.

20 (10) A certified microbusiness development corporation  
 21 that is in default for nonperformance under rules  
 22 established by the department may be required to refund the  
 23 outstanding balance of loans awarded prior to the default  
 24 declaration. A development loan is secured by a first lien  
 25 on the receivables of the corporation receiving the loan.



1        **NEW SECTION. Section 6. Certification of microbusiness**  
 2 **development corporations.** The department may certify:  
 3        (1) a microbusiness development corporation when it  
 4 determines that the corporation:  
 5        (a) has developed a viable plan for providing training,  
 6 access to financing, and technical assistance for qualified  
 7 microbusinesses;  
 8        (b) has broad-based community support in a designated  
 9 multicounty region of the state, as reflected, for example,  
 10 by the membership of its board of directors; and  
 11        (c) has an adequate source of operating capital; or  
 12        (2) a statewide microbusiness development corporation  
 13 when the department determines that the corporation meets  
 14 the conditions under subsection (1) and, in addition:  
 15        (a) has a viable plan to provide specialized services  
 16 to constituents throughout the state;  
 17        (b) does not preempt or duplicate efforts of  
 18 microbusiness development corporations within local  
 19 communities; and  
 20        (c) obtains written indications of support from local  
 21 development organizations in the communities in which it  
 22 plans to offer its services.  
 23        **NEW SECTION. Section 7. Microbusiness advisory council**  
 24 **-- appointment of members -- organization.** (1) There is a  
 25 microbusiness advisory council composed of 13 members

1 appointed by the governor from a list of candidates  
 2 submitted by the director of the department after the  
 3 department provides by rule for a process of requesting and  
 4 receiving nominations from the public. No more than seven of  
 5 the council members may live in the same congressional  
 6 district as the congressional districts existed on December  
 7 31, 1990. At least four members must be representatives of  
 8 certified community lead organizations. At least two of the  
 9 four community representatives shall reside in communities  
 10 with a population of less than 15,000. At least four members  
 11 must be owners of qualified microbusinesses as defined in  
 12 [section 3]. The membership must include representation of  
 13 minorities, women, and low-income persons.  
 14        (2) (a) At the first meeting of the council, members  
 15 shall draw lots to determine six members whose terms expire  
 16 June 30, 1992, and seven members whose terms expire June 30,  
 17 1993.  
 18        (b) Members serving terms beginning after the  
 19 expiration of the terms set in subsection (2)(a) shall serve  
 20 2-year terms.  
 21        (c) A member appointed to fill an unexpired term shall  
 22 serve until the term expires.  
 23        (3) The members of the council shall elect a chairman  
 24 and other officers as they determine necessary.  
 25        (4) The council shall meet at least once each quarter

1 and more often as the chairman or a majority of the members  
2 determine necessary.

3 (5) Members of the council are not entitled to  
4 compensation for their services except for reimbursement of  
5 expenses as provided in 2-18-501 through 2-18-503.

6 (6) The function of the council is to advise the  
7 department regarding the creation, operation, and  
8 maintenance of the program and the policies and operations  
9 affecting the certified microbusiness development  
10 corporations.

11 NEW SECTION. Section 8. Authority to accept funds --  
12 statutory appropriation -- funding authorization. (1) The  
13 department may accept grants, donations, and other private  
14 and public income, including payments of interest on loans  
15 made by the department under the provisions of [sections 1  
16 through 9] and fees charged by the department. The  
17 department shall deposit all money received under this  
18 section in the microbusiness finance program administrative  
19 account established in [section 5].

20 (2) The money in the microbusiness finance program  
21 administrative account is statutorily appropriated to the  
22 department, as provided in 17-7-502, for the purposes stated  
23 in [sections 1 through 9].

24 NEW SECTION. Section 9. Audit and evaluation of the  
25 microbusiness finance program -- report to legislature. An

1 audit, an analysis of costs and benefits, and an evaluation  
2 of the microbusiness finance program must be conducted by  
3 the office of the legislative auditor, beginning October 1,  
4 1994, and the findings of this audit, analysis, and  
5 evaluation must be reported to the legislature no later than  
6 January 15, 1995.

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

8 "17-7-502. Statutory appropriations -- definition --  
9 requisites for validity. (1) A statutory appropriation is an  
10 appropriation made by permanent law that authorizes spending  
11 by a state agency without the need for a biennial  
12 legislative appropriation or budget amendment.

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

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

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

21 (3) The following laws are the only laws containing  
22 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
23 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
24 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
25 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;

1 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
 2 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 3 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
 4 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
 5 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
 6 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
 7 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
 8 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
 9 and section 13, House Bill No. 861, Laws of 1985; and  
 10 [section 8].

11 (4) There is a statutory appropriation to pay the  
 12 principal, interest, premiums, and costs of issuing, paying,  
 13 and securing all bonds, notes, or other obligations, as due,  
 14 that have been authorized and issued pursuant to the laws of  
 15 Montana. Agencies that have entered into agreements  
 16 authorized by the laws of Montana to pay the state  
 17 treasurer, for deposit in accordance with 17-2-101 through  
 18 17-2-107, as determined by the state treasurer, an amount  
 19 sufficient to pay the principal and interest as due on the  
 20 bonds or notes have statutory appropriation authority for  
 21 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
 22 664, L. 1987, the inclusion of 39-71-2504 terminates June  
 23 30, 1991.)"

24 NEW SECTION. Section 11. Appropriation -- approval of  
 25 three-fourths of members required -- severability. (1)

1 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 2 recognizing that the provisions of [sections 1 through 9]  
 3 are consistent with 17-6-304 and 17-6-305 and that [sections  
 4 1 through 9] will result in long-term benefits to the  
 5 economy of the state, there is appropriated to the  
 6 department of commerce from the in-state investment fund in  
 7 17-6-306 during the biennium beginning July 1, 1991,  
 8 \$3,250,000 for the microbusiness finance program established  
 9 in [section 4]. Funds appropriated from the in-state  
 10 investment fund must be deposited in the microbusiness  
 11 development loan account and are appropriated to the  
 12 department for the purpose of making development loans  
 13 pursuant to [sections 1 through 9].

14 (2) Because subsection (1) appropriates money from the  
 15 principal of the permanent coal tax trust fund, the  
 16 appropriation requires a vote of three-fourths of the  
 17 members of each house of the legislature. If [this act] is  
 18 approved by a vote of less than three-fourths of the members  
 19 of each house, this section is void and the remaining  
 20 sections of [this act] are valid and remain in effect in all  
 21 valid applications upon enactment.

22 NEW SECTION. Section 12. Coordination instruction. If  
 23 \_\_\_ Bill No. \_\_\_ [LC 15] is passed and approved and if it  
 24 includes provisions eliminating the in-state investment  
 25 fund, the code commissioner is instructed to substitute

LC 0873/01

1 "permanent coal tax trust" for "in-state investment fund"  
2 where it appears in [this act], unless the context requires  
3 otherwise.

4 NEW SECTION. Section 13. Effective date. [This act] is  
5 effective July 1, 1991.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0477, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


An act establishing the microbusiness development act; creating the microbusiness finance program; creating the microbusiness advisory council; providing a statutory appropriation; providing an appropriation for the in-state investment fund; amending section 17-7-502, MCA; and providing an effective date.

ASSUMPTIONS:

1. Microbusinesses are business enterprises located in the state that produce goods and services with fewer than ten full-time equivalent employees and annual gross revenues of less than \$500,000.
2. The proposed legislation establishes a revolving loan fund for microbusiness development. Section 11 appropriates \$3.25 million from the in-state investment fund to a microbusiness development account in the state special revenue fund.
3. Principle payments from microbusiness loans will be deposited into the microbusiness development loan account. Interest earnings and other program income will be deposited into a microbusiness finance program administrative account.
4. The proposed legislation would authorize general fund for the administrative costs of the program. Administrative costs following the initial year of operation will be derived from the interest earnings on development loans.
5. The Small Business Development Center of the Business Development Division in the Department of Commerce will operate the proposed program.
6. The program will require 1.00 FTE administrative officer and .50 FTE secretary. Program staff will draft and implement administrative rules, evaluate loan applications, award development loans, monitor training and job creation performance by microbusiness development corporations, manage and disburse loan funds, and internally audit revolving loan fund administration.
7. The projected number of development loans is based on the number of local development organizations which have expressed interest in the program and capable of performing the required training.
8. Under current law, the general fund and state equalization aid account would receive the interest earnings from the \$3.25 million transferred from the in-state investment fund to the microbusiness development loan account. Interest earnings on the in-state investment fund will decrease following the transfer of funds.

FISCAL IMPACT:

see next page

  
ROD SUNDESTED, BUDGET DIRECTOR      2-7-91      DATE  
Office of Budget and Program Planning

  
MIKE KADAS, PRIMARY SPONSOR      2-7-91      DATE

Fiscal Note for HB0477, as introduced.

**HB 477**

FISCAL IMPACT:

Department of Commerce:

	FY 92			FY 93		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
<u>Expenditures:</u>						
FTE	0.00	1.50	1.50	0.00	1.50	1.50
Personal Services	0	41,683	41,683	0	41,683	41,683
Operating Costs	0	33,234	33,234	0	35,557	35,557
Equipment	0	6,350	6,350	0	1,500	1,500
Loans	0	<u>1,250,000</u>	<u>1,250,000</u>	0	<u>2,000,000</u>	<u>2,000,000</u>
Total	0	1,331,267	1,331,267	0	2,078,740	2,078,740
<u>Funding:</u>						
General Fund	0	64,600	64,600	0	0	0
State Special	0	<u>1,266,667</u>	<u>1,266,667</u>	0	<u>2,078,740</u>	<u>2,078,740</u>
Total	0	1,331,267	1,331,267	0	2,078,740	2,078,740
<u>Revenues:</u>						
Interest Earnings (02)	0	16,667	16,667	0	80,000	80,000

In-State Investment Fd.:

Revenues:

Interest Earnings (01)	114,706	0	(114,706)	114,076	0	(114,706)
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Funding:

General Fund	97,500	0	(97,500)	97,500	0	(97,500)
State Equalization Aid	<u>17,206</u>	<u>0</u>	<u>(17,206)</u>	<u>17,206</u>	<u>0</u>	<u>(17,206)</u>
Total	114,706	0	(114,706)	114,076	0	(114,706)

LONG-RANGE IMPACTS:

1. The \$3.25 million dollar loan fund will be reinvested once every three years. National statistics indicate that 30% of new jobs are filled by individuals receiving unemployment insurance or welfare assistance.
2. The estimated costs of the office of the Legislative Auditor are \$16,000 in personal services in FY94 and FY95.

TECHNICAL NOTE:

1. Disposition of principal payments to in-state investment or into the microbusiness development loan account could be stipulated.
2. Depositing general fund appropriations into the microbusiness finance program administrative account, which is a state special revenue accounts, double-appropriates the administrative costs of the program.

**HB 477**

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0477, as introduced, revised.

DESCRIPTION OF PROPOSED LEGISLATION:


An act establishing the microbusiness development act; creating the microbusiness finance program; creating the microbusiness advisory council; providing a statutory appropriation; providing an appropriation for the in-state investment fund; amending section 17-7-502, MCA; and providing an effective date.

