

HOUSE BILL NO. 703

INTRODUCED BY BRADLEY, CRIPPEN, THOMAS, THAYER, TOWE, HARP,
D. BROWN, HALLIGAN, VAN VALKENBURG, WILLIAMS, ECK,
DRISCOLL, HARPER

IN THE HOUSE

FEBRUARY 8, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 25, 1991 PRINTING REPORT.

FEBRUARY 26, 1991 SECOND READING, DO PASS AS AMENDED.

 ENGROSSING REPORT.

FEBRUARY 27, 1991 THIRD READING, PASSED.
AYES, 94; NOES, 5.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

 FIRST READING.

MARCH 20, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 22, 1991 SECOND READING, CONCURRED IN.

MARCH 23, 1991 THIRD READING, CONCURRED IN.
AYES, 46; NOES, 1.

 RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 9, 1991 RECEIVED FROM SENATE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 10, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *HOUSE* BILL NO. *703*
 2 INTRODUCED BY *Bradley Cynn Thomas*
 3 *HARP* *David Brown* *Walter* *V. Volk* *Ray* *Clark*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE MONTANA
 5 SCIENCE AND TECHNOLOGY ALLIANCE TO MAKE LOANS OF UP TO \$2
 6 MILLION FROM THE IN-STATE INVESTMENT FUND TO PRIVATE VENTURE
 7 CAPITAL COMPANIES FOR INVESTMENT IN NEW OR EXPANDING
 8 BUSINESS; PROVIDING CRITERIA FOR THE INVESTMENT LOANS;
 9 PROVIDING TERMS FOR THE INVESTMENT LOANS; AMENDING SECTIONS
 10 90-3-102, 90-3-501, 90-3-502, 90-3-503, 90-3-504, 90-3-522,
 11 AND 90-3-523, MCA; AND PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 90-3-102, MCA, is amended to read:

15 **"90-3-102. Definitions.** As used in this chapter, the
16 following definitions apply:

- 17 (1) "Act" means the Montana science and technology
18 financing act.
- 19 (2) "Board" means the Montana board of science and
20 technology development provided for in 2-15-1818.
- 21 (3) "Company" means a firm, partnership, corporation,
22 association, or any other entity authorized to conduct
23 business in Montana.
- 24 (4) "Convertible debenture" means a debenture
25 convertible into stock under certain conditions by any

1 individual or company. The debenture may not be converted by
2 the board.

3 (5) "Debenture" or "note" means a writing or
4 certificate issued as evidence of debt.

5 (6) "Department" means the department of commerce
6 created in 2-15-1801.

7 (7) "Expansion capital project" means a science and
8 technology development project undertaken to enable a
9 company to expand its manufacturing and marketing activities
10 in order to move its products or services into new markets
11 or to expand existing markets.

12 (8) "Innovative technology" means the involvement of a
13 product or process that embodies the use of implements,
14 machinery, equipment, chemical formulations, resources,
15 materials, methods, or other items in a manner that departs
16 from previous commercial developments, practices, or
17 applications.

18 (9) "Matching funds" means the funds received in cash
19 by the science and technology development project loan
20 recipient from nonstate-appropriated sources and committed
21 by the loan recipient to the project in an amount that is at
22 least equal to the funds loaned to the recipient by the
23 board for use in the science and technology development
24 project.

25 (10) "Portfolio company" means a startup or expansion



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HB 703

1 stage company that has received a seed capital project loan
2 from the board.

3 (11) "Private sector" means any entity or individual,
4 not principally a part of or associated with a governmental
5 unit, that is associated with or involved in commercial
6 activity.

7 (12) "Research and development project" means a science
8 and technology development project that falls into the
9 category of research capability development, applied
10 technology research, or technology transfer and assistance.

11 (13) "Research and development project loan" means a
12 science and technology development project loan entered into
13 between the board and a loan recipient for a research and
14 development project.

15 (14) "Science and technology development project" means
16 either a seed capital project or research and development
17 project designed to discover, develop, transfer, utilize, or
18 commercialize existing or new, innovative technology in
19 order to strengthen and enhance economic development in
20 Montana.

21 (15) "Science and technology development project loan
22 agreement" or "loan" means an agreement entered into between
23 the board and the loan recipient of a seed capital project
24 loan or a research and development project loan that:

25 (a) creates a debt relationship between the parties;

1 (b) provides for a financial return to the board;

2 (c) provides economic development potential to the
3 state; and

4 (d) contains the applicable provisions and terms
5 required by this chapter.

6 (16) "Seed capital project" means a startup capital
7 project or expansion capital project.

8 (17) "Seed capital project loan" means a science and
9 technology development project loan entered into between the
10 board and a loan recipient for a seed capital project.

11 (18) "Startup capital project" means a science and
12 technology development project that assists a company in
13 initiating commercial operations.

14 (19) "State" means the state of Montana.

15 (20) "Venture capital company" means a partnership,
16 corporation, or other business entity engaged in raising
17 funds from investors and earning a financial return for
18 those investors by making equity or quasi-equity investments
19 in new or expanding business.

20 (21) "Warrant" means an instrument issued by a
21 corporation that gives a holder other than the board the
22 right to purchase stock of a corporation either for a
23 limited time or perpetually."

24 **Section 2.** Section 90-3-501, MCA, is amended to read:

25 "90-3-501. Science and technology development project

1 -- priorities. (1) The board shall make a loan for a science
2 and technology development project if it determines that the
3 project has potential to stimulate economic development in
4 this state and meets the loan criteria established in this
5 chapter.

6 (2) The board shall give priority to project proposals
7 that it determines:

8 (a) incorporate innovative technologies and involve, but
9 are not limited to, one or more of the following target
10 technologies:

11 (a)(i) mineral technology;

12 (b)(ii) agricultural technology;

13 (c)(iii) forestry technology;

14 (d)(iv) energy technology;

15 (e)(v) materials sciences;

16 (f)(vi) information sciences;

17 (g)(vii) biotechnology;

18 (h)(viii) microelectronics and computer sciences; or

19 (i)(ix) hazardous waste treatment and disposal; or

20 (b) represent the best available opportunities for
21 private sector management of funds to be used for
22 early-stage venture capital investments."

23 **Section 3.** Section 90-3-502, MCA, is amended to read:

24 "90-3-502. General criteria underlying science and
25 technology development project loan program. The board may

1 make a science and technology development project loan only
2 upon a favorable determination that the proposed project:

3 (1) is consistent with the findings and purposes of
4 this chapter because it incorporates innovative technology
5 or will invest in innovative technology;

6 (2) has prospects for collaboration between the public
7 and private sectors of the state's economy;

8 (3) has prospects for achieving commercial success and
9 for creating new jobs in the state;

10 (4) has potential for commercial success related to the
11 specific product, or business development methodology, or
12 investment strategy proposed;

13 (5) can provide matching funds to the project as
14 required under 90-3-301; and

15 (6) has a management structure that allows ongoing
16 postdisbursement involvement by the board."

17 **Section 4.** Section 90-3-503, MCA, is amended to read:

18 "90-3-503. Seed capital project -- goals. (1) The board
19 may make a seed capital project loan in a company upon a
20 determination by the board that the project meets the loan
21 criteria established in 90-3-502 and 90-3-504 and that the
22 project meets the goals established in subsection (2) and
23 involves investment in the development and commercialization
24 of innovative products or processes.

25 (2) The goals in making a seed capital project loan

1 are:

2 (a) to assist the development of innovative technology
3 in the state by providing a source of capital to the
4 technology-based entrepreneurial sector in the state's
5 economy;

6 (b) to provide financing and follow-along management
7 support for entrepreneurial companies in the state that are
8 attempting to develop products or processes based on
9 innovative technologies; and

10 (c) to provide a liaison between entrepreneurial
11 companies in the state and other investors in an effort to
12 enhance the pool of capital available to technology-based
13 companies in the state."

14 **Section 5.** Section 90-3-504, MCA, is amended to read:

15 "90-3-504. Specific criteria for seed capital project
16 loans. The board may make a seed capital project loan only
17 if it determines that the proposed project complies with the
18 criteria and goals set forth in 90-3-502 and 90-3-503 and;

19 (1) the board further determines that:

20 †1†(a) the project develops or employs innovative
21 technology to produce a product or process that promises a
22 significant competitive advantage;

23 †2†(b) the project provides an opportunity to preserve
24 the principal of the loan amount and earn a monetary return;

25 †3†(c) the project has potential to realize substantial

1 growth in sales and a sales revenue level that provides the
2 capacity to meet the board's payback requirements;

3 †4†(d) the company is located or preparing to locate
4 within the state;

5 †5†(e) the project demonstrates a capacity to diversify
6 or add value to the state's basic industries;

7 †6†(f) the company's management team possesses
8 sufficient business experience to enable the company to
9 reach its commercial potential;

10 †7†(g) the company has a strong potential for creating
11 and retaining jobs and stimulating tax revenue growth in the
12 state;

13 †8†(h) the company's product or process is targeted for
14 a sizeable commercial market;

15 †9†(i) the company's product or process is of
16 sufficient quality to significantly impact the target
17 market; and

18 †10†(j) the company's business plan is sufficiently
19 designed to complete financing, marketing, and production
20 objectives to accomplish the proposed commercialization; or

21 (2) the company is a venture capital company that meets
22 the following criteria:

23 (a) the company has raised or is in the process of
24 raising its investment capital under the terms of a
25 prospectus or other offering document that gives the board

1 assurance that the company:

2 (i) will invest at least 50% of its capital in
3 businesses that generally comply with the provisions of
4 subsections (1)(a) through (1)(j);

5 (ii) is in compliance with the United States securities
6 and exchange commission and Montana securities laws and
7 regulations applicable to venture capital companies;

8 (iii) will use equity or quasi-equity investment
9 mechanisms for at least three-fourths of its investments and
10 will not use conventional secured debt mechanisms for more
11 than one-fourth of its investments; and

12 (iv) will otherwise conduct its investment strategy and
13 investment management practices in a manner that conforms to
14 standard venture capital industry practices;

15 (b) the company has a management team that will
16 dedicate the equivalent of at least one full-time manager to
17 the operation of the company; and

18 (c) the company's management has expertise and
19 experience in finding, evaluating, investing in, and
20 managing businesses, with preference given to companies
21 managed by individuals who have experience and expertise in
22 Montana or the Rocky Mountain west."

23 **Section 6.** Section 90-3-522, MCA, is amended to read:

24 "90-3-522. Science and technology development project
25 loan agreement. (1) The board shall enter into a science and

1 technology development project loan agreement with a loan
2 recipient whose product, or process, or investment business
3 will be developed and commercialized as a result of a
4 science and technology development project loan.

5 (2) The loan agreement, at a minimum, must contain the
6 following provisions:

7 (a) the project budget;

8 (b) the financing, or marketing, and production
9 milestones for the project that describe project tasks to be
10 achieved in each phase of the project at designated times;

11 (c) the reporting requirements, including but not
12 limited to:

13 (i) quarterly financial statements;

14 (ii) quarterly commercialization progress reports;

15 (iii) annual reports; and

16 (iv) reports on any significant project transactions;

17 (d) the disbursement schedule for the loan;

18 (e) the payback to the board;

19 (f) the causes for loan revocation, suspension, or
20 termination; and

21 (g) the intellectual property provisions, when
22 applicable."

23 **Section 7.** Section 90-3-523, MCA, is amended to read:

24 "90-3-523. Seed capital project loan agreement --
25 specific requirements -- payback. (1) In Except as provided

1 in subsection (3), in addition to the loan agreement
2 provisions required in 90-3-522, a seed capital project
3 loan;

4 (a) must be structured as contracted debt that includes
5 but is not limited to the following terms:

6 (a)(i) an interest rate set at the level that provides
7 a return to the board, from paybacks by all of its portfolio
8 companies, in an amount at least equal to the principal
9 amount of the loans and that provides for a market rate of
10 return when considering the overall benefit to the state
11 derived from the projects;

12 (b)(ii) a provision in the note that may defer debt
13 service until maturity of the note, the term of which may
14 not exceed 8 years;

15 (c)(iii) a loan amount that may not exceed \$350,000 in
16 any one round of financing. Successive rounds of financing
17 in which the board participates for any one company may not
18 occur within a 9-month period. The total amount that may be
19 loaned to any one company may not exceed \$750,000.

20 (d)(iv) a provision that the note becomes due in full
21 upon dissolution or liquidation of the company.

22 ~~(2) -- (a) -- In addition to the provisions in 90-3-522 and~~
23 ~~subsection (1) -- a seed capital project loan agreement~~

24 (b) may provide for any of the following:

25 (i) a convertible debenture;

1 (ii) a warrant held by the board; or

2 (iii) a warrant held by a third party for the benefit of
3 the board.

4 ~~(b)(2)~~ However, the The board itself may not convert
5 the convertible debenture, exercise the warrant, or hold
6 stock acquired upon any conversion or exercise.

7 (3) A seed capital project loan agreement with a
8 venture capital company must contain the following terms:

9 (a) a loan amount that may not be less than \$1 million
10 or more than \$2 million; and

11 (b) payback provisions:

12 (i) that are structured as contracted debt;

13 (ii) that allow debt to be repaid in portions of the
14 original loan amount or as interest on the original loan
15 amount in the same proportion as any paybacks made to the
16 other investors or lenders that make up the remaining
17 capitalization of the venture capital company, based upon
18 the original capital invested in or loaned to the venture
19 capital company by the other investors or lenders;

20 (iii) that are not more or less favorable than the
21 repayment and earnings provisions applicable to other
22 investors or lenders that make up the remaining
23 capitalization of the venture capital company; and

24 (iv) that are based on a term no greater than 12 years."

25 NEW SECTION. Section 8. Effective date. [This act] is

LC 1508/01

1 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 HB0703, second reading.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to authorize the Montana Board of Science and Technology Development to make loans of \$1 million from the In-State Investment Fund to private venture capital companies for investment in new or expanding business; providing criteria for the investment loans; providing terms for the investment loans and amending section 90-3-522 and 90-3-523, MCA; and providing an immediate effective date.

ASSUMPTIONS:


1. Dollar-for-dollar matching funds are required for all seed capital loans to venture capital companies.
2. The Montana Science and Technology Alliance (MSTA) may reserve up to \$2 million of its \$7.5 million fund from the In-State Investment Fund for seed capital project loans to venture capital companies with monetary return-on-investment as a priority (as the MSTTA currently conducts business).
3. MSTTA will manage its portion of the In-State Investment Fund to receive an annual rate of return of at least 10 percent.
4. Administrative costs of the seed capital financing program will be paid from the general fund and appropriated through the General Appropriations Act beginning on July 1, 1991.
5. MSTTA has unencumbered approximately \$6.3 million of the \$7.5 million appropriated in 17-6-308(4) for seed capital projects. MSTTA's authority to lend the above funds does not extend beyond June 30, 1994.
6. Current law is represented by the FY92-93 executive budget recommendation for the MSTTA.

FISCAL IMPACT:

None

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The MSTTA's loans to venture capital companies will serve to stimulate the creation of venture capital companies in Montana and thereby increase the pool of investment capital available to early stage, technology-based companies in the state.



ROD SUNDSTED, BUDGET DIRECTOR 2-27-91
Office of Budget and Program Planning DATE



DOROTHY BRADLEY, PRIMARY SPONSOR 3-5-91
DATE

Fiscal Note for HB0703, second reading

HB 703

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 703

INTRODUCED BY BRADLEY, CRIPPEN, THOMAS, THAYER, TOWE, HARP, D. BROWN, HALLIGAN, VAN VALKENBURG, WILLIAMS, ECK, DRISCOLL, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE MONTANA SCIENCE AND TECHNOLOGY ALLIANCE TO MAKE LOANS OF ~~UP TO \$2~~ NOT MORE THAN \$1 MILLION FROM THE IN-STATE INVESTMENT FUND TO PRIVATE VENTURE CAPITAL COMPANIES FOR INVESTMENT IN NEW OR EXPANDING BUSINESS; PROVIDING CRITERIA FOR THE INVESTMENT LOANS; PROVIDING TERMS FOR THE INVESTMENT LOANS; AMENDING SECTIONS 90-3-102, ~~90-3-501, 90-3-502, 90-3-503, 90-3-504,~~ 90-3-522, AND 90-3-523, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 90-3-102, MCA, is amended to read:

"90-3-102. Definitions. As used in this chapter, the following definitions apply:

- (1) "Act" means the Montana science and technology financing act.
(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.
(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct

business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the



1 board for use in the science and technology development
2 project.