ASSUMPTIONS:

1. Microbusinesses are business enterprises located in the state that produce goods and services with fewer than ten full-time equivalent employees and annual gross revenues of less than \$500,000.
2. The proposed legislation establishes a revolving loan fund for microbusiness development. Section 11 appropriates \$3.25 million from the in-state investment fund to a microbusiness development account in the state special revenue fund.
3. Principal payments from microbusiness loans will be deposited into the microbusiness development loan account. Interest earnings and other program income will be deposited into a microbusiness finance program administrative account.
4. The proposed legislation appropriates general fund for the administrative cost of the program. Administrative cost following the initial year of operation will be derived from the interest earnings on development loans.
5. The Small Business Development Center of the Business Development Division in the Department of Commerce will operate the proposed program.
6. The program will require 1.00 FTE administrative officer and .50 FTE secretary. Program staff will draft and implement administrative rules, evaluate loan applications, award development loans, monitor training and job creation performance by microbusiness development corporations, manage and disburse loan funds, and internally audit revolving loan fund administration.
7. The projected number of development loans is based on the number of local development organizations which have expressed interest in the program and are capable of performing the required training.
8. Under current law, the general fund and state equalization aid account would receive the interest earnings from the \$3.25 million transferred from the in-state investment fund to the microbusiness development loan account. Interest earnings on the in-state investment fund will decrease following the transfer of funds.

FISCAL IMPACT:

see next page

  
ROD SUNDSTED, BUDGET DIRECTOR  
Office of Budget and Program Planning

3/19/91  
DATE

  
MIKE KADAS, PRIMARY SPONSOR  
DATE

3-21-91

Fiscal Note for HB0477, as introduced, revised. **HB477-2**

Fiscal Note Request, HBO477, as introduced, revised.

Form BD-15

Page 2

FISCAL IMPACT:

Department of Commerce:

<u>Expenditures:</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0.00	1.50	1.50	0.00	1.50	1.50
Personal Services	0	41,683	41,683	0	41,683	41,683
Operating costs	0	33,234	33,234	0	35,557	35,557
Equipment	0	6,350	6,350	0	1,500	1,500
Loans	0	<u>1,250,000</u>	<u>1,250,000</u>	0	<u>2,000,000</u>	<u>2,000,000</u>
Total	0	1,331,267	1,331,267	0	2,078,740	2,078,740
<u>Funding:</u>						
General Fund	0	64,600	64,600	0	0	0
State Special	0	<u>1,266,667</u>	<u>1,266,667</u>	0	<u>2,078,740</u>	<u>2,078,740</u>
Total	0	1,331,267	1,331,267	0	2,078,740	2,078,740

Revenues:

Interest Earnings (02)	0	16,667	16,667	0	80,000	80,000
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In-State Investment Fund:

Revenues:

Interest Earnings (01)	32,126	0	(32,126)	176,150	0	(176,150)
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Fund Distribution:

General Fund	27,307	0	(27,307)	149,727	0	(149,727)
State Equalization Aid	<u>4,819</u>	<u>0</u>	<u>(4,819)</u>	<u>26,423</u>	<u>0</u>	<u>(26,423)</u>
Total	32,126	0	(32,126)	176,150	0	(176,150)

Impact to General Fund (decrease)			(27,307)			(149,727)
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LONG-RANGE IMPACTS:

1. The \$3.25 million dollar loan fund will be reinvested once every three years. National statistics indicate that 30% of new jobs are filled by individuals receiving unemployment insurance or welfare assistance.
2. The estimated costs of the office of the Legislative Auditor are \$16,000 in personal services in FY94 and FY95.

TECHNICAL NOTES:

1. Disposition of principal payments to in-state investment or into the microbusiness development loan account could be stipulated.
2. Depositing general fund appropriations into the microbusiness finance program administrative account, which is a state special revenue account, unnecessarily double-appropriates the administrative cost of the program.

HB 477-2



APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 477

INTRODUCED BY KADAS, ECK, GRINDE, HARPER,  
MAZUREK, DOHERTY, DRISCOLL, STANG, BRADLEY,  
HALLIGAN, S. RICE, BACHINI, VAN VALKENBURG,  
SVRCEK, TOWE, FRITZ, DARKO, CRIPPEN, THOMAS,  
COBB, SWYSGOOD, MERCER, HARP, TVEIT, D. BROWN,  
THAYER, BENEDICT, GRADY  
BY REQUEST OF THE GOVERNOR

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS  
FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY  
COUNCIL; CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL;  
PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING  
AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION  
17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE DATES."

STATEMENT OF INTENT

A statement of intent is required for this bill because  
[sections 4 and 7] authorize the department of commerce to  
adopt rules for the administration of the microbusiness  
finance program and for the nomination of candidates to the  
microbusiness advisory council. [This act] is intended to  
provide a significant portion of the capital for a network

of institutions that will, taken together, provide access  
throughout Montana to small loans for economically sound and  
feasible microbusiness projects that because of the high  
costs and diseconomies of scale of small lending or  
unconventional collateral are unlikely to receive financing  
from conventional public or private sources. The rules must  
ensure that a certified microbusiness development  
corporation receiving funds under this program:

(1) is prepared and qualified to provide or furnish  
access to management training and technical assistance to  
loan applicants and to conduct credit investigation and  
analysis and revolving loan fund administration in a prudent  
and professional manner; and

(2) has identified adequate sources of operating income  
and sufficient prospective business clients; AND

(3) INCLUDES IN THE MEMBERSHIP OF ITS BOARD OF  
DIRECTORS REPRESENTATION OF MINORITIES, WOMEN, AND  
LOW-INCOME PERSONS.

Ensuring management training capability, prudent  
revolving loan fund administration, and adequate operating  
income and market base must be balanced against the  
requirement to achieve geographic and rural-to-urban equity  
and equity for minorities, women, and low-income persons.

The rules must require that applicants to be certified  
as microbusiness development corporations submit cooperative

1 proposals that propose to serve a multicounty region of the  
 2 state and incorporate as partners or have the explicit  
 3 approval of a significant number of development institutions  
 4 and service providers within the communities to be served,  
 5 including but not limited to local governments, certified  
 6 community lead organizations, financial institutions,  
 7 business incubators, business assistance groups, women, and  
 8 representatives of low-income and minority populations.

9 Interest rates paid to the department by certified  
 10 microbusiness development corporations receiving development  
 11 loans must be at least sufficient, when the development loan  
 12 fund is fully invested in development loans, to cover the  
 13 department's administrative costs of the microbusiness  
 14 finance program. Rates generally must be kept at the minimum  
 15 necessary to provide for the department's administrative  
 16 costs in order to provide the corporations with an interest  
 17 earnings spread to be used for their own operating expenses.

18 Development loans generally must be interest-only loans,  
 19 renewable at terms not to exceed 8 years. When the  
 20 department chooses not to renew an interest-only development  
 21 loan that has come to term and the corporation receiving the  
 22 loan has administered its funds according to the program's  
 23 criteria, the department shall attempt to negotiate an  
 24 amortization schedule for repaying the loan that does not  
 25 disrupt the operations or earnings of the corporation.

1 For maximum interest rates that certified microbusiness  
 2 development corporations may charge on microbusiness loans,  
 3 the rules must attempt to ensure that microbusiness  
 4 development corporations comply with federal and state usury  
 5 laws and other federal and state statutes and regulations  
 6 regarding maximum rates to be charged by financial  
 7 institutions. The department shall develop guidelines  
 8 designed to reflect prevailing market conditions and  
 9 specific loan risk and portfolio risk and may establish  
 10 specific rate limits based on standard industry benchmarks,  
 11 such as the New York prime rate, with the objective of  
 12 allowing modest interest premiums, on the order of 1% to 3%  
 13 above prevailing market rates, to be charged.

14 For minimum interest rates on microbusiness loans, the  
 15 rules must consider prevailing market conditions and  
 16 established industry benchmarks, such as the New York prime  
 17 rate, in attempting to ensure that microbusiness development  
 18 corporations are charging at least a prevailing market rate  
 19 for loans of similar nature, term, and risk.

20  
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. **Section 1.** Short title. [Sections 1  
 23 through 9] may be cited as the "Microbusiness Development  
 24 Act".

25 NEW SECTION. **Section 2.** Legislative findings and

1 purpose. (1) The legislature finds and declares that:

2 (a) it is the policy of the state to foster and  
3 encourage economic development within the state in order to  
4 promote the general welfare of the people;

5 (b) no program exists by which the state encourages and  
6 assists in the creation, development, and financing of  
7 businesses with fewer than 10 full-time equivalent employees  
8 and gross revenues of less than \$500,000 a year, which  
9 represent a significant component of and potential for  
10 growth in the state's economy; and

11 (c) neither the public sector nor the private sector  
12 currently satisfies the financial needs of these businesses.

13 (2) The purpose of [sections 1 through 9] is to create  
14 a program to encourage and assist in the creation,  
15 development, and financing of businesses with fewer than 10  
16 full-time equivalent employees and gross revenues of less  
17 than \$500,000 a year.

18 (3) The process of certification of microbusiness  
19 development corporations and selection among competing  
20 proposals for development loans must be open and competitive  
21 and allow access to the competition to all interested  
22 communities and organizations and must provide for selecting  
23 for award of development loans those projects that are best  
24 qualified according to the criteria established under  
25 [sections 4 through 6].

1 NEW SECTION. **Section 3. Definitions.** As used in  
2 [sections 1 through 9], the following definitions apply:

3 (1) "Certified community lead organization" means an  
4 organization that has sponsored community certification  
5 under the certified communities program of the department.

6 (2) "Certified microbusiness development corporation"  
7 means a microbusiness development corporation certified  
8 pursuant to [section 6].

9 (3) "Council" means the microbusiness advisory council  
10 established in [section 7].

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

13 (5) "Development loan" means money loaned to a  
14 certified microbusiness development corporation by the  
15 department for the purpose of making microbusiness loans  
16 under the provisions of [sections 1 through 9].

17 (6) "Microbusiness development corporation" means a  
18 nonprofit corporation organized and existing under the laws  
19 of the state to provide training, technical assistance, and  
20 access to capital for the startup or expansion of qualified  
21 microbusinesses.

22 (7) "Microbusiness loan" means a loan made from or  
23 guaranteed by a revolving loan fund contributed to by the  
24 microbusiness finance program.

25 (8) "Program" means the microbusiness finance program

1 established in [section 4].

2 (9) "Qualified microbusiness" means a business  
3 enterprise located in the state that produces goods or  
4 provides services and has fewer than 10 full-time equivalent  
5 employees and annual gross revenues of less than \$500,000.

6 (10) "Revolving loan fund" means a fund required to be  
7 established by a certified microbusiness development  
8 corporation that receives a development loan.

9 NEW SECTION. Section 4. Microbusiness finance program  
10 -- powers and duties of department. There is a microbusiness  
11 finance program administered by the department. The  
12 department shall adopt rules to implement the provisions of  
13 [sections 1 through 9], including but not limited to:

14 (1) establishing criteria and procedures for certifying  
15 microbusiness development corporations;

16 (2) establishing criteria and procedures to select from  
17 competing development loan applications and to award  
18 development loans to certified microbusiness development  
19 corporations;

20 (3) establishing criteria and procedures to be followed  
21 by certified microbusiness development corporations that  
22 administer revolving loan funds supported by the program;

23 (4) determining the amount and method of computation  
24 and payment of interest rates charged to recipients of  
25 development loans and specifying amortization schedules and

1 other terms and conditions for development loans as may be  
2 necessary. However, the rate of interest may not be less  
3 than 3% a year.

4 (5) establishing criteria for determining  
5 nonperformance and declaring default in the administration  
6 of development loans and requiring the refund of defaulted  
7 development loan funds to the microbusiness development loan  
8 account;

9 (6) establishing criteria for satisfactory performance  
10 in development loan administration to determine eligibility  
11 for renewal of development loans or for additional  
12 development loans;

13 (7) establishing guidelines for maximum and minimum  
14 interest rates that may be charged by certified  
15 microbusiness development corporations on microbusiness  
16 loans; and

17 (8) dividing the state into not more than 12  
18 multicounty service regions within each of which not more  
19 than one microbusiness development corporation may be  
20 certified-or funded at any time. However, a corporation that  
21 is certified FUNDED as a statewide microbusiness development  
22 corporation under [section 6] may offer specialized services  
23 to constituents within regions having a certified FUNDED  
24 regional microbusiness development corporation.