3 (10) "Portfolio company" means a startup or expansion
4 stage company that has received a seed capital project loan
5 from the board.

6 (11) "Private sector" means any entity or individual,
7 not principally a part of or associated with a governmental
8 unit, that is associated with or involved in commercial
9 activity.

10 (12) "Research and development project" means a science
11 and technology development project that falls into the
12 category of research capability development, applied
13 technology research, or technology transfer and assistance.

14 (13) "Research and development project loan" means a
15 science and technology development project loan entered into
16 between the board and a loan recipient for a research and
17 development project.

18 (14) "Science and technology development project" means
19 either a seed capital project or research and development
20 project designed to discover, develop, transfer, utilize, or
21 commercialize existing or new, innovative technology in
22 order to strengthen and enhance economic development in
23 Montana.

24 (15) "Science and technology development project loan
25 agreement" or "loan" means an agreement entered into between

1 the board and the loan recipient of a seed capital project
2 loan or a research and development project loan that:

3 (a) creates a debt relationship between the parties;

4 (b) provides for a financial return to the board;

5 (c) provides economic development potential to the
6 state; and

7 (d) contains the applicable provisions and terms
8 required by this chapter.

9 (16) "Seed capital project" means a startup capital
10 project or expansion capital project.

11 (17) "Seed capital project loan" means a science and
12 technology development project loan entered into between the
13 board and a loan recipient for a seed capital project.

14 (18) "Startup capital project" means a science and
15 technology development project that assists a company in
16 initiating commercial operations.

17 (19) "State" means the state of Montana.

18 (20) "Venture capital company" means a partnership,
19 corporation, or other business entity engaged in raising
20 funds from investors and earning a financial return for
21 those investors by making equity or quasi-equity investments
22 in new or expanding business.

23 (21) "Warrant" means an instrument issued by a
24 corporation that gives a holder other than the board the
25 right to purchase stock of a corporation either for a

1 limited time or perpetually."

2 Section 2,--Section 90-3-501, MCA, is amended to read:
3 "90-3-501,--Science--and--technology-development-project
4 ---priorities,--(1)--The board shall make a loan for a science
5 and technology development project if it determines that the
6 project has potential to stimulate economic--development--in
7 this--state--and meets the loan criteria established in this
8 chapter:

9 (2)--The board shall give priority to project--proposals
10 that it determines:

11 (a) incorporate innovative technologies and involve, but
12 are--not--limited--to,--one--or--more--of--the--following--target
13 technologies:

- 14 (a)(i) mineral technology;
- 15 (b)(ii) agricultural technology;
- 16 (c)(iii) forestry technology;
- 17 (d)(iv) energy technology;
- 18 (e)(v) materials sciences;
- 19 (f)(vi) information sciences;
- 20 (g)(vii) biotechnology;
- 21 (h)(viii) microelectronics and computer sciences; or
- 22 (i)(ix) hazardous waste treatment and disposal; or
- 23 (b)--represent--the--best--available--opportunities--for
24 private--sector--management--of--funds--to--be--used--for
25 early-stage-venture-capital-investments;"

1 Section 3,--Section 90-3-502, MCA, is amended to read:
2 "90-3-502,--General--criteria--underlying--science--and
3 technology-development-project-loan-program,--The--board--may
4 make--a--science--and--technology-development-project-loan--only
5 upon--a--favorable--determination--that--the--proposed--project:
6 (1)--is--consistent--with--the--findings--and--purposes--of
7 this--chapter--because--it--incorporates--innovative--technology
8 or--will--invest--in--innovative--technology;
9 (2)--has--prospects--for--collaboration--between--the--public
10 and--private--sectors--of--the--state's--economy;
11 (3)--has--prospects--for--achieving--commercial--success--and
12 for--creating--new--jobs--in--the--state;
13 (4)--has--potential--for--commercial--success--related--to--the
14 specific-product, or business--development--methodology, or
15 investment-strategy proposed;

16 (5)--can--provide--matching--funds--to--the--project--as
17 required under 90-3-301; and

18 (6)--has--a--management--structure--that--allows--ongoing
19 postdisbursement involvement by the board."

20 Section 4,--Section 90-3-503, MCA, is amended to read:
21 "90-3-503,--Seed-capital-project---goals,--(1)--The board
22 may make a seed capital project loan in a company upon a
23 determination by the board that the project meets the loan
24 criteria established in 90-3-502 and 90-3-504 and that the
25 project meets the goals established in subsection (2) and

1 involves investment in the development and commercialization
2 of innovative products or processes.

3 (2) The goals in making a seed capital project loan
4 are:

5 (a) to assist the development of innovative technology
6 in the state by providing a source of capital to the
7 technology-based entrepreneurial sector in the state's
8 economy;

9 (b) to provide financing and follow-along management
10 support for entrepreneurial companies in the state that are
11 attempting to develop products or processes based on
12 innovative technologies; and

13 (c) to provide a liaison between entrepreneurial
14 companies in the state and other investors in an effort to
15 enhance the pool of capital available to technology-based
16 companies in the state."

17 Section 5, Section 90-3-504, MCA, is amended to read:

18 "90-3-504. Specific criteria for seed capital project
19 loans. The board may make a seed capital project loan only
20 if it determines that the proposed project complies with the
21 criteria and goals set forth in 90-3-502 and 90-3-503 and:

22 (1) the board further determines that:

23 (i) (a) the project develops or employs innovative
24 technology to produce a product or process that promises a
25 significant competitive advantage;

1 (2) (b) the project provides an opportunity to preserve
2 the principal of the loan amount and earn a monetary return;

3 (3) (c) the project has potential to realize substantial
4 growth in sales and a sales revenue level that provides the
5 capacity to meet the board's payback requirements;

6 (4) (d) the company is located or preparing to locate
7 within the state;

8 (5) (e) the project demonstrates a capacity to diversify
9 or add value to the state's basic industries;

10 (6) (f) the company's management team possesses
11 sufficient business experience to enable the company to
12 reach its commercial potential;

13 (7) (g) the company has a strong potential for creating
14 and retaining jobs and stimulating tax revenue growth in the
15 state;

16 (8) (h) the company's product or process is targeted for
17 a sizeable commercial market;

18 (9) (i) the company's product or process is of
19 sufficient quality to significantly impact the target
20 market; and

21 (10) (j) the company's business plan is sufficiently
22 designed to complete financing, marketing, and production
23 objectives to accomplish the proposed commercialization; or

24 (2) the company is a venture capital company that meets
25 the following criteria:

~~(a) the company has raised or is in the process of raising its investment capital under the terms of a prospectus or other offering document that gives the board assurance that the company:~~

~~(i) will invest at least 50% of its capital in businesses that generally comply with the provisions of subsections (i)(a) through (i)(j);~~

~~(ii) is in compliance with the United States securities and exchange commission and Montana securities laws and regulations applicable to venture capital companies;~~

~~(iii) will use equity or quasi-equity investment mechanisms for at least three-fourths of its investments and will not use conventional secured debt mechanisms for more than one-fourth of its investments; and~~

~~(iv) will otherwise conduct its investment strategy and investment management practices in a manner that conforms to standard venture capital industry practices;~~

~~(b) the company has a management team that will dedicate the equivalent of at least one full-time manager to the operation of the company; and~~

~~(c) the company's management has expertise and experience in finding, evaluating, investing in, and managing businesses, with preference given to companies managed by individuals who have experience and expertise in Montana or the Rocky Mountain west."~~

Section 2. Section 90-3-522, MCA, is amended to read:

"90-3-522. Science and technology development project loan agreement. (1) The board shall enter into a science and technology development project loan agreement with a loan recipient whose product^r or OR process^r or investment business will be developed and commercialized as a result of a science and technology development project loan.