25 NEW SECTION. Section 5. Microbusiness development loan

1 account and finance program administrative account --  
 2 criteria -- limitations. (1) There is in the state special  
 3 revenue fund a microbusiness development loan account into  
 4 which the funds appropriated pursuant to [section 11] AND  
 5 MONEY RECEIVED IN REPAYMENT OF THE PRINCIPAL OF DEVELOPMENT  
 6 LOANS must be deposited. The department may make development  
 7 loans from the account in amounts not to exceed \$250,000 a  
 8 loan to a certified microbusiness development corporation.

9 (2) There is in the state special revenue fund a  
 10 microbusiness finance program administrative account into  
 11 which all interest received on development loans, service  
 12 charges or fees received from certified microbusiness  
 13 development corporations, grants, donations, and private or  
 14 public income, ~~including general fund appropriations for~~  
 15 ~~administrative costs,~~ must be deposited. Money in the  
 16 administrative account may be transferred to the development  
 17 loan account or be used to pay the costs of the program,  
 18 including personnel, travel, equipment, supplies, consulting  
 19 costs, and other operating expenses of the program.

20 (3) Subject to subsection (1), a certified  
 21 microbusiness development corporation that receives a  
 22 development loan may apply for an additional loan after 1  
 23 year following approval of the previous loan, if the  
 24 applicant meets the performance criteria established by the  
 25 department.

1 (4) To establish the criteria for making development  
 2 loans, the department shall consider:

3 (a) the plan for providing services to microbusinesses;  
 4 (b) the scope of services to be provided by the  
 5 certified microbusiness development corporation;

6 (c) geographic representation of all regions of the  
 7 state, including both urban and rural communities;

8 (d) the plan for providing service to minorities,  
 9 women, and low-income persons;

10 (e) the ability of the corporation to provide business  
 11 training and technical assistance to microbusiness clients;

12 (f) the ability of the corporation, with its plan, to:  
 13 (i) monitor and provide financial oversight of  
 14 recipients of microbusiness loans;

15 (ii) administer a revolving loan fund; and

16 (iii) investigate and qualify financing proposals and to  
 17 service credit accounts;

18 (g) sources and sufficiency of operating funds for the  
 19 certified microbusiness development corporation; and

20 (h) the intent of the corporation, with its plan and  
 21 written indications of local institutional support, to  
 22 provide services to a designated multicounty region of the  
 23 state.

24 (5) Development loan funds may be used by a certified  
 25 microbusiness development corporation to:

1 (a) satisfy matching fund requirements for other state,  
2 federal, or private grants;

3 (b) establish a revolving loan fund from which the  
4 certified microbusiness development corporation may make  
5 loans to qualified microbusinesses, provided that a single  
6 loan does not exceed \$20,000 and the outstanding balance of  
7 all loans to a microbusiness or a project participated in by  
8 more than one microbusiness or to two or more  
9 microbusinesses in which any one person holds more than a  
10 20% equity share does not exceed \$20,000;

11 (c) establish a guarantee fund from which the certified  
12 microbusiness development corporation may guarantee loans  
13 made by financial institutions to qualified microbusinesses.  
14 However, a single guarantee may not exceed \$20,000, and the  
15 aggregate of all guarantees to a microbusiness or a project  
16 participated in by more than one microbusiness or to two or  
17 more microbusinesses in which any one person holds more than  
18 a 20% equity share may not exceed \$20,000.

19 (6) Development loan funds may not be:

20 (a) loaned for relending or investment in stocks,  
21 bonds, or other securities or for property not intended for  
22 use in production by the recipient of the loan; or

23 (b) used to:

24 (I) REFINANCE A NONPERFORMING LOAN HELD BY A FINANCIAL  
25 INSTITUTION; OR

1 (II) pay the operating costs of a certified  
2 microbusiness development corporation. However, interest  
3 income earned from the proceeds of a development loan may be  
4 used to pay operating expenses.

5 (7) Certified microbusiness development corporations  
6 are required to match development loans from the program  
7 with contributions to their revolving loan fund from other  
8 sources on a ratio of at least \$1 from other sources for  
9 each \$3 from the program. Matching contributions may come  
10 from a public or private source other than the program and  
11 may be in the form of equity capital, loans, or grants.

12 (8) Development loans must be made pursuant to a  
13 development loan agreement and may be amortization or term  
14 loans, bear interest at less than the market rate, be  
15 renewable or, BE callable, and contain other terms and  
16 conditions considered appropriate by the department that are  
17 consistent with the purposes of and with rules promulgated  
18 to implement [sections 1 through 9].

19 (9) (a) Unless subject to federal law or rule, each  
20 certified microbusiness development corporation that  
21 receives a development loan under [sections 1 through 9]  
22 shall pay the cost of an audit of its operations to be  
23 conducted at least once every 2 years. The department shall  
24 designate an auditor to conduct the audit.

25 (b) IF an audit is performed under a requirement of

1 federal law or rule, the department shall waive the audit  
 2 required in subsection (9)(a) with respect to all issues  
 3 addressed by the federal audit report. However, the  
 4 department may require an audit of matters that are not, in  
 5 the department's judgment, addressed by the federal  
 6 report--for example, verification of compliance with  
 7 requirements specific to the program, such as job-generation  
 8 standards and reporting.

9 (10) A certified microbusiness development corporation  
 10 that is in default for nonperformance under rules  
 11 established by the department may be required to refund the  
 12 outstanding balance of DEVELOPMENT loans awarded prior to  
 13 the default declaration. A development loan is secured by a  
 14 first lien on the receivables of the corporation receiving  
 15 the loan.

16 NEW SECTION. Section 6. Certification of microbusiness  
 17 development corporations. The department may certify:

18 (1) a microbusiness development corporation when it  
 19 determines that the corporation:

20 (a) has developed a viable plan for providing training,  
 21 access to financing, and technical assistance for qualified  
 22 microbusinesses;

23 (b) has broad-based community support in a designated  
 24 multicounty region of the state, as reflected, for example,  
 25 by the membership of its board of directors; and

1 (c) has an adequate source of operating capital; or  
 2 (2) a statewide microbusiness development corporation  
 3 when the department determines that the corporation meets  
 4 the conditions under subsection (1) and, in addition:  
 5 (a) has a viable plan to provide specialized services  
 6 to constituents throughout the state;  
 7 (b) does not preempt or duplicate efforts of  
 8 microbusiness development corporations within local  
 9 communities; and  
 10 (c) obtains written indications of support from local  
 11 development organizations in the communities in which it  
 12 plans to offer its services.

13 NEW SECTION. Section 7. Microbusiness advisory council  
 14 -- appointment of members -- organization -- NONVOTING  
 15 LEGISLATIVE CONSULTING PANEL. (1) There SUBJECT TO THE  
 16 PROVISIONS OF SUBSECTION (5), THERE is a microbusiness  
 17 advisory council composed of 13 members appointed by the  
 18 governor from a list of candidates submitted by the director  
 19 of the department after the department provides by rule for  
 20 a process of requesting and receiving nominations from the  
 21 public. No more than seven of the council members may live  
 22 in the same congressional district as the congressional  
 23 districts existed on December 31, 1990. At least four THREE  
 24 members must be representatives of certified community lead  
 25 organizations. At least two of the four THREE community

1 representatives shall reside in communities with a  
2 population of less than 15,000. At least four THREE members  
3 must be owners of qualified microbusinesses as defined in  
4 [section 3]. AT LEAST TWO MEMBERS MUST HAVE EXPERTISE IN  
5 ADMINISTERING REVOLVING LOAN FUNDS THAT PRIMARILY SERVE  
6 MICROBUSINESSES. The membership must include representation  
7 of minorities, women, and low-income persons.

8 (2) (a) At the first meeting of the council, members  
9 shall draw lots to determine six members whose terms expire  
10 June 30, 1992, and seven members whose terms expire June 30,  
11 1993.

12 (b) Members serving terms beginning after the  
13 expiration of the terms set in subsection (2)(a) shall serve  
14 2-year terms.

15 (c) A member appointed to fill an unexpired term shall  
16 serve until the term expires.

17 (3) The members of the council shall elect a chairman  
18 and other officers as they determine necessary.

19 (4) The council shall meet at least once each quarter  
20 and more often as the chairman or a majority of the members  
21 determine necessary.

22 (5) (A) THERE IS A LEGISLATIVE CONSULTING PANEL OF FOUR  
23 MEMBERS. THE PANEL:

24 (1) SHALL MEET WITH THE COUNCIL, PARTICIPATE IN  
25 DELIBERATIONS OF THE COUNCIL, AND ADVISE THE COUNCIL IN

1 PERFORMANCE OF ITS FUNCTIONS UNDER SUBSECTION (7) BUT MAY  
2 NOT VOTE ON ANY MOTION BEFORE THE COUNCIL; AND

3 (II) CONSISTS OF:

4 (A) TWO REPRESENTATIVES, INCLUDING ONE FROM EACH PARTY,  
5 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;  
6 AND

7 (B) TWO SENATORS, INCLUDING ONE FROM EACH PARTY,  
8 APPOINTED BY THE COMMITTEE ON COMMITTEES.

9 (B) THE MEMBERS:

10 (1) MUST BE APPOINTED ON OR BEFORE THE 10TH DAY OF EACH  
11 REGULAR SESSION OF THE LEGISLATURE AND SHALL SERVE UNTIL THE  
12 CONVENING OF THE NEXT REGULAR SESSION OF THE LEGISLATURE. IF  
13 A VACANCY ON THE PANEL OCCURS DURING A LEGISLATIVE INTERIM,  
14 THAT VACANCY MUST BE FILLED IN THE SAME MANNER AS THE  
15 ORIGINAL APPOINTMENT.

16 (II) ARE ENTITLED TO COMPENSATION IN THE SAME MANNER AS  
17 MEMBERS OF THE COUNCIL, AS PROVIDED IN SUBSECTION (6).

18 ~~†5†~~(6) Members of the council are not entitled to  
19 compensation for their services except for reimbursement of  
20 expenses as provided in 2-18-501 through 2-18-503.

21 ~~†6†~~(7) The function of the council is to advise the  
22 department regarding the creation, operation, and  
23 maintenance of the program and the policies and operations  
24 affecting the certified microbusiness development  
25 corporations.



1        NEW SECTION. Section 8. Authority to accept funds --  
 2        statutory appropriation -- funding authorization. (1) The  
 3        department may accept grants, donations, and other private  
 4        and public income, including payments of interest on loans  
 5        made by the department under the provisions of [sections 1  
 6        through 9] and fees charged by the department. The  
 7        department shall deposit all money received under this  
 8        section in the microbusiness finance program administrative  
 9        account established in [section 5].

10        (2) The money in the microbusiness finance program  
 11        administrative account is statutorily appropriated to the  
 12        department, as provided in 17-7-502, for the purposes stated  
 13        in [sections 1 through 9].

14        NEW SECTION. Section 9. Audit and evaluation of the  
 15        microbusiness finance program -- report to legislature. An  
 16        audit, an analysis of costs and benefits, and an evaluation  
 17        of the microbusiness finance program must be conducted by  
 18        the office of the legislative auditor, beginning October 1,  
 19        1994, and the findings of this audit, analysis, and  
 20        evaluation must be reported to the legislature no later than  
 21        January 15, 1995.

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

23        "17-7-502. Statutory appropriations -- definition --  
 24        requisites for validity. (1) A statutory appropriation is an  
 25        appropriation made by permanent law that authorizes spending

1        by a state agency without the need for a biennial  
 2        legislative appropriation or budget amendment.

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

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

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

11        (3) The following laws are the only laws containing  
 12        statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 13        10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 14        15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
 15        15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
 16        17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
 17        19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 18        19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
 19        20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
 20        23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
 21        53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
 22        75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
 23        82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
 24        and section 13, House Bill No. 861, Laws of 1985; and  
 25        [section 8].

1 (4) There is a statutory appropriation to pay the  
 2 principal, interest, premiums, and costs of issuing, paying,  
 3 and securing all bonds, notes, or other obligations, as due,  
 4 that have been authorized and issued pursuant to the laws of  
 5 Montana. Agencies that have entered into agreements  
 6 authorized by the laws of Montana to pay the state  
 7 treasurer, for deposit in accordance with 17-2-101 through  
 8 17-2-107, as determined by the state treasurer, an amount  
 9 sufficient to pay the principal and interest as due on the  
 10 bonds or notes have statutory appropriation authority for  
 11 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
 12 664, L. 1987, the inclusion of 39-71-2504 terminates June  
 13 30, 1991.)"

14 NEW SECTION. Section 11. Appropriation -- approval of  
 15 three-fourths of members required -- severability. (1)  
 16 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 17 recognizing that the provisions of [sections 1 through 9]  
 18 are consistent with 17-6-304 and 17-6-305 and that [sections  
 19 1 through 9] will result in long-term benefits to the  
 20 economy of the state, there is appropriated to the  
 21 department of commerce from the in-state investment fund in  
 22 17-6-306 during the biennium beginning July 1, 1991,  
 23 \$3,250,000 for the microbusiness finance program established  
 24 in [section 4]. Funds appropriated from the in-state  
 25 investment fund must be deposited in the microbusiness

1 development loan account and are appropriated to the  
 2 department for the purpose of making development loans  
 3 pursuant to [sections 1 through 9].

4 (2) Because subsection (1) appropriates money from the  
 5 principal of the permanent coal tax trust fund, the  
 6 appropriation requires a vote of three-fourths of the  
 7 members of each house of the legislature. If [this act] is  
 8 approved by a vote of less than three-fourths of the members  
 9 of each house, this section is void and the remaining  
 10 sections of [this act] are valid and remain in effect in all  
 11 valid applications upon enactment.

12 NEW SECTION. SECTION 12. APPROPRIATION. THERE IS  
 13 APPROPRIATED TO THE MICROBUSINESS FINANCE PROGRAM  
 14 ADMINISTRATIVE ACCOUNT CREATED IN [SECTION 5] FROM THE  
 15 GENERAL FUND \$64,600 FOR THE FISCAL YEAR ENDING JUNE 30,  
 16 1992.

17 NEW SECTION. Section 13. Coordination instruction. If  
 18 Senate Bill No. 26 [LC 15] is passed and approved and if it  
 19 includes provisions eliminating the in-state investment  
 20 fund, the code commissioner is instructed to substitute  
 21 "permanent coal tax trust" for "in-state investment fund"  
 22 where it appears in [this act], unless the context requires  
 23 otherwise.

24 NEW SECTION. Section 14. Effective date DATES. [This  
 25 act]-is (1) [SECTIONS 1 THROUGH 9], [SECTION 13], AND [THIS

HB 0477/02

1 SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.  
2 (2) [SECTIONS 10 THROUGH 12] ARE effective July 1,  
3 1991.

-End-

1                   HOUSE BILL NO. 477  
 2           INTRODUCED BY KADAS, ECK, GRINDE, HARPER,  
 3           MAZUREK, DOHERTY, DRISCOLL, STANG, BRADLEY,  
 4           HALLIGAN, S. RICE, BACHINI, VAN VALKENBURG,  
 5           SVRCEK, TOWE, FRITZ, DARKO, CRIPPEN, THOMAS,  
 6           COBB, SWYSGOOD, MERCER, HARP, TVEIT, D. BROWN,  
 7           THAYER, BENEDICT, GRADY  
 8           BY REQUEST OF THE GOVERNOR

9  
 10   A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
 11   MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS  
 12   FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY  
 13   COUNCIL; CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL;  
 14   PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
 15   APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING  
 16   AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION  
 17   17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE DATES."

18  
 19                   STATEMENT OF INTENT

20       A statement of intent is required for this bill because  
 21   [sections 4 and 7] authorize the department of commerce to  
 22   adopt rules for the administration of the microbusiness  
 23   finance program and for the nomination of candidates to the  
 24   microbusiness advisory council. [This act] is intended to  
 25   provide a significant portion of the capital for a network

There are no changes in this bill,  
 and will not be reprinted. Please  
 refer to yellow copy for complete  
 text.



SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
April 5, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 477 (third reading copy -- blue), respectfully report that House Bill No. 477 be amended and as so amended be concurred in:

1. Page 19, line 15.

Following: "(1)"

Insert: "(a)"

2. Page 19, line 20.

Following: "appropriated"

Insert: ", subject to the provisions of subsections (1)(b) and (1)(c),"

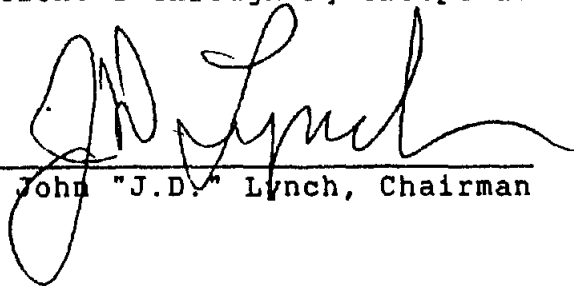
3. Page 20.

Following: line 3

Insert: "(b) The funds appropriated in subsection (1)(a) from the in-state investment fund to the department of commerce must remain in the in-state investment fund until the department has decided to make a loan to a certified microbusiness development corporation under the provisions of [section 5]. When the department has made the decision to make a loan to a certified microbusiness development corporation under the provisions of [section 5], the director of the department shall notify the state treasurer of the decision and direct him to transfer an amount equal to the amount of the loan from the in-state investment fund to the microbusiness development loan account created in [section 5].

(c) Funds may not be transferred from the in-state investment fund to the microbusiness development loan account for the purposes of [sections 1 through 9] except as provided in subsection (1)(b)."

Signed:



John "J.D." Lynch, Chairman

*JJK* 4-5-91  
Asst. Coord.

*SB* 4-5 11:05  
Sec. of Senate

SENATE  
HB 477

## 1 HOUSE BILL NO. 477

2 INTRODUCED BY KADAS, ECK, GRINDE, HARPER,  
 3 MAZUREK, DOHERTY, DRISCOLL, STANG, BRADLEY,  
 4 HALLIGAN, S. RICE, BACHINI, VAN VALKENBURG,  
 5 SVRCEK, TOWE, FRITZ, DARKO, CRIPPEN, THOMAS,  
 6 COBB, SWYSGOOD, MERCER, HARP, TVEIT, D. BROWN,  
 7 THAYER, BENEDICT, GRADY  
 8 BY REQUEST OF THE GOVERNOR

9  
 10 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
 11 MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS  
 12 FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY  
 13 COUNCIL; CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL;  
 14 PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
 15 APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING  
 16 AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION  
 17 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE DATES."

## 18 STATEMENT OF INTENT

19  
 20 A statement of intent is required for this bill because  
 21 [sections 4 and 7] authorize the department of commerce to  
 22 adopt rules for the administration of the microbusiness  
 23 finance program and for the nomination of candidates to the  
 24 microbusiness advisory council. [This act] is intended to  
 25 provide a significant portion of the capital for a network

1 of institutions that will, taken together, provide access  
 2 throughout Montana to small loans for economically sound and  
 3 feasible microbusiness projects that because of the high  
 4 costs and diseconomies of scale of small lending or  
 5 unconventional collateral are unlikely to receive financing  
 6 from conventional public or private sources. The rules must  
 7 ensure that a certified microbusiness development  
 8 corporation receiving funds under this program:

9 (1) is prepared and qualified to provide or furnish  
 10 access to management training and technical assistance to  
 11 loan applicants and to conduct credit investigation and  
 12 analysis and revolving loan fund administration in a prudent  
 13 and professional manner; and

14 (2) has identified adequate sources of operating income  
 15 and sufficient prospective business clients; AND

16 (3) INCLUDES IN THE MEMBERSHIP OF ITS BOARD OF  
 17 DIRECTORS REPRESENTATION OF MINORITIES, WOMEN, AND  
 18 LOW-INCOME PERSONS.

19 Ensuring management training capability, prudent  
 20 revolving loan fund administration, and adequate operating  
 21 income and market base must be balanced against the  
 22 requirement to achieve geographic and rural-to-urban equity  
 23 and equity for minorities, women, and low-income persons.

24 The rules must require that applicants to be certified  
 25 as microbusiness development corporations submit cooperative

1 proposals that propose to serve a multicounty region of the  
 2 state and incorporate as partners or have the explicit  
 3 approval of a significant number of development institutions  
 4 and service providers within the communities to be served,  
 5 including but not limited to local governments, certified  
 6 community lead organizations, financial institutions,  
 7 business incubators, business assistance groups, women, and  
 8 representatives of low-income and minority populations.

9 Interest rates paid to the department by certified  
 10 microbusiness development corporations receiving development  
 11 loans must be at least sufficient, when the development loan  
 12 fund is fully invested in development loans, to cover the  
 13 department's administrative costs of the microbusiness  
 14 finance program. Rates generally must be kept at the minimum  
 15 necessary to provide for the department's administrative  
 16 costs in order to provide the corporations with an interest  
 17 earnings spread to be used for their own operating expenses.

18 Development loans generally must be interest-only loans,  
 19 renewable at terms not to exceed 8 years. When the  
 20 department chooses not to renew an interest-only development  
 21 loan that has come to term and the corporation receiving the  
 22 loan has administered its funds according to the program's  
 23 criteria, the department shall attempt to negotiate an  
 24 amortization schedule for repaying the loan that does not  
 25 disrupt the operations or earnings of the corporation.

1 For maximum interest rates that certified microbusiness  
 2 development corporations may charge on microbusiness loans,  
 3 the rules must attempt to ensure that microbusiness  
 4 development corporations comply with federal and state usury  
 5 laws and other federal and state statutes and regulations  
 6 regarding maximum rates to be charged by financial  
 7 institutions. The department shall develop guidelines  
 8 designed to reflect prevailing market conditions and  
 9 specific loan risk and portfolio risk and may establish  
 10 specific rate limits based on standard industry benchmarks,  
 11 such as the New York prime rate, with the objective of  
 12 allowing modest interest premiums, on the order of 1% to 3%  
 13 above prevailing market rates, to be charged.

14 For minimum interest rates on microbusiness loans, the  
 15 rules must consider prevailing market conditions and  
 16 established industry benchmarks, such as the New York prime  
 17 rate, in attempting to ensure that microbusiness development  
 18 corporations are charging at least a prevailing market rate  
 19 for loans of similar nature, term, and risk.

20  
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. **Section 1.** Short title. [Sections 1  
 23 through 9] may be cited as the "Microbusiness Development  
 24 Act".

25 NEW SECTION. **Section 2.** Legislative findings and

1 **purpose.** (1) The legislature finds and declares that:

2 (a) it is the policy of the state to foster and  
3 encourage economic development within the state in order to  
4 promote the general welfare of the people;

5 (b) no program exists by which the state encourages and  
6 assists in the creation, development, and financing of  
7 businesses with fewer than 10 full-time equivalent employees  
8 and gross revenues of less than \$500,000 a year, which  
9 represent a significant component of and potential for  
10 growth in the state's economy; and

11 (c) neither the public sector nor the private sector  
12 currently satisfies the financial needs of these businesses.