(2) The loan agreement, at a minimum, must contain the following provisions:

(a) the project budget;

(b) the financing^r, or marketing^r, and production milestones for the project that describe project tasks to be achieved in each phase of the project at designated times;

(c) the reporting requirements, including but not limited to:

(i) quarterly financial statements;

(ii) quarterly commercialization progress reports;

(iii) annual reports; and

(iv) reports on any significant project transactions;

(d) the disbursement schedule for the loan;

(e) the payback to the board;

(f) the causes for loan revocation, suspension, or termination; and

(g) the intellectual property provisions, when applicable."

Section 3. Section 90-3-523, MCA, is amended to read:

"90-3-523. Seed capital project loan agreement -- specific requirements -- payback. (1) In Except as provided in subsection--(3) [SECTION 5], in addition to the loan agreement provisions required in 90-3-522, a seed capital project loan:

(a) must be structured as contracted debt that includes but is not limited to the following terms:

(a)(i)(A) an interest rate set at the level that provides a return to the board, from paybacks by all of its portfolio companies, in an amount at least equal to the principal amount of the loans and that provides for a market rate of return when considering the overall benefit to the state derived from the projects;

(b)(i)(B) a provision in the note that may defer debt service until maturity of the note, the term of which may not exceed 8 years;

(c)(i)(C) a loan amount that may not exceed \$350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period. The total amount that may be loaned to any one company may not exceed \$750,000.

(d)(i)(D) a provision that the note becomes due in full upon dissolution or liquidation of the company.

~~(2)--(a) In addition to the provisions in 90-3-522 and subsection-(1), a seed capital project loan agreement~~

(b)(2) (A) IN ADDITION TO THE PROVISIONS IN 90-3-522 AND SUBSECTION (1) OF THIS SECTION, A SEED CAPITAL PROJECT LOAN AGREEMENT may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b)(2)(B) However, the The board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise."

NEW SECTION. SECTION 4. VENTURE CAPITAL COMPANIES. THE BOARD MAY MAKE UP TO \$2 MILLION OF ITS FUNDS AVAILABLE UNDER 17-6-308 FOR SEED CAPITAL PROJECT LOANS TO VENTURE CAPITAL COMPANIES IN ORDER TO FURTHER THE DEVELOPMENT OF SEED CAPITAL RESOURCES AVAILABLE FOR INVESTMENT IN TECHNOLOGY-ORIENTED BUSINESS DEVELOPMENT AND EXPANSION ACTIVITIES IF THE VENTURE CAPITAL COMPANIES MEET THE CRITERIA IN SUBSECTIONS (1) AND (2):

(1) VENTURE CAPITAL COMPANIES MUST BE SELECTED FOR LOANS BY THE BOARD ON THE BASIS OF THE DEMONSTRATED ABILITY OF THE COMPANIES' PRINCIPALS TO MAKE SOUND INVESTMENTS AND THE PRINCIPALS' BUSINESS DEVELOPMENT EXPERIENCE.

(2) THE COMPANY HAS RAISED OR IS IN THE PROCESS OF

1 RAISING ITS INVESTMENT CAPITAL UNDER THE TERMS OF A
2 PROSPECTUS OR OTHER OFFERING DOCUMENT THAT GIVES THE BOARD
3 ASSURANCE THAT THE COMPANY:

4 (A) IS IN COMPLIANCE WITH THE UNITED STATES SECURITIES
5 AND EXCHANGE COMMISSION AND MONTANA SECURITIES LAWS AND
6 REGULATIONS APPLICABLE TO VENTURE CAPITAL COMPANIES;

7 (B) WILL USE EQUITY OR QUASI-EQUITY INVESTMENT
8 MECHANISMS FOR AT LEAST THREE-FOURTHS OF ITS INVESTMENTS AND
9 WILL NOT USE CONVENTIONAL SECURED DEBT MECHANISMS FOR MORE
10 THAN ONE-FOURTH OF ITS INVESTMENTS;

11 (C) WILL OTHERWISE CONDUCT ITS INVESTMENT STRATEGY AND
12 INVESTMENT MANAGEMENT PRACTICES IN A MANNER THAT CONFORMS TO
13 STANDARD VENTURE CAPITAL INDUSTRY PRACTICES; AND

14 (D) HAS A MANAGEMENT TEAM THAT WILL DEDICATE THE
15 EQUIVALENT OF AT LEAST ONE FULL-TIME MANAGER TO THE
16 OPERATION OF THE COMPANY.

17 (3) THE BOARD MAY ADOPT RULES GOVERNING LOANS TO
18 VENTURE CAPITAL COMPANIES TO IMPLEMENT THE TERMS OF THIS
19 SECTION AND TO ENSURE THAT THE LOANS MEET THE REQUIREMENTS
20 OF 90-3-501 THROUGH 90-3-504.

21 NEW SECTION. SECTION 5. SEED CAPITAL PROJECT LOAN
22 AGREEMENT WITH VENTURE CAPITAL COMPANY. (3) A seed capital
23 project loan agreement with a venture capital company must
24 contain the following terms:

25 (a)(1) a loan amount that may not be less than \$1

1 million \$500,000 or more than \$2 \$1 million; and

2 (b)(2) payback provisions:

3 (i)(A) that are structured as contracted debt;

4 (ii)(B) that allow debt to be repaid in portions of the
5 original loan amount or as interest on the original loan
6 amount in the same proportion as any paybacks made to the
7 other investors or lenders that make up the remaining
8 capitalization of the venture capital company, based upon
9 the original capital invested in or loaned to the venture
10 capital company by the other investors or lenders;

11 (iii)(C) that are not more or less favorable than the
12 repayment and earnings provisions applicable to other
13 investors or lenders that make up the remaining
14 capitalization of the venture capital company; and

15 (iv)(D) that are based on a term no greater than 12
16 years.

17 NEW SECTION. Section 6. Effective date. [This act] is
18 effective July 1, 1991.

-End-

HOUSE BILL NO. 703

INTRODUCED BY BRADLEY, CRIPPEN, THOMAS, THAYER, TOWE, HARP,
D. BROWN, HALLIGAN, VAN VALKENBURG, WILLIAMS, ECK,
DRISCOLL, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE MONTANA
SCIENCE AND TECHNOLOGY ALLIANCE TO MAKE LOANS OF ~~UP TO \$2~~
NOT MORE THAN \$1 MILLION FROM THE IN-STATE INVESTMENT FUND
TO PRIVATE VENTURE CAPITAL COMPANIES FOR INVESTMENT IN NEW
OR EXPANDING BUSINESS; PROVIDING CRITERIA FOR THE INVESTMENT
LOANS; PROVIDING TERMS FOR THE INVESTMENT LOANS; AMENDING
SECTIONS 90-3-102, ~~90-3-501, 90-3-502, 90-3-503, 90-3-504,~~
90-3-501, 90-3-522, AND 90-3-523, MCA; AND PROVIDING AN
EFFECTIVE DATE."

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

Section 1. Section 90-3-102, MCA, is amended to read:

"90-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

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

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct

business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the

1 board for use in the science and technology development
2 project.

3 (10) "Portfolio company" means a startup or expansion
4 stage company that has received a seed capital project loan
5 from the board.

6 (11) "Private sector" means any entity or individual,
7 not principally a part of or associated with a governmental
8 unit, that is associated with or involved in commercial
9 activity.

10 (12) "Research and development project" means a science
11 and technology development project that falls into the
12 category of research capability development, applied
13 technology research, or technology transfer and assistance.

14 (13) "Research and development project loan" means a
15 science and technology development project loan entered into
16 between the board and a loan recipient for a research and
17 development project.

18 (14) "Science and technology development project" means
19 either a seed capital project or research and development
20 project designed to discover, develop, transfer, utilize, or
21 commercialize existing or new, innovative technology in
22 order to strengthen and enhance economic development in
23 Montana.

24 (15) "Science and technology development project loan
25 agreement" or "loan" means an agreement entered into between

1 the board and the loan recipient of a seed capital project
2 loan or a research and development project loan that:

3 (a) creates a debt relationship between the parties;

4 (b) provides for a financial return to the board;

5 (c) provides economic development potential to the
6 state; and

7 (d) contains the applicable provisions and terms
8 required by this chapter.