13 (2) The purpose of [sections 1 through 9] is to create  
14 a program to encourage and assist in the creation,  
15 development, and financing of businesses with fewer than 10  
16 full-time equivalent employees and gross revenues of less  
17 than \$500,000 a year.

18 (3) The process of certification of microbusiness  
19 development corporations and selection among competing  
20 proposals for development loans must be open and competitive  
21 and allow access to the competition to all interested  
22 communities and organizations and must provide for selecting  
23 for award of development loans those projects that are best  
24 qualified according to the criteria established under  
25 [sections 4 through 6].

1 **NEW SECTION. Section 3. Definitions.** As used in  
2 [sections 1 through 9], the following definitions apply:

3 (1) "Certified community lead organization" means an  
4 organization that has sponsored community certification  
5 under the certified communities program of the department.

6 (2) "Certified microbusiness development corporation"  
7 means a microbusiness development corporation certified  
8 pursuant to [section 6].

9 (3) "Council" means the microbusiness advisory council  
10 established in [section 7].

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

13 (5) "Development loan" means money loaned to a  
14 certified microbusiness development corporation by the  
15 department for the purpose of making microbusiness loans  
16 under the provisions of [sections 1 through 9].

17 (6) "Microbusiness development corporation" means a  
18 nonprofit corporation organized and existing under the laws  
19 of the state to provide training, technical assistance, and  
20 access to capital for the startup or expansion of qualified  
21 microbusinesses.

22 (7) "Microbusiness loan" means a loan made from or  
23 guaranteed by a revolving loan fund contributed to by the  
24 microbusiness finance program.

25 (8) "Program" means the microbusiness finance program



1 established in [section 4].

2 (9) "Qualified microbusiness" means a business  
3 enterprise located in the state that produces goods or  
4 provides services and has fewer than 10 full-time equivalent  
5 employees and annual gross revenues of less than \$500,000.

6 (10) "Revolving loan fund" means a fund required to be  
7 established by a certified microbusiness development  
8 corporation that receives a development loan.

9 NEW SECTION. Section 4. Microbusiness finance program  
10 -- powers and duties of department. There is a microbusiness  
11 finance program administered by the department. The  
12 department shall adopt rules to implement the provisions of  
13 [sections 1 through 9], including but not limited to:

14 (1) establishing criteria and procedures for certifying  
15 microbusiness development corporations;

16 (2) establishing criteria and procedures to select from  
17 competing development loan applications and to award  
18 development loans to certified microbusiness development  
19 corporations;

20 (3) establishing criteria and procedures to be followed  
21 by certified microbusiness development corporations that  
22 administer revolving loan funds supported by the program;

23 (4) determining the amount and method of computation  
24 and payment of interest rates charged to recipients of  
25 development loans and specifying amortization schedules and

1 other terms and conditions for development loans as may be  
2 necessary. However, the rate of interest may not be less  
3 than 3% a year.

4 (5) establishing criteria for determining  
5 nonperformance and declaring default in the administration  
6 of development loans and requiring the refund of defaulted  
7 development loan funds to the microbusiness development loan  
8 account;

9 (6) establishing criteria for satisfactory performance  
10 in development loan administration to determine eligibility  
11 for renewal of development loans or for additional  
12 development loans;

13 (7) establishing guidelines for maximum and minimum  
14 interest rates that may be charged by certified  
15 microbusiness development corporations on microbusiness  
16 loans; and

17 (8) dividing the state into not more than 12  
18 multicounty service regions within each of which not more  
19 than one microbusiness development corporation may be  
20 certified-or funded at any time. However, a corporation that  
21 is certified FUNDED as a statewide microbusiness development  
22 corporation under [section 6] may offer specialized services  
23 to constituents within regions having a certified FUNDED  
24 regional microbusiness development corporation.

25 NEW SECTION. Section 5. Microbusiness development loan

1 account and finance program administrative account --  
 2 criteria -- limitations. (1) There is in the state special  
 3 revenue fund a microbusiness development loan account into  
 4 which the funds appropriated pursuant to [section 11] AND  
 5 MONEY RECEIVED IN REPAYMENT OF THE PRINCIPAL OF DEVELOPMENT  
 6 LOANS must be deposited. The department may make development  
 7 loans from the account in amounts not to exceed \$250,000 a  
 8 loan to a certified microbusiness development corporation.

9 (2) There is in the state special revenue fund a  
 10 microbusiness finance program administrative account into  
 11 which all interest received on development loans, service  
 12 charges or fees received from certified microbusiness  
 13 development corporations, grants, donations, and private or  
 14 public income, ~~including general fund appropriations for~~  
 15 ~~administrative costs,~~ must be deposited. Money in the  
 16 administrative account may be transferred to the development  
 17 loan account or be used to pay the costs of the program,  
 18 including personnel, travel, equipment, supplies, consulting  
 19 costs, and other operating expenses of the program.

20 (3) Subject to subsection (1), a certified  
 21 microbusiness development corporation that receives a  
 22 development loan may apply for an additional loan after 1  
 23 year following approval of the previous loan, if the  
 24 applicant meets the performance criteria established by the  
 25 department.

1 (4) To establish the criteria for making development  
 2 loans, the department shall consider:

- 3 (a) the plan for providing services to microbusinesses;  
 4 (b) the scope of services to be provided by the  
 5 certified microbusiness development corporation;  
 6 (c) geographic representation of all regions of the  
 7 state, including both urban and rural communities;  
 8 (d) the plan for providing service to minorities,  
 9 women, and low-income persons;  
 10 (e) the ability of the corporation to provide business  
 11 training and technical assistance to microbusiness clients;  
 12 (f) the ability of the corporation, with its plan, to:  
 13 (i) monitor and provide financial oversight of  
 14 recipients of microbusiness loans;  
 15 (ii) administer a revolving loan fund; and  
 16 (iii) investigate and qualify financing proposals and to  
 17 service credit accounts;  
 18 (g) sources and sufficiency of operating funds for the  
 19 certified microbusiness development corporation; and  
 20 (h) the intent of the corporation, with its plan and  
 21 written indications of local institutional support, to  
 22 provide services to a designated multicounty region of the  
 23 state.
- 24 (5) Development loan funds may be used by a certified  
 25 microbusiness development corporation to:

1 (a) satisfy matching fund requirements for other state,  
2 federal, or private grants;

3 (b) establish a revolving loan fund from which the  
4 certified microbusiness development corporation may make  
5 loans to qualified microbusinesses, provided that a single  
6 loan does not exceed \$20,000 and the outstanding balance of  
7 all loans to a microbusiness or a project participated in by  
8 more than one microbusiness or to two or more  
9 microbusinesses in which any one person holds more than a  
10 20% equity share does not exceed \$20,000;

11 (c) establish a guarantee fund from which the certified  
12 microbusiness development corporation may guarantee loans  
13 made by financial institutions to qualified microbusinesses.  
14 However, a single guarantee may not exceed \$20,000, and the  
15 aggregate of all guarantees to a microbusiness or a project  
16 participated in by more than one microbusiness or to two or  
17 more microbusinesses in which any one person holds more than  
18 a 20% equity share may not exceed \$20,000.

19 (6) Development loan funds may not be:

20 (a) loaned for relending or investment in stocks,  
21 bonds, or other securities or for property not intended for  
22 use in production by the recipient of the loan; or

23 (b) used to:

24 (i) REFINANCE A NONPERFORMING LOAN HELD BY A FINANCIAL  
25 INSTITUTION; OR

1 (II) pay the operating costs of a certified  
2 microbusiness development corporation. However, interest  
3 income earned from the proceeds of a development loan may be  
4 used to pay operating expenses.

5 (7) Certified microbusiness development corporations  
6 are required to match development loans from the program  
7 with contributions to their revolving loan fund from other  
8 sources on a ratio of at least \$1 from other sources for  
9 each \$3 from the program. Matching contributions may come  
10 from a public or private source other than the program and  
11 may be in the form of equity capital, loans, or grants.

12 (8) Development loans must be made pursuant to a  
13 development loan agreement and may be amortization or term  
14 loans, bear interest at less than the market rate, be  
15 renewable ~~or~~, BE callable, and contain other terms and  
16 conditions considered appropriate by the department that are  
17 consistent with the purposes of and with rules promulgated  
18 to implement [sections 1 through 9].

19 (9) (a) Unless subject to federal law or rule, each  
20 certified microbusiness development corporation that  
21 receives a development loan under [sections 1 through 9]  
22 shall pay the cost of an audit of its operations to be  
23 conducted at least once every 2 years. The department shall  
24 designate an auditor to conduct the audit.

25 (b) If an audit is performed under a requirement of

1 federal law or rule, the department shall waive the audit  
 2 required in subsection (9)(a) with respect to all issues  
 3 addressed by the federal audit report. However, the  
 4 department may require an audit of matters that are not, in  
 5 the department's judgment, addressed by the federal  
 6 report--for example, verification of compliance with  
 7 requirements specific to the program, such as job-generation  
 8 standards and reporting.

9 (10) A certified microbusiness development corporation  
 10 that is in default for nonperformance under rules  
 11 established by the department may be required to refund the  
 12 outstanding balance of DEVELOPMENT loans awarded prior to  
 13 the default declaration. A development loan is secured by a  
 14 first lien on the receivables of the corporation receiving  
 15 the loan.

16 NEW SECTION. Section 6. Certification of microbusiness  
 17 development corporations. The department may certify:

18 (1) a microbusiness development corporation when it  
 19 determines that the corporation:

20 (a) has developed a viable plan for providing training,  
 21 access to financing, and technical assistance for qualified  
 22 microbusinesses;

23 (b) has broad-based community support in a designated  
 24 multicounty region of the state, as reflected, for example,  
 25 by the membership of its board of directors; and

1 (c) has an adequate source of operating capital; or  
 2 (2) a statewide microbusiness development corporation  
 3 when the department determines that the corporation meets  
 4 the conditions under subsection (1) and, in addition:

5 (a) has a viable plan to provide specialized services  
 6 to constituents throughout the state;

7 (b) does not preempt or duplicate efforts of  
 8 microbusiness development corporations within local  
 9 communities; and

10 (c) obtains written indications of support from local  
 11 development organizations in the communities in which it  
 12 plans to offer its services.

13 NEW SECTION. Section 7. Microbusiness advisory council  
 14 -- appointment of members -- organization -- NONVOTING  
 15 LEGISLATIVE CONSULTING PANEL. (1) There SUBJECT TO THE  
 16 PROVISIONS OF SUBSECTION (5), THERE is a microbusiness  
 17 advisory council composed of 13 members appointed by the  
 18 governor from a list of candidates submitted by the director  
 19 of the department after the department provides by rule for  
 20 a process of requesting and receiving nominations from the  
 21 public. No more than seven of the council members may live  
 22 in the same congressional district as the congressional  
 23 districts existed on December 31, 1990. At least four THREE  
 24 members must be representatives of certified community lead  
 25 organizations. At least two of the four THREE community

1 representatives shall reside in communities with a  
 2 population of less than 15,000. At least four THREE members  
 3 must be owners of qualified microbusinesses as defined in  
 4 [section 3]. AT LEAST TWO MEMBERS MUST HAVE EXPERTISE IN  
 5 ADMINISTERING REVOLVING LOAN FUNDS THAT PRIMARILY SERVE  
 6 MICROBUSINESSES. The membership must include representation  
 7 of minorities, women, and low-income persons.

8 (2) (a) At the first meeting of the council, members  
 9 shall draw lots to determine six members whose terms expire  
 10 June 30, 1992, and seven members whose terms expire June 30,  
 11 1993.

12 (b) Members serving terms beginning after the  
 13 expiration of the terms set in subsection (2)(a) shall serve  
 14 2-year terms.

15 (c) A member appointed to fill an unexpired term shall  
 16 serve until the term expires.

17 (3) The members of the council shall elect a chairman  
 18 and other officers as they determine necessary.

19 (4) The council shall meet at least once each quarter  
 20 and more often as the chairman or a majority of the members  
 21 determine necessary.

22 (5) (A) THERE IS A LEGISLATIVE CONSULTING PANEL OF FOUR  
 23 MEMBERS. THE PANEL:

24 (I) SHALL MEET WITH THE COUNCIL, PARTICIPATE IN  
 25 DELIBERATIONS OF THE COUNCIL, AND ADVISE THE COUNCIL IN

1 PERFORMANCE OF ITS FUNCTIONS UNDER SUBSECTION (7) BUT MAY  
 2 NOT VOTE ON ANY MOTION BEFORE THE COUNCIL; AND

3 (II) CONSISTS OF:

4 (A) TWO REPRESENTATIVES, INCLUDING ONE FROM EACH PARTY,  
 5 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;  
 6 AND

7 (B) TWO SENATORS, INCLUDING ONE FROM EACH PARTY,  
 8 APPOINTED BY THE COMMITTEE ON COMMITTEES.

9 (B) THE MEMBERS:

10 (I) MUST BE APPOINTED ON OR BEFORE THE 10TH DAY OF EACH  
 11 REGULAR SESSION OF THE LEGISLATURE AND SHALL SERVE UNTIL THE  
 12 CONVENING OF THE NEXT REGULAR SESSION OF THE LEGISLATURE. IF  
 13 A VACANCY ON THE PANEL OCCURS DURING A LEGISLATIVE INTERIM,  
 14 THAT VACANCY MUST BE FILLED IN THE SAME MANNER AS THE  
 15 ORIGINAL APPOINTMENT.

16 (II) ARE ENTITLED TO COMPENSATION IN THE SAME MANNER AS  
 17 MEMBERS OF THE COUNCIL, AS PROVIDED IN SUBSECTION (6).

18 ~~(5)~~(6) Members of the council are not entitled to  
 19 compensation for their services except for reimbursement of  
 20 expenses as provided in 2-18-501 through 2-18-503.

21 ~~(6)~~(7) The function of the council is to advise the  
 22 department regarding the creation, operation, and  
 23 maintenance of the program and the policies and operations  
 24 affecting the certified microbusiness development  
 25 corporations.

**NEW SECTION. Section 8. Authority to accept funds --**  
 statutory appropriation -- funding authorization. (1) The  
 department may accept grants, donations, and other private  
 and public income, including payments of interest on loans  
 made by the department under the provisions of [sections 1  
 through 9] and fees charged by the department. The  
 department shall deposit all money received under this  
 section in the microbusiness finance program administrative  
 account established in [section 5].

(2) The money in the microbusiness finance program  
 administrative account is statutorily appropriated to the  
 department, as provided in 17-7-502, for the purposes stated  
 in [sections 1 through 9].

**NEW SECTION. Section 9. Audit and evaluation of the**  
**microbusiness finance program -- report to legislature.** An  
 audit, an analysis of costs and benefits, and an evaluation  
 of the microbusiness finance program must be conducted by  
 the office of the legislative auditor, beginning October 1,  
 1994, and the findings of this audit, analysis, and  
 evaluation must be reported to the legislature no later than  
 January 15, 1995.

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

"17-7-502. Statutory appropriations -- definition --  
 requisites for validity. (1) A statutory appropriation is an  
 appropriation made by permanent law that authorizes spending

by a state agency without the need for a biennial  
 legislative appropriation or budget amendment.

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

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

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

(3) The following laws are the only laws containing  
 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
 20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
 23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
 53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
 75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
 82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
 and section 13, House Bill No. 861, Laws of 1985; and  
 [section 8].

1 (4) There is a statutory appropriation to pay the  
 2 principal, interest, premiums, and costs of issuing, paying,  
 3 and securing all bonds, notes, or other obligations, as due,  
 4 that have been authorized and issued pursuant to the laws of  
 5 Montana. Agencies that have entered into agreements  
 6 authorized by the laws of Montana to pay the state  
 7 treasurer, for deposit in accordance with 17-2-101 through  
 8 17-2-107, as determined by the state treasurer, an amount  
 9 sufficient to pay the principal and interest as due on the  
 10 bonds or notes have statutory appropriation authority for  
 11 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
 12 664, L. 1987, the inclusion of 39-71-2504 terminates June  
 13 30, 1991.)"

14 NEW SECTION. Section 11. Appropriation -- approval of  
 15 three-fourths of members required -- severability. (1)(A)  
 16 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 17 recognizing that the provisions of [sections 1 through 9]  
 18 are consistent with 17-6-304 and 17-6-305 and that [sections  
 19 1 through 9] will result in long-term benefits to the  
 20 economy of the state, there is appropriated, SUBJECT TO THE  
 21 PROVISIONS OF SUBSECTIONS (1)(B) AND (1)(C), to the  
 22 department of commerce from the in-state investment fund in  
 23 17-6-306 during the biennium beginning July 1, 1991,  
 24 \$3,250,000 for the microbusiness finance program established  
 25 in [section 4]. Funds appropriated from the in-state

1 investment fund must be deposited in the microbusiness  
 2 development loan account and are appropriated to the  
 3 department for the purpose of making development loans  
 4 pursuant to [sections 1 through 9].

5 (B) THE FUNDS APPROPRIATED IN SUBSECTION (1)(A) FROM  
 6 THE IN-STATE INVESTMENT FUND TO THE DEPARTMENT OF COMMERCE  
 7 MUST REMAIN IN THE IN-STATE INVESTMENT FUND UNTIL THE  
 8 DEPARTMENT HAS DECIDED TO MAKE A LOAN TO A CERTIFIED  
 9 MICROBUSINESS DEVELOPMENT CORPORATION UNDER THE PROVISIONS  
 10 OF [SECTION 5]. WHEN THE DEPARTMENT HAS MADE THE DECISION  
 11 TO MAKE A LOAN TO A CERTIFIED MICROBUSINESS DEVELOPMENT  
 12 CORPORATION UNDER THE PROVISIONS OF [SECTION 5], THE  
 13 DIRECTOR OF THE DEPARTMENT SHALL NOTIFY THE STATE TREASURER  
 14 OF THE DECISION AND DIRECT HIM TO TRANSFER AN AMOUNT EQUAL  
 15 TO THE AMOUNT OF THE LOAN FROM THE IN-STATE INVESTMENT FUND  
 16 TO THE MICROBUSINESS DEVELOPMENT LOAN ACCOUNT CREATED IN  
 17 [SECTION 5].

18 (C) FUNDS MAY NOT BE TRANSFERRED FROM THE IN-STATE  
 19 INVESTMENT FUND TO THE MICROBUSINESS DEVELOPMENT LOAN  
 20 ACCOUNT FOR THE PURPOSES OF [SECTIONS 1 THROUGH 9] EXCEPT AS  
 21 PROVIDED IN SUBSECTION (1)(B).

22 (2) Because subsection (1) appropriates money from the  
 23 principal of the permanent coal tax trust fund, the  
 24 appropriation requires a vote of three-fourths of the  
 25 members of each house of the legislature. If [this act] is

1 approved by a vote of less than three-fourths of the members  
2 of each house, this section is void and the remaining  
3 sections of [this act] are valid and remain in effect in all  
4 valid applications upon enactment.

5 NEW SECTION. SECTION 12. APPROPRIATION. THERE IS  
6 APPROPRIATED TO THE MICROBUSINESS FINANCE PROGRAM  
7 ADMINISTRATIVE ACCOUNT CREATED IN [SECTION 5] FROM THE  
8 GENERAL FUND \$64,600 FOR THE FISCAL YEAR ENDING JUNE 30,  
9 1992.

10 NEW SECTION. Section 13. Coordination instruction. If  
11 Senate Bill No. 26 [LC 15] is passed and approved and if it  
12 includes provisions eliminating the in-state investment  
13 fund, the code commissioner is instructed to substitute  
14 "permanent coal tax trust" for "in-state investment fund"  
15 where it appears in [this act], unless the context requires  
16 otherwise.

17 NEW SECTION. Section 14. Effective date DATES. †This  
18 act†-is (1) [SECTIONS 1 THROUGH 9], [SECTION 13], AND [THIS  
19 SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

20 (2) [SECTIONS 10 THROUGH 12] ARE effective July 1,  
21 1991.

-End-



## 1 HOUSE BILL NO. 477

2 INTRODUCED BY KADAS, ECK, GRINDE, HARPER,  
 3 MAZUREK, DOHERTY, DRISCOLL, STANG, BRADLEY,  
 4 HALLIGAN, S. RICE, BACHINI, VAN VALKENBURG,  
 5 SVRCEK, TOWE, FRITZ, DARKO, CRIPPEN, THOMAS,  
 6 COBB, SWYSGOOD, MERCER, HARP, TVEIT, D. BROWN,  
 7 THAYER, BENEDICT, GRADY  
 8 BY REQUEST OF THE GOVERNOR

9  
 10 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE  
 11 MICROBUSINESS DEVELOPMENT ACT; CREATING THE MICROBUSINESS  
 12 FINANCE PROGRAM; CREATING THE MICROBUSINESS ADVISORY  
 13 COUNCIL; CREATING A NONVOTING LEGISLATIVE CONSULTING PANEL;  
 14 PROVIDING A STATUTORY APPROPRIATION; PROVIDING AN  
 15 APPROPRIATION FROM THE IN-STATE INVESTMENT FUND; PROVIDING  
 16 AN APPROPRIATION FROM THE GENERAL FUND; AMENDING SECTION  
 17 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE DATES."

## 18 STATEMENT OF INTENT

19  
 20 A statement of intent is required for this bill because  
 21 [sections 4 and 7] authorize the department of commerce to  
 22 adopt rules for the administration of the microbusiness  
 23 finance program and for the nomination of candidates to the  
 24 microbusiness advisory council. [This act] is intended to  
 25 provide a significant portion of the capital for a network

1 of institutions that will, taken together, provide access  
 2 throughout Montana to small loans for economically sound and  
 3 feasible microbusiness projects that because of the high  
 4 costs and diseconomies of scale of small lending or  
 5 unconventional collateral are unlikely to receive financing  
 6 from conventional public or private sources. The rules must  
 7 ensure that a certified microbusiness development  
 8 corporation receiving funds under this program:

9 (1) is prepared and qualified to provide or furnish  
 10 access to management training and technical assistance to  
 11 loan applicants and to conduct credit investigation and  
 12 analysis and revolving loan fund administration in a prudent  
 13 and professional manner; and

14 (2) has identified adequate sources of operating income  
 15 and sufficient prospective business clients; AND

16 (3) INCLUDES IN THE MEMBERSHIP OF ITS BOARD OF  
 17 DIRECTORS REPRESENTATION OF MINORITIES, WOMEN, AND  
 18 LOW-INCOME PERSONS.

19 Ensuring management training capability, prudent  
 20 revolving loan fund administration, and adequate operating  
 21 income and market base must be balanced against the  
 22 requirement to achieve geographic and rural-to-urban equity  
 23 and equity for minorities, women, and low-income persons.

24 The rules must require that applicants to be certified  
 25 as microbusiness development corporations submit cooperative

1 proposals that propose to serve a multicounty region of the  
 2 state and incorporate as partners or have the explicit  
 3 approval of a significant number of development institutions  
 4 and service providers within the communities to be served,  
 5 including but not limited to local governments, certified  
 6 community lead organizations, financial institutions,  
 7 business incubators, business assistance groups, women, and  
 8 representatives of low-income and minority populations.