9 (16) "Seed capital project" means a startup capital
10 project or expansion capital project.

11 (17) "Seed capital project loan" means a science and
12 technology development project loan entered into between the
13 board and a loan recipient for a seed capital project.

14 (18) "Startup capital project" means a science and
15 technology development project that assists a company in
16 initiating commercial operations.

17 (19) "State" means the state of Montana.

18 (20) "Venture capital company" means a partnership,
19 corporation, or other business entity engaged in raising
20 funds from investors and earning a financial return for
21 those investors by making equity or quasi-equity investments
22 in new or expanding business.

23 (21) "Warrant" means an instrument issued by a
24 corporation that gives a holder other than the board the
25 right to purchase stock of a corporation either for a

1 limited time or perpetually."

2 Section 2, Section 90-3-501, MCA, is amended to read:

3 "90-3-501. Science and technology development project
4 ---priorities. (1) The board shall make a loan for a science
5 and technology development project if it determines that the
6 project has potential to stimulate economic development in
7 this state and meets the loan criteria established in this
8 chapter;

9 (2) The board shall give priority to project proposals
10 that it determines:

11 (a) incorporate innovative technologies and involve, but
12 are not limited to, one or more of the following target
13 technologies:

- 14 (a) (i) mineral technology;
- 15 (b) (ii) agricultural technology;
- 16 (c) (iii) forestry technology;
- 17 (d) (iv) energy technology;
- 18 (e) (v) materials sciences;
- 19 (f) (vi) information sciences;
- 20 (g) (vii) biotechnology;
- 21 (h) (viii) microelectronics and computer sciences; or
- 22 (i) (ix) hazardous waste treatment and disposal; or
- 23 (b) represent the best available opportunities for
24 private sector management of funds to be used for
25 early stage venture capital investments."

1 Section 3, Section 90-3-502, MCA, is amended to read:

2 "90-3-502. General criteria underlying science and
3 technology development project loan program. The board may
4 make a science and technology development project loan only
5 upon a favorable determination that the proposed project:

6 (1) is consistent with the findings and purposes of
7 this chapter because it incorporates innovative technology
8 or will invest in innovative technology;

9 (2) has prospects for collaboration between the public
10 and private sectors of the state's economy;

11 (3) has prospects for achieving commercial success and
12 for creating new jobs in the state;

13 (4) has potential for commercial success related to the
14 specific product, or business development methodology, or
15 investment strategy proposed;

16 (5) can provide matching funds to the project as
17 required under 90-3-301; and

18 (6) has a management structure that allows ongoing
19 postdisbursement involvement by the board."

20 Section 4, Section 90-3-503, MCA, is amended to read:

21 "90-3-503. Seed capital project goals. (1) The board
22 may make a seed capital project loan in a company upon a
23 determination by the board that the project meets the loan
24 criteria established in 90-3-502 and 90-3-504 and that the
25 project meets the goals established in subsection (2) and

1 involves investment in the development and commercialization
2 of innovative products or processes;

3 (2) The goals in making a seed capital project loan
4 are:

5 (a) to assist the development of innovative technology
6 in the state by providing a source of capital to the
7 technology-based entrepreneurial sector in the state's
8 economy;

9 (b) to provide financing and follow-along management
10 support for entrepreneurial companies in the state that are
11 attempting to develop products or processes based on
12 innovative technologies; and

13 (c) to provide a liaison between entrepreneurial
14 companies in the state and other investors in an effort to
15 enhance the pool of capital available to technology-based
16 companies in the state.²

17 Section 5, Section 90-3-504, MCA, is amended to read:

18 "90-3-504. Specific criteria for seed capital project
19 loans: The board may make a seed capital project loan only
20 if it determines that the proposed project complies with the
21 criteria and goals set forth in 90-3-502 and 90-3-503 and:

22 (1) the board further determines that:

23 (i) (a) the project develops or employs innovative
24 technology to produce a product or process that promises a
25 significant competitive advantage;

1 (2) (b) the project provides an opportunity to preserve
2 the principal of the loan amount and earn a monetary return;

3 (3) (c) the project has potential to realize substantial
4 growth in sales and a sales revenue level that provides the
5 capacity to meet the board's payback requirements;

6 (4) (d) the company is located or preparing to locate
7 within the state;

8 (5) (e) the project demonstrates a capacity to diversify
9 or add value to the state's basic industries;

10 (6) (f) the company's management team possesses
11 sufficient business experience to enable the company to
12 reach its commercial potential;

13 (7) (g) the company has a strong potential for creating
14 and retaining jobs and stimulating tax revenue growth in the
15 state;

16 (8) (h) the company's product or process is targeted for
17 a sizeable commercial market;

18 (9) (i) the company's product or process is of
19 sufficient quality to significantly impact the target
20 market; and

21 (10) (j) the company's business plan is sufficiently
22 designed to complete financing, marketing, and production
23 objectives to accomplish the proposed commercialization; or

24 (2) the company is a venture capital company that meets
25 the following criteria:

1 ~~(a) the company has raised or is in the process of~~
 2 ~~raising its investment capital under the terms of a~~
 3 ~~prospectus or other offering document that gives the board~~
 4 ~~assurance that the company:~~
 5 ~~(i) will invest at least 50% of its capital in~~
 6 ~~businesses that generally comply with the provisions of~~
 7 ~~subsections (i)(a) through (i)(j);~~
 8 ~~(ii) is in compliance with the United States securities~~
 9 ~~and exchange commission and Montana securities laws and~~
 10 ~~regulations applicable to venture capital companies;~~
 11 ~~(iii) will use equity or quasi-equity investment~~
 12 ~~mechanisms for at least three-fourths of its investments and~~
 13 ~~will not use conventional secured debt mechanisms for more~~
 14 ~~than one-fourth of its investments; and~~
 15 ~~(iv) will otherwise conduct its investment strategy and~~
 16 ~~investment management practices in a manner that conforms to~~
 17 ~~standard venture capital industry practices;~~
 18 ~~(b) the company has a management team that will~~
 19 ~~dedicate the equivalent of at least one full-time manager to~~
 20 ~~the operation of the company; and~~
 21 ~~(c) the company's management has expertise and~~
 22 ~~experience in finding, evaluating, investing in, and~~
 23 ~~managing businesses, with preference given to companies~~
 24 ~~managed by individuals who have experience and expertise in~~
 25 ~~Montana or the Rocky Mountain west."~~

1 **SECTION 2.** SECTION 90-3-501, MCA, IS AMENDED TO READ:
 2 "90-3-501. Science and technology development project
 3 -- priorities. (1) The board shall make a loan for a science
 4 and technology development project if it determines that the
 5 project has potential to stimulate economic development in
 6 this state and meets the loan criteria established in this
 7 chapter.
 8 (2) The board shall give priority to project proposals
 9 that it determines incorporate innovative technologies and
 10 involve, but are not limited to, one or more of the
 11 following target technologies:
 12 (a) mineral technology;
 13 (b) agricultural technology;
 14 (c) forestry technology;
 15 (d) energy technology;
 16 (e) materials sciences;
 17 (f) information sciences;
 18 (g) biotechnology;
 19 (h) microelectronics and computer sciences; or
 20 (i) hazardous waste treatment and disposal.
 21 (3) The board may use up to 25% of the funds for seed
 22 capital project loans to make seed capital project loans
 23 that do not address the innovative technologies listed in
 24 subsection (2)."
 25 **Section 3.** Section 90-3-522, MCA, is amended to read:

1 "90-3-522. Science and technology development project
2 loan agreement. (1) The board shall enter into a science and
3 technology development project loan agreement with a loan
4 recipient whose product~~y~~ or OR process~~,--or--investment~~
5 business will be developed and commercialized as a result of
6 a science and technology development project loan.