9 Interest rates paid to the department by certified  
 10 microbusiness development corporations receiving development  
 11 loans must be at least sufficient, when the development loan  
 12 fund is fully invested in development loans, to cover the  
 13 department's administrative costs of the microbusiness  
 14 finance program. Rates generally must be kept at the minimum  
 15 necessary to provide for the department's administrative  
 16 costs in order to provide the corporations with an interest  
 17 earnings spread to be used for their own operating expenses.

18 Development loans generally must be interest-only loans,  
 19 renewable at terms not to exceed 8 years. When the  
 20 department chooses not to renew an interest-only development  
 21 loan that has come to term and the corporation receiving the  
 22 loan has administered its funds according to the program's  
 23 criteria, the department shall attempt to negotiate an  
 24 amortization schedule for repaying the loan that does not  
 25 disrupt the operations or earnings of the corporation.

1 For maximum interest rates that certified microbusiness  
 2 development corporations may charge on microbusiness loans,  
 3 the rules must attempt to ensure that microbusiness  
 4 development corporations comply with federal and state usury  
 5 laws and other federal and state statutes and regulations  
 6 regarding maximum rates to be charged by financial  
 7 institutions. The department shall develop guidelines  
 8 designed to reflect prevailing market conditions and  
 9 specific loan risk and portfolio risk and may establish  
 10 specific rate limits based on standard industry benchmarks,  
 11 such as the New York prime rate, with the objective of  
 12 allowing modest interest premiums, on the order of 1% to 3%  
 13 above prevailing market rates, to be charged.

14 For minimum interest rates on microbusiness loans, the  
 15 rules must consider prevailing market conditions and  
 16 established industry benchmarks, such as the New York prime  
 17 rate, in attempting to ensure that microbusiness development  
 18 corporations are charging at least a prevailing market rate  
 19 for loans of similar nature, term, and risk.

20  
 21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. **Section 1.** Short title. [Sections 1  
 23 through 9] may be cited as the "Microbusiness Development  
 24 Act".

25 NEW SECTION. **Section 2.** Legislative findings and

1 purpose. (1) The legislature finds and declares that:

2 (a) it is the policy of the state to foster and  
3 encourage economic development within the state in order to  
4 promote the general welfare of the people;

5 (b) no program exists by which the state encourages and  
6 assists in the creation, development, and financing of  
7 businesses with fewer than 10 full-time equivalent employees  
8 and gross revenues of less than \$500,000 a year, which  
9 represent a significant component of and potential for  
10 growth in the state's economy; and

11 (c) neither the public sector nor the private sector  
12 currently satisfies the financial needs of these businesses.

13 (2) The purpose of [sections 1 through 9] is to create  
14 a program to encourage and assist in the creation,  
15 development, and financing of businesses with fewer than 10  
16 full-time equivalent employees and gross revenues of less  
17 than \$500,000 a year.

18 (3) The process of certification of microbusiness  
19 development corporations and selection among competing  
20 proposals for development loans must be open and competitive  
21 and allow access to the competition to all interested  
22 communities and organizations and must provide for selecting  
23 for award of development loans those projects that are best  
24 qualified according to the criteria established under  
25 [sections 4 through 6].

1 NEW SECTION. **Section 3. Definitions.** As used in  
2 [sections 1 through 9], the following definitions apply:

3 (1) "Certified community lead organization" means an  
4 organization that has sponsored community certification  
5 under the certified communities program of the department.

6 (2) "Certified microbusiness development corporation"  
7 means a microbusiness development corporation certified  
8 pursuant to [section 6].

9 (3) "Council" means the microbusiness advisory council  
10 established in [section 7].

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

13 (5) "Development loan" means money loaned to a  
14 certified microbusiness development corporation by the  
15 department for the purpose of making microbusiness loans  
16 under the provisions of [sections 1 through 9].

17 (6) "Microbusiness development corporation" means a  
18 nonprofit corporation organized and existing under the laws  
19 of the state to provide training, technical assistance, and  
20 access to capital for the startup or expansion of qualified  
21 microbusinesses.

22 (7) "Microbusiness loan" means a loan made from or  
23 guaranteed by a revolving loan fund contributed to by the  
24 microbusiness finance program.

25 (8) "Program" means the microbusiness finance program

1 established in [section 4].

2 (9) "Qualified microbusiness" means a business  
3 enterprise located in the state that produces goods or  
4 provides services and has fewer than 10 full-time equivalent  
5 employees and annual gross revenues of less than \$500,000.

6 (10) "Revolving loan fund" means a fund required to be  
7 established by a certified microbusiness development  
8 corporation that receives a development loan.

9 **NEW SECTION. Section 4. Microbusiness finance program**  
10 -- **powers and duties of department.** There is a microbusiness  
11 finance program administered by the department. The  
12 department shall adopt rules to implement the provisions of  
13 [sections 1 through 9], including but not limited to:

14 (1) establishing criteria and procedures for certifying  
15 microbusiness development corporations;

16 (2) establishing criteria and procedures to select from  
17 competing development loan applications and to award  
18 development loans to certified microbusiness development  
19 corporations;

20 (3) establishing criteria and procedures to be followed  
21 by certified microbusiness development corporations that  
22 administer revolving loan funds supported by the program;

23 (4) determining the amount and method of computation  
24 and payment of interest rates charged to recipients of  
25 development loans and specifying amortization schedules and

1 other terms and conditions for development loans as may be  
2 necessary. However, the rate of interest may not be less  
3 than 3% a year.

4 (5) establishing criteria for determining  
5 nonperformance and declaring default in the administration  
6 of development loans and requiring the refund of defaulted  
7 development loan funds to the microbusiness development loan  
8 account;

9 (6) establishing criteria for satisfactory performance  
10 in development loan administration to determine eligibility  
11 for renewal of development loans or for additional  
12 development loans;

13 (7) establishing guidelines for maximum and minimum  
14 interest rates that may be charged by certified  
15 microbusiness development corporations on microbusiness  
16 loans; and

17 (8) dividing the state into not more than 12  
18 multicounty service regions within each of which not more  
19 than one microbusiness development corporation may be  
20 certified-or funded at any time. However, a corporation that  
21 is certified FUNDED as a statewide microbusiness development  
22 corporation under [section 6] may offer specialized services  
23 to constituents within regions having a certified FUNDED  
24 regional microbusiness development corporation.

25 **NEW SECTION. Section 5. Microbusiness development loan**

1 account and finance program administrative account --  
 2 criteria -- limitations. (1) There is in the state special  
 3 revenue fund a microbusiness development loan account into  
 4 which the funds appropriated pursuant to [section 11] AND  
 5 MONEY RECEIVED IN REPAYMENT OF THE PRINCIPAL OF DEVELOPMENT  
 6 LOANS must be deposited. The department may make development  
 7 loans from the account in amounts not to exceed \$250,000 a  
 8 loan to a certified microbusiness development corporation.  
 9 (2) There is in the state special revenue fund a  
 10 microbusiness finance program administrative account into  
 11 which all interest received on development loans, service  
 12 charges or fees received from certified microbusiness  
 13 development corporations, grants, donations, and private or  
 14 public income, ~~including--general--fund--appropriations--for~~  
 15 ~~administrative--costs,~~ must be deposited. Money in the  
 16 administrative account may be transferred to the development  
 17 loan account or be used to pay the costs of the program,  
 18 including personnel, travel, equipment, supplies, consulting  
 19 costs, and other operating expenses of the program.  
 20 (3) Subject to subsection (1), a certified  
 21 microbusiness development corporation that receives a  
 22 development loan may apply for an additional loan after 1  
 23 year following approval of the previous loan, if the  
 24 applicant meets the performance criteria established by the  
 25 department.

1 (4) To establish the criteria for making development  
 2 loans, the department shall consider:  
 3 (a) the plan for providing services to microbusinesses;  
 4 (b) the scope of services to be provided by the  
 5 certified microbusiness development corporation;  
 6 (c) geographic representation of all regions of the  
 7 state, including both urban and rural communities;  
 8 (d) the plan for providing service to minorities,  
 9 women, and low-income persons;  
 10 (e) the ability of the corporation to provide business  
 11 training and technical assistance to microbusiness clients;  
 12 (f) the ability of the corporation, with its plan, to:  
 13 (i) monitor and provide financial oversight of  
 14 recipients of microbusiness loans;  
 15 (ii) administer a revolving loan fund; and  
 16 (iii) investigate and qualify financing proposals and to  
 17 service credit accounts;  
 18 (g) sources and sufficiency of operating funds for the  
 19 certified microbusiness development corporation; and  
 20 (h) the intent of the corporation, with its plan and  
 21 written indications of local institutional support, to  
 22 provide services to a designated multicounty region of the  
 23 state.  
 24 (5) Development loan funds may be used by a certified  
 25 microbusiness development corporation to:

1 (a) satisfy matching fund requirements for other state,  
2 federal, or private grants;

3 (b) establish a revolving loan fund from which the  
4 certified microbusiness development corporation may make  
5 loans to qualified microbusinesses, provided that a single  
6 loan does not exceed \$20,000 and the outstanding balance of  
7 all loans to a microbusiness or a project participated in by  
8 more than one microbusiness or to two or more  
9 microbusinesses in which any one person holds more than a  
10 20% equity share does not exceed \$20,000;

11 (c) establish a guarantee fund from which the certified  
12 microbusiness development corporation may guarantee loans  
13 made by financial institutions to qualified microbusinesses.  
14 However, a single guarantee may not exceed \$20,000, and the  
15 aggregate of all guarantees to a microbusiness or a project  
16 participated in by more than one microbusiness or to two or  
17 more microbusinesses in which any one person holds more than  
18 a 20% equity share may not exceed \$20,000.

19 (6) Development loan funds may not be:

20 (a) loaned for relending or investment in stocks,  
21 bonds, or other securities or for property not intended for  
22 use in production by the recipient of the loan; or

23 (b) used to:

24 (I) REFINANCE A NONPERFORMING LOAN HELD BY A FINANCIAL  
25 INSTITUTION; OR

1 (II) pay the operating costs of a certified  
2 microbusiness development corporation. However, interest  
3 income earned from the proceeds of a development loan may be  
4 used to pay operating expenses.

5 (7) Certified microbusiness development corporations  
6 are required to match development loans from the program  
7 with contributions to their revolving loan fund from other  
8 sources on a ratio of at least \$1 from other sources for  
9 each \$3 from the program. Matching contributions may come  
10 from a public or private source other than the program and  
11 may be in the form of equity capital, loans, or grants.

12 (8) Development loans must be made pursuant to a  
13 development loan agreement and may be amortization or term  
14 loans, bear interest at less than the market rate, be  
15 renewable or, BE callable, and contain other terms and  
16 conditions considered appropriate by the department that are  
17 consistent with the purposes of and with rules promulgated  
18 to implement [sections 1 through 9].

19 (9) (a) Unless subject to federal law or rule, each  
20 certified microbusiness development corporation that  
21 receives a development loan under [sections 1 through 9]  
22 shall pay the cost of an audit of its operations to be  
23 conducted at least once every 2 years. The department shall  
24 designate an auditor to conduct the audit.

25 (b) If an audit is performed under a requirement of

1 federal law or rule, the department shall waive the audit  
 2 required in subsection (9)(a) with respect to all issues  
 3 addressed by the federal audit report. However, the  
 4 department may require an audit of matters that are not, in  
 5 the department's judgment, addressed by the federal  
 6 report--for example, verification of compliance with  
 7 requirements specific to the program, such as job-generation  
 8 standards and reporting.

9 (10) A certified microbusiness development corporation  
 10 that is in default for nonperformance under rules  
 11 established by the department may be required to refund the  
 12 outstanding balance of DEVELOPMENT loans awarded prior to  
 13 the default declaration. A development loan is secured by a  
 14 first lien on the receivables of the corporation receiving  
 15 the loan.

16 NEW SECTION. Section 6. Certification of microbusiness  
 17 development corporations. The department may certify:

18 (1) a microbusiness development corporation when it  
 19 determines that the corporation:

20 (a) has developed a viable plan for providing training,  
 21 access to financing, and technical assistance for qualified  
 22 microbusinesses;

23 (b) has broad-based community support in a designated  
 24 multicounty region of the state, as reflected, for example,  
 25 by the membership of its board of directors; and

1 (c) has an adequate source of operating capital; or  
 2 (2) a statewide microbusiness development corporation  
 3 when the department determines that the corporation meets  
 4 the conditions under subsection (1) and, in addition:

5 (a) has a viable plan to provide specialized services  
 6 to constituents throughout the state;

7 (b) does not preempt or duplicate efforts of  
 8 microbusiness development corporations within local  
 9 communities; and

10 (c) obtains written indications of support from local  
 11 development organizations in the communities in which it  
 12 plans to offer its services.

13 NEW SECTION. Section 7. Microbusiness advisory council

14 -- appointment of members -- organization -- NONVOTING

15 LEGISLATIVE CONSULTING PANEL. (1) There SUBJECT TO THE  
 16 PROVISIONS OF SUBSECTION (5), THERE is a microbusiness

17 advisory council composed of 13 members appointed by the  
 18 governor from a list of candidates submitted by the director  
 19 of the department after the department provides by rule for  
 20 a process of requesting and receiving nominations from the  
 21 public. No more than seven of the council members may live  
 22 in the same congressional district as the congressional  
 23 districts existed on December 31, 1990. At least ~~four~~ THREE  
 24 members must be representatives of certified community lead  
 25 organizations. At least two of the ~~four~~ THREE community

1 representatives shall reside in communities with a  
2 population of less than 15,000. At least four THREE members  
3 must be owners of qualified microbusinesses as defined in  
4 [section 3]. AT LEAST TWO MEMBERS MUST HAVE EXPERTISE IN  
5 ADMINISTERING REVOLVING LOAN FUNDS THAT PRIMARILY SERVE  
6 MICROBUSINESSES. The membership must include representation  
7 of minorities, women, and low-income persons.

8 (2) (a) At the first meeting of the council, members  
9 shall draw lots to determine six members whose terms expire  
10 June 30, 1992, and seven members whose terms expire June 30,  
11 1993.

12 (b) Members serving terms beginning after the  
13 expiration of the terms set in subsection (2)(a) shall serve  
14 2-year terms.

15 (c) A member appointed to fill an unexpired term shall  
16 serve until the term expires.

17 (3) The members of the council shall elect a chairman  
18 and other officers as they determine necessary.

19 (4) The council shall meet at least once each quarter  
20 and more often as the chairman or a majority of the members  
21 determine necessary.

22 (5) (A) THERE IS A LEGISLATIVE CONSULTING PANEL OF FOUR  
23 MEMBERS. THE PANEL:

24 (I) SHALL MEET WITH THE COUNCIL, PARTICIPATE IN  
25 DELIBERATIONS OF THE COUNCIL, AND ADVISE THE COUNCIL IN

1 PERFORMANCE OF ITS FUNCTIONS UNDER SUBSECTION (7) BUT MAY  
2 NOT VOTE ON ANY MOTION BEFORE THE COUNCIL; AND

3 (II) CONSISTS OF:

4 (A) TWO REPRESENTATIVES, INCLUDING ONE FROM EACH PARTY,  
5 APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;  
6 AND

7 (B) TWO SENATORS, INCLUDING ONE FROM EACH PARTY,  
8 APPOINTED BY THE COMMITTEE ON COMMITTEES.

9 (B) THE MEMBERS:

10 (I) MUST BE APPOINTED ON OR BEFORE THE 10TH DAY OF EACH  
11 REGULAR SESSION OF THE LEGISLATURE AND SHALL SERVE UNTIL THE  
12 CONVENING OF THE NEXT REGULAR SESSION OF THE LEGISLATURE. IF  
13 A VACANCY ON THE PANEL OCCURS DURING A LEGISLATIVE INTERIM,  
14 THAT VACANCY MUST BE FILLED IN THE SAME MANNER AS THE  
15 ORIGINAL APPOINTMENT.

16 (II) ARE ENTITLED TO COMPENSATION IN THE SAME MANNER AS  
17 MEMBERS OF THE COUNCIL, AS PROVIDED IN SUBSECTION (6).

18 ~~5~~(6) Members of the council are not entitled to  
19 compensation for their services except for reimbursement of  
20 expenses as provided in 2-18-501 through 2-18-503.

21 ~~6~~(7) The function of the council is to advise the  
22 department regarding the creation, operation, and  
23 maintenance of the program and the policies and operations  
24 affecting the certified microbusiness development  
25 corporations.



1       **NEW SECTION. Section 8.** Authority to accept funds --  
 2       statutory appropriation -- funding authorization. (1) The  
 3       department may accept grants, donations, and other private  
 4       and public income, including payments of interest on loans  
 5       made by the department under the provisions of [sections 1  
 6       through 9] and fees charged by the department. The  
 7       department shall deposit all money received under this  
 8       section in the microbusiness finance program administrative  
 9       account established in [section 5].

10       (2) The money in the microbusiness finance program  
 11       administrative account is statutorily appropriated to the  
 12       department, as provided in 17-7-502, for the purposes stated  
 13       in [sections 1 through 9].

14       **NEW SECTION. Section 9.** Audit and evaluation of the  
 15       microbusiness finance program -- report to legislature. An  
 16       audit, an analysis of costs and benefits, and an evaluation  
 17       of the microbusiness finance program must be conducted by  
 18       the office of the legislative auditor, beginning October 1,  
 19       1994, and the findings of this audit, analysis, and  
 20       evaluation must be reported to the legislature no later than  
 21       January 15, 1995.

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

23       "17-7-502. Statutory appropriations -- definition --  
 24       requisites for validity. (1) A statutory appropriation is an  
 25       appropriation made by permanent law that authorizes spending

1       by a state agency without the need for a biennial  
 2       legislative appropriation or budget amendment.

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

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

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

11       (3) The following laws are the only laws containing  
 12       statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
 13       10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111;  
 14       15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121;  
 15       15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404;  
 16       17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007;  
 17       19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513;  
 18       19-11-606; 19-12-301; 19-13-604; 20-6-406; 20-8-111;  
 19       20-9-361; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-1016;  
 20       23-5-1027; 27-12-206; 37-51-501; 39-71-2504; 53-6-150;  
 21       53-24-206; 61-2-406; 61-5-121; 67-3-205; 75-1-1101;  
 22       75-5-1108; 75-11-313; 76-12-123; 80-2-103; 82-11-136;  
 23       82-11-161; 90-3-301; 90-4-215; 90-4-613; 90-6-331; 90-9-306;  
 24       and section 13, House Bill No. 861, Laws of 1985; and  
 25       [section 8].

1 (4) There is a statutory appropriation to pay the  
 2 principal, interest, premiums, and costs of issuing, paying,  
 3 and securing all bonds, notes, or other obligations, as due,  
 4 that have been authorized and issued pursuant to the laws of  
 5 Montana. Agencies that have entered into agreements  
 6 authorized by the laws of Montana to pay the state  
 7 treasurer, for deposit in accordance with 17-2-101 through  
 8 17-2-107, as determined by the state treasurer, an amount  
 9 sufficient to pay the principal and interest as due on the  
 10 bonds or notes have statutory appropriation authority for  
 11 such payments. (In subsection (3), pursuant to sec. 10, Ch.  
 12 664, L. 1987, the inclusion of 39-71-2504 terminates June  
 13 30, 1991.)"

14 NEW SECTION. Section 11. Appropriation -- approval of  
 15 three-fourths of members required -- severability. (1)(A)  
 16 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 17 recognizing that the provisions of [sections 1 through 9]  
 18 are consistent with 17-6-304 and 17-6-305 and that [sections  
 19 1 through 9] will result in long-term benefits to the  
 20 economy of the state, there is appropriated, SUBJECT TO THE  
 21 PROVISIONS OF SUBSECTIONS (1)(B) AND (1)(C), to the  
 22 department of commerce from the in-state investment fund in  
 23 17-6-306 during the biennium beginning July 1, 1991,  
 24 \$3,250,000 for the microbusiness finance program established  
 25 in [section 4]. Funds appropriated from the in-state

1 investment fund must be deposited in the microbusiness  
 2 development loan account and are appropriated to the  
 3 department for the purpose of making development loans  
 4 pursuant to [sections 1 through 9].

5 (B) THE FUNDS APPROPRIATED IN SUBSECTION (1)(A) FROM  
 6 THE IN-STATE INVESTMENT FUND TO THE DEPARTMENT OF COMMERCE  
 7 MUST REMAIN IN THE IN-STATE INVESTMENT FUND UNTIL THE  
 8 DEPARTMENT HAS DECIDED TO MAKE A LOAN TO A CERTIFIED  
 9 MICROBUSINESS DEVELOPMENT CORPORATION UNDER THE PROVISIONS  
 10 OF [SECTION 5]. WHEN THE DEPARTMENT HAS MADE THE DECISION  
 11 TO MAKE A LOAN TO A CERTIFIED MICROBUSINESS DEVELOPMENT  
 12 CORPORATION UNDER THE PROVISIONS OF [SECTION 5], THE  
 13 DIRECTOR OF THE DEPARTMENT SHALL NOTIFY THE STATE TREASURER  
 14 OF THE DECISION AND DIRECT HIM TO TRANSFER AN AMOUNT EQUAL  
 15 TO THE AMOUNT OF THE LOAN FROM THE IN-STATE INVESTMENT FUND  
 16 TO THE MICROBUSINESS DEVELOPMENT LOAN ACCOUNT CREATED IN  
 17 [SECTION 5].

18 (C) FUNDS MAY NOT BE TRANSFERRED FROM THE IN-STATE  
 19 INVESTMENT FUND TO THE MICROBUSINESS DEVELOPMENT LOAN  
 20 ACCOUNT FOR THE PURPOSES OF [SECTIONS 1 THROUGH 9] EXCEPT AS  
 21 PROVIDED IN SUBSECTION (1)(B).

22 (2) Because subsection (1) appropriates money from the  
 23 principal of the permanent coal tax trust fund, the  
 24 appropriation requires a vote of three-fourths of the  
 25 members of each house of the legislature. If [this act] is

1 approved by a vote of less than three-fourths of the members  
2 of each house, this section is void and the remaining  
3 sections of [this act] are valid and remain in effect in all  
4 valid applications upon enactment.

5 NEW SECTION. SECTION 12. APPROPRIATION. THERE IS  
6 APPROPRIATED TO THE MICROBUSINESS FINANCE PROGRAM  
7 ADMINISTRATIVE ACCOUNT CREATED IN [SECTION 5] FROM THE  
8 GENERAL FUND \$64,600 FOR THE FISCAL YEAR ENDING JUNE 30,  
9 1992.

10 NEW SECTION. Section 13. Coordination instruction. If  
11 Senate Bill No. 26 [LC 15] is passed and approved and if it  
12 includes provisions eliminating the in-state investment  
13 fund, the code commissioner is instructed to substitute  
14 "permanent coal tax trust" for "in-state investment fund"  
15 where it appears in [this act], unless the context requires  
16 otherwise.

17 NEW SECTION. Section 14. Effective date DATES. †This  
18 act†-is (1) [SECTIONS 1 THROUGH 9], [SECTION 13], AND [THIS  
19 SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

20 (2) [SECTIONS 10 THROUGH 12] ARE effective July 1,  
21 1991.

-End-