7 (2) The loan agreement, at a minimum, must contain the
8 following provisions:

9 (a) the project budget;

10 (b) the financing~~y~~, or marketing~~y~~, and production
11 milestones for the project that describe project tasks to be
12 achieved in each phase of the project at designated times;

13 (c) the reporting requirements, including but not
14 limited to:

15 (i) quarterly financial statements;

16 (ii) quarterly commercialization progress reports;

17 (iii) annual reports; and

18 (iv) reports on any significant project transactions;

19 (d) the disbursement schedule for the loan;

20 (e) the payback to the board;

21 (f) the causes for loan revocation, suspension, or
22 termination; and

23 (g) the intellectual property provisions, when
24 applicable."

25 **Section 4.** Section 90-3-523, MCA, is amended to read:

1 "90-3-523. Seed capital project loan agreement --
2 specific requirements -- payback. (1) In Except as provided
3 in subsection-(3) [SECTION 5], in addition to the loan
4 agreement provisions required in 90-3-522, a seed capital
5 project loan:

6 ~~(a)~~ must be structured as contracted debt that includes
7 but is not limited to the following terms:

8 ~~(a)~~~~(i)~~(A) an interest rate set at the level that
9 provides a return to the board, from paybacks by all of its
10 portfolio companies, in an amount at least equal to the
11 principal amount of the loans and that provides for a market
12 rate of return when considering the overall benefit to the
13 state derived from the projects;

14 ~~(b)~~~~(ii)~~(B) a provision in the note that may defer debt
15 service until maturity of the note, the term of which may
16 not exceed 8 years;

17 ~~(c)~~~~(iii)~~(C) a loan amount that may not exceed \$350,000
18 in any one round of financing. Successive rounds of
19 financing in which the board participates for any one
20 company may not occur within a 9-month period. The total
21 amount that may be loaned to any one company may not exceed
22 \$750,000.

23 ~~(d)~~~~(iv)~~(D) a provision that the note becomes due in full
24 upon dissolution or liquidation of the company.

25 ~~(2)--(a)--In-addition-to-the-provisions-in--90-3-522--and~~

~~subsection-117-a-seed-capital-project-loan-agreement~~

~~b)(2) (A) IN ADDITION TO THE PROVISIONS IN 90-3-522 AND SUBSECTION (1) OF THIS SECTION, A SEED CAPITAL PROJECT LOAN AGREEMENT may provide for any of the following:~~

- ~~(i) a convertible debenture;~~
- ~~(ii) a warrant held by the board; or~~
- ~~(iii) a warrant held by a third party for the benefit of the board.~~

~~b)(2)(B) However, the The board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise."~~

NEW SECTION. SECTION 5. VENTURE CAPITAL COMPANIES. THE BOARD MAY MAKE UP TO \$2 MILLION OF ITS FUNDS AVAILABLE UNDER 17-6-308 FOR SEED CAPITAL PROJECT LOANS TO VENTURE CAPITAL COMPANIES IN ORDER TO FURTHER THE DEVELOPMENT OF SEED CAPITAL RESOURCES AVAILABLE FOR INVESTMENT IN TECHNOLOGY-ORIENTED BUSINESS DEVELOPMENT AND EXPANSION ACTIVITIES IF THE VENTURE CAPITAL COMPANIES MEET THE CRITERIA IN SUBSECTIONS (1) AND (2):

(1) VENTURE CAPITAL COMPANIES MUST BE SELECTED FOR LOANS BY THE BOARD ON THE BASIS OF THE DEMONSTRATED ABILITY OF THE COMPANIES' PRINCIPALS TO MAKE SOUND INVESTMENTS AND THE PRINCIPALS' BUSINESS DEVELOPMENT EXPERIENCE.

(2) THE COMPANY HAS RAISED OR IS IN THE PROCESS OF RAISING ITS INVESTMENT CAPITAL UNDER THE TERMS OF A

PROSPECTUS OR OTHER OFFERING DOCUMENT THAT GIVES THE BOARD ASSURANCE THAT THE COMPANY:

(A) IS IN COMPLIANCE WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION AND MONTANA SECURITIES LAWS AND REGULATIONS APPLICABLE TO VENTURE CAPITAL COMPANIES;

(B) WILL USE EQUITY OR QUASI-EQUITY INVESTMENT MECHANISMS FOR AT LEAST THREE-FOURTHS OF ITS INVESTMENTS AND WILL NOT USE CONVENTIONAL SECURED DEBT MECHANISMS FOR MORE THAN ONE-FOURTH OF ITS INVESTMENTS;

(C) WILL OTHERWISE CONDUCT ITS INVESTMENT STRATEGY AND INVESTMENT MANAGEMENT PRACTICES IN A MANNER THAT CONFORMS TO STANDARD VENTURE CAPITAL INDUSTRY PRACTICES; AND

(D) HAS A MANAGEMENT TEAM THAT WILL DEDICATE THE EQUIVALENT OF AT LEAST ONE FULL-TIME MANAGER TO THE OPERATION OF THE COMPANY.

(3) THE BOARD MAY ADOPT RULES GOVERNING LOANS TO VENTURE CAPITAL COMPANIES TO IMPLEMENT THE TERMS OF THIS SECTION AND TO ENSURE THAT THE LOANS MEET THE REQUIREMENTS OF 90-3-501 THROUGH 90-3-504.

NEW SECTION. SECTION 6. SEED CAPITAL PROJECT LOAN AGREEMENT WITH VENTURE CAPITAL COMPANY. {3} A seed capital project loan agreement with a venture capital company must contain the following terms:

{a)(1) a loan amount that may not be less than \$1 million \$500,000 or more than \$2 \$1 million; and

1 (b)(2) payback provisions:
2 (i)(A) that are structured as contracted debt;
3 (i)(B) that allow debt to be repaid in portions of the
4 original loan amount or as interest on the original loan
5 amount in the same proportion as any paybacks made to the
6 other investors or lenders that make up the remaining
7 capitalization of the venture capital company, based upon
8 the original capital invested in or loaned to the venture
9 capital company by the other investors or lenders;
10 (i)(C) that are not more or less favorable than the
11 repayment and earnings provisions applicable to other
12 investors or lenders that make up the remaining
13 capitalization of the venture capital company; and
14 (i)(D) that are based on a term no greater than 12
15 years.

16 **NEW SECTION. Section 7. Effective date.** [This act] is
17 effective July 1, 1991.

-End-

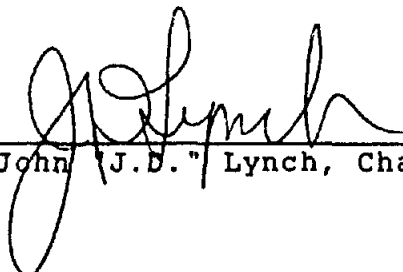
SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 20, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 703 (third reading copy -- blue), respectfully report that House Bill No. 703 be amended and as so amended be concurred in:

1. Title, line 7.
Following: "TO"
Insert: "USE UP TO \$2 MILLION TO"

Signed: 
John "J.D." Lynch, Chairman

KPL 3-20-91
App. Coord.

Sec. of Senate

SENATE
HB 703

HOUSE BILL NO. 703

INTRODUCED BY BRADLEY, CRIPPEN, THOMAS, THAYER, TOWE, HARP,
D. BROWN, HALLIGAN, VAN VALKENBURG, WILLIAMS, ECK,
DRISCOLL, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE MONTANA
SCIENCE AND TECHNOLOGY ALLIANCE TO USE UP TO \$2 MILLION TO
MAKE LOANS OF ~~UP TO \$2~~ NOT MORE THAN \$1 MILLION FROM THE
IN-STATE INVESTMENT FUND TO PRIVATE VENTURE CAPITAL
COMPANIES FOR INVESTMENT IN NEW OR EXPANDING BUSINESS;
PROVIDING CRITERIA FOR THE INVESTMENT LOANS; PROVIDING TERMS
FOR THE INVESTMENT LOANS; AMENDING SECTIONS 90-3-102,
~~90-3-501, 90-3-502, 90-3-503, 90-3-504,~~ 90-3-501, 90-3-522,
AND 90-3-523, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 90-3-102, MCA, is amended to read:

"90-3-102. Definitions. As used in this chapter, the following definitions apply:

- (1) "Act" means the Montana science and technology financing act.
- (2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.
- (3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct

business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

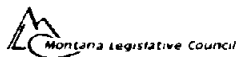
(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the



1 board for use in the science and technology development
2 project.

3 (10) "Portfolio company" means a startup or expansion
4 stage company that has received a seed capital project loan
5 from the board.

6 (11) "Private sector" means any entity or individual,
7 not principally a part of or associated with a governmental
8 unit, that is associated with or involved in commercial
9 activity.

10 (12) "Research and development project" means a science
11 and technology development project that falls into the
12 category of research capability development, applied
13 technology research, or technology transfer and assistance.

14 (13) "Research and development project loan" means a
15 science and technology development project loan entered into
16 between the board and a loan recipient for a research and
17 development project.

18 (14) "Science and technology development project" means
19 either a seed capital project or research and development
20 project designed to discover, develop, transfer, utilize, or
21 commercialize existing or new, innovative technology in
22 order to strengthen and enhance economic development in
23 Montana.

24 (15) "Science and technology development project loan
25 agreement" or "loan" means an agreement entered into between

1 the board and the loan recipient of a seed capital project
2 loan or a research and development project loan that:

3 (a) creates a debt relationship between the parties;

4 (b) provides for a financial return to the board;

5 (c) provides economic development potential to the
6 state; and

7 (d) contains the applicable provisions and terms
8 required by this chapter.

9 (16) "Seed capital project" means a startup capital
10 project or expansion capital project.

11 (17) "Seed capital project loan" means a science and
12 technology development project loan entered into between the
13 board and a loan recipient for a seed capital project.

14 (18) "Startup capital project" means a science and
15 technology development project that assists a company in
16 initiating commercial operations.

17 (19) "State" means the state of Montana.

18 (20) "Venture capital company" means a partnership,
19 corporation, or other business entity engaged in raising
20 funds from investors and earning a financial return for
21 those investors by making equity or quasi-equity investments
22 in new or expanding business.

23 (21) "Warrant" means an instrument issued by a
24 corporation that gives a holder other than the board the
25 right to purchase stock of a corporation either for a

1 limited time or perpetually."

2 Section 2, Section 90-3-501, MCA, is amended to read:

3 "90-3-501, Science and technology development project
4 ---priorities; (1) The board shall make a loan for a science
5 and technology development project if it determines that the
6 project has potential to stimulate economic development in
7 this state and meets the loan criteria established in this
8 chapter;

9 (2) The board shall give priority to project proposals
10 that it determines:

11 (a) incorporate innovative technologies and involve, but
12 are not limited to, one or more of the following target
13 technologies:

14 (a) (i) mineral technology;

15 (b) (ii) agricultural technology;

16 (c) (iii) forestry technology;

17 (d) (iv) energy technology;

18 (e) (v) materials sciences;

19 (f) (vi) information sciences;

20 (g) (vii) biotechnology;

21 (h) (viii) microelectronics and computer sciences; or

22 (i) (ix) hazardous waste treatment and disposal; or

23 (b) represent the best available opportunities for
24 private sector management of funds to be used for
25 early stage venture capital investments."

1 Section 3, Section 90-3-502, MCA, is amended to read:

2 "90-3-502, General criteria underlying science and
3 technology development project loan program. The board may
4 make a science and technology development project loan only
5 upon a favorable determination that the proposed project:

6 (1) is consistent with the findings and purposes of
7 this chapter because it incorporates innovative technology
8 or will invest in innovative technology;

9 (2) has prospects for collaboration between the public
10 and private sectors of the state's economy;

11 (3) has prospects for achieving commercial success and
12 for creating new jobs in the state;

13 (4) has potential for commercial success related to the
14 specific product, or business development methodology, or
15 investment strategy proposed;

16 (5) can provide matching funds to the project as
17 required under 90-3-301, and

18 (6) has a management structure that allows ongoing
19 postdisbursement involvement by the board."

20 Section 4, Section 90-3-503, MCA, is amended to read:

21 "90-3-503, Seed capital project goals. (1) The board
22 may make a seed capital project loan in a company upon a
23 determination by the board that the project meets the loan
24 criteria established in 90-3-502 and 90-3-504 and that the
25 project meets the goals established in subsection (2) and

1 involves investment in the development and commercialization
2 of innovative products or processes;

3 (2) The goals in making a seed capital project loan
4 are:

5 (a) to assist the development of innovative technology
6 in the state by providing a source of capital to the
7 technology-based entrepreneurial sector in the state's
8 economy;

9 (b) to provide financing and follow-along management
10 support for entrepreneurial companies in the state that are
11 attempting to develop products or processes based on
12 innovative technologies; and

13 (c) to provide a liaison between entrepreneurial
14 companies in the state and other investors in an effort to
15 enhance the pool of capital available to technology-based
16 companies in the state.4

17 Section 5, Section 90-3-504, MCA, is amended to read:

18 "90-3-504. Specific criteria for seed capital project
19 loans. The board may make a seed capital project loan only
20 if it determines that the proposed project complies with the
21 criteria and goals set forth in 90-3-502 and 90-3-503 and:

22 (1) the board further determines that:

23 (i) (a) the project develops or employs innovative
24 technology to produce a product or process that promises a
25 significant competitive advantage;

1 (2) (b) the project provides an opportunity to preserve
2 the principal of the loan amount and earn a monetary return;

3 (3) (c) the project has potential to realize substantial
4 growth in sales and a sales revenue level that provides the
5 capacity to meet the board's payback requirements;

6 (4) (d) the company is located or preparing to locate
7 within the state;

8 (5) (e) the project demonstrates a capacity to diversify
9 or add value to the state's basic industries;

10 (6) (f) the company's management team possesses
11 sufficient business experience to enable the company to
12 reach its commercial potential;

13 (7) (g) the company has a strong potential for creating
14 and retaining jobs and stimulating tax revenue growth in the
15 state;

16 (8) (h) the company's product or process is targeted for
17 a sizeable commercial market;

18 (9) (i) the company's product or process is of
19 sufficient quality to significantly impact the target
20 market; and

21 (10) (j) the company's business plan is sufficiently
22 designed to complete financing, marketing, and production
23 objectives to accomplish the proposed commercialization; or

24 (2) the company is a venture capital company that meets
25 the following criteria:

1 ~~(a) the company has raised or is in the process of~~
 2 ~~raising its investment capital under the terms of a~~
 3 ~~prospectus or other offering document that gives the board~~
 4 ~~assurance that the company:~~
 5 ~~(i) will invest at least 50% of its capital in~~
 6 ~~businesses that generally comply with the provisions of~~
 7 ~~subsections (1)(a) through (1)(j);~~
 8 ~~(ii) is in compliance with the United States securities~~
 9 ~~and exchange commission and Montana securities laws and~~
 10 ~~regulations applicable to venture capital companies;~~
 11 ~~(iii) will use equity or quasi-equity investment~~
 12 ~~mechanisms for at least three-fourths of its investments and~~
 13 ~~will not use conventional secured debt mechanisms for more~~
 14 ~~than one-fourth of its investments; and~~
 15 ~~(iv) will otherwise conduct its investment strategy and~~
 16 ~~investment management practices in a manner that conforms to~~
 17 ~~standard venture capital industry practices;~~
 18 ~~(b) the company has a management team that will~~
 19 ~~dedicate the equivalent of at least one full-time manager to~~
 20 ~~the operation of the company; and~~
 21 ~~(c) the company's management has expertise and~~
 22 ~~experience in finding, evaluating, investing in, and~~
 23 ~~managing businesses, with preference given to companies~~
 24 ~~managed by individuals who have experience and expertise in~~
 25 ~~Montana or the Rocky Mountain west;"~~

1 **SECTION 2.** SECTION 90-3-501, MCA, IS AMENDED TO READ:
 2 "90-3-501. Science and technology development project
 3 -- priorities. (1) The board shall make a loan for a science
 4 and technology development project if it determines that the
 5 project has potential to stimulate economic development in
 6 this state and meets the loan criteria established in this
 7 chapter.
 8 (2) The board shall give priority to project proposals
 9 that it determines incorporate innovative technologies and
 10 involve, but are not limited to, one or more of the
 11 following target technologies:
 12 (a) mineral technology;
 13 (b) agricultural technology;
 14 (c) forestry technology;
 15 (d) energy technology;
 16 (e) materials sciences;
 17 (f) information sciences;
 18 (g) biotechnology;
 19 (h) microelectronics and computer sciences; or
 20 (i) hazardous waste treatment and disposal.
 21 (3) The board may use up to 25% of the funds for seed
 22 capital project loans to make seed capital project loans
 23 that do not address the innovative technologies listed in
 24 subsection (2)."
 25 **Section 3.** Section 90-3-522, MCA, is amended to read:

1 **"90-3-522. Science and technology development project**
 2 **loan agreement.** (1) The board shall enter into a science and
 3 technology development project loan agreement with a loan
 4 recipient whose product~~7~~ or OR process~~7~~--~~or--investment~~
 5 ~~business~~ will be developed and commercialized as a result of
 6 a science and technology development project loan.

7 (2) The loan agreement, at a minimum, must contain the
 8 following provisions:

- 9 (a) the project budget;
- 10 (b) the financing~~7~~, ~~or~~ marketing~~7~~, and production
 11 milestones for the project that describe project tasks to be
 12 achieved in each phase of the project at designated times;
- 13 (c) the reporting requirements, including but not
 14 limited to:
 - 15 (i) quarterly financial statements;
 - 16 (ii) quarterly commercialization progress reports;
 - 17 (iii) annual reports; and
 - 18 (iv) reports on any significant project transactions;
 - 19 (d) the disbursement schedule for the loan;
 - 20 (e) the payback to the board;
 - 21 (f) the causes for loan revocation, suspension, or
 22 termination; and
 - 23 (g) the intellectual property provisions, when
 24 applicable."

25 **Section 4.** Section 90-3-523, MCA, is amended to read:

1 **"90-3-523. Seed capital project loan agreement --**
 2 **specific requirements -- payback.** (1) ~~in~~ Except as provided
 3 in subsection-(3) [SECTION 5], in addition to the loan
 4 agreement provisions required in 90-3-522, a seed capital
 5 project loan~~7~~:

6 ~~(a)~~ must be structured as contracted debt that includes
 7 but is not limited to the following terms:

8 ~~(a)~~~~(i)~~(A) an interest rate set at the level that
 9 provides a return to the board, from paybacks by all of its
 10 portfolio companies, in an amount at least equal to the
 11 principal amount of the loans and that provides for a market
 12 rate of return when considering the overall benefit to the
 13 state derived from the projects;

14 ~~(b)~~~~(ii)~~(B) a provision in the note that may defer debt
 15 service until maturity of the note, the term of which may
 16 not exceed 8 years;

17 ~~(c)~~~~(iii)~~(C) a loan amount that may not exceed \$350,000
 18 in any one round of financing. Successive rounds of
 19 financing in which the board participates for any one
 20 company may not occur within a 9-month period. The total
 21 amount that may be loaned to any one company may not exceed
 22 \$750,000.

23 ~~(d)~~~~(iv)~~(D) a provision that the note becomes due in full
 24 upon dissolution or liquidation of the company.

25 ~~(2) --(a) in addition to the provisions in --90-3-522--and~~

1 ~~subsection (1), a seed capital project loan agreement~~
 2 ~~(b)(2) (A) IN ADDITION TO THE PROVISIONS IN 90-3-522~~
 3 ~~AND SUBSECTION (1) OF THIS SECTION, A SEED CAPITAL PROJECT~~
 4 ~~LOAN AGREEMENT may provide for any of the following:~~
 5 ~~(i) a convertible debenture;~~
 6 ~~(ii) a warrant held by the board; or~~
 7 ~~(iii) a warrant held by a third party for the benefit of~~
 8 ~~the board.~~
 9 ~~(b)(2)(B) However, the The board itself may not convert~~
 10 ~~the convertible debenture, exercise the warrant, or hold~~
 11 ~~stock acquired upon any conversion or exercise."~~
 12 NEW SECTION. SECTION 5. VENTURE CAPITAL COMPANIES. THE
 13 BOARD MAY MAKE UP TO \$2 MILLION OF ITS FUNDS AVAILABLE UNDER
 14 17-6-308 FOR SEED CAPITAL PROJECT LOANS TO VENTURE CAPITAL
 15 COMPANIES IN ORDER TO FURTHER THE DEVELOPMENT OF SEED
 16 CAPITAL RESOURCES AVAILABLE FOR INVESTMENT IN
 17 TECHNOLOGY-ORIENTED BUSINESS DEVELOPMENT AND EXPANSION
 18 ACTIVITIES IF THE VENTURE CAPITAL COMPANIES MEET THE
 19 CRITERIA IN SUBSECTIONS (1) AND (2):
 20 (1) VENTURE CAPITAL COMPANIES MUST BE SELECTED FOR
 21 LOANS BY THE BOARD ON THE BASIS OF THE DEMONSTRATED ABILITY
 22 OF THE COMPANIES' PRINCIPALS TO MAKE SOUND INVESTMENTS AND
 23 THE PRINCIPALS' BUSINESS DEVELOPMENT EXPERIENCE.
 24 (2) THE COMPANY HAS RAISED OR IS IN THE PROCESS OF
 25 RAISING ITS INVESTMENT CAPITAL UNDER THE TERMS OF A

1 PROSPECTUS OR OTHER OFFERING DOCUMENT THAT GIVES THE BOARD
 2 ASSURANCE THAT THE COMPANY:
 3 (A) IS IN COMPLIANCE WITH THE UNITED STATES SECURITIES
 4 AND EXCHANGE COMMISSION AND MONTANA SECURITIES LAWS AND
 5 REGULATIONS APPLICABLE TO VENTURE CAPITAL COMPANIES;
 6 (B) WILL USE EQUITY OR QUASI-EQUITY INVESTMENT
 7 MECHANISMS FOR AT LEAST THREE-FOURTHS OF ITS INVESTMENTS AND
 8 WILL NOT USE CONVENTIONAL SECURED DEBT MECHANISMS FOR MORE
 9 THAN ONE-FOURTH OF ITS INVESTMENTS;
 10 (C) WILL OTHERWISE CONDUCT ITS INVESTMENT STRATEGY AND
 11 INVESTMENT MANAGEMENT PRACTICES IN A MANNER THAT CONFORMS TO
 12 STANDARD VENTURE CAPITAL INDUSTRY PRACTICES; AND
 13 (D) HAS A MANAGEMENT TEAM THAT WILL DEDICATE THE
 14 EQUIVALENT OF AT LEAST ONE FULL-TIME MANAGER TO THE
 15 OPERATION OF THE COMPANY.
 16 (3) THE BOARD MAY ADOPT RULES GOVERNING LOANS TO
 17 VENTURE CAPITAL COMPANIES TO IMPLEMENT THE TERMS OF THIS
 18 SECTION AND TO ENSURE THAT THE LOANS MEET THE REQUIREMENTS
 19 OF 90-3-501 THROUGH 90-3-504.
 20 NEW SECTION. SECTION 6. SEED CAPITAL PROJECT LOAN
 21 AGREEMENT WITH VENTURE CAPITAL COMPANY. (3) A seed capital
 22 project loan agreement with a venture capital company must
 23 contain the following terms:
 24 (a)(1) a loan amount that may not be less than \$1
 25 million \$500,000 or more than \$2 \$1 million; and

1 (b)(2) payback provisions:
2 (i)(A) that are structured as contracted debt;
3 (ii)(B) that allow debt to be repaid in portions of the
4 original loan amount or as interest on the original loan
5 amount in the same proportion as any paybacks made to the
6 other investors or lenders that make up the remaining
7 capitalization of the venture capital company, based upon
8 the original capital invested in or loaned to the venture
9 capital company by the other investors or lenders;
10 (iii)(C) that are not more or less favorable than the
11 repayment and earnings provisions applicable to other
12 investors or lenders that make up the remaining
13 capitalization of the venture capital company; and
14 (iv)(D) that are based on a term no greater than 12
15 years.
16 **NEW SECTION. Section 7. Effective date.** [This act] is
17 effective July 1, 1991.

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