

SENATE BILL NO. 26

INTRODUCED BY MANNING
BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

IN THE SENATE

DECEMBER 31, 1990 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

JANUARY 7, 1991 FIRST READING.

JANUARY 22, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 23, 1991 PRINTING REPORT.

 ON MOTION, CONSIDERATION PASSED.

JANUARY 24, 1991 SECOND READING, DO PASS.

JANUARY 25, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 47; NOES, 2.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 25, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON TAXATION.

JANUARY 26, 1991 FIRST READING.

APRIL 4, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

APRIL 11, 1991 SECOND READING, CONCURRED IN.

APRIL 12, 1991 THIRD READING, CONCURRED IN.
AYES, 95; NOES, 2.

 RETURNED TO SENATE.

IN THE SENATE

APRIL 13, 1991 RECEIVED FROM HOUSE.

 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 SENATE BILL NO. 26

2 INTRODUCED BY MANNING

3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE
7 PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF
8 THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE
9 ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STATE
10 INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST
11 UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE
12 MONTANA ECONOMY; ELIMINATING THE LOAN LOSS RESERVE FUND;
13 AUTHORIZING MONTANA CAPITAL COMPANIES TO ISSUE AND SELL
14 DEBENTURES TO THE PERMANENT COAL TAX TRUST FUND; ALLOWING AN
15 INTEREST RATE REDUCTION INCENTIVE FOR JOB CREATION BY SMALL
16 BUSINESSES; ALLOWING AN ADDITIONAL SERVICE FEE DISCOUNT TO
17 FINANCIAL INSTITUTIONS ON CERTAIN SMALL BUSINESS LOAN
18 PARTICIPATIONS; AMENDING SECTIONS 17-5-1506, 17-5-1525,
19 17-5-1526, 17-5-1527, 17-6-302, 17-6-305, 17-6-308,
20 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101, 90-3-525,
21 90-6-104, 90-8-102, AND 90-8-305, MCA; AND REPEALING
22 SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND 17-6-315, MCA."

23
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:25 **Section 1.** Section 17-5-1506, MCA, is amended to read:

1 "17-5-1506. Bonds and notes for projects and major
2 projects. (1) The board may by resolution issue negotiable
3 notes and bonds in a principal amount as the board
4 determines necessary to provide sufficient funds for
5 achieving any of its purposes, including the payment of
6 interest on notes and bonds of the board, establishment of
7 reserves to secure the notes and bonds, including the
8 reserve funds created under 17-5-1515, and all other
9 expenditures of the board incident to and necessary or
10 convenient to carry out this part.

11 (2) The board may by resolution, from time to time,
12 issue notes to renew notes and bonds or to pay notes,
13 including interest, and whenever it considers refunding
14 expedient, refund any bonds by the issuance of new bonds,
15 whether or not the bonds to be refunded have matured, or
16 issue bonds partly to refund bonds outstanding and partly
17 for any of its other purposes.

18 (3) Except as otherwise expressly provided by
19 resolution of the board, every issue of its bonds is an
20 obligation of the board payable out of any revenue, assets,
21 or money of the board, subject only to agreements with the
22 holders of particular notes or bonds pledging particular
23 revenues, assets, or money.

24 (4) The notes and bonds ~~shall~~ must be authorized by
25 resolutions of the board, bear a date, and mature at the

1 times the resolutions provide. A note may not mature more
 2 than 5 years from the date of its issue. A bond may not
 3 mature more than 40 years from the date of its issue. The
 4 bonds may be issued as serial bonds payable in annual
 5 installments, as term bonds, or as a combination thereof.
 6 The notes and bonds shall must bear interest at a stated
 7 rate or rates or at a rate or rate determination as stated,
 8 be in denominations, be in a form, either coupon or
 9 registered, carry registration privileges, be executed in a
 10 manner, be payable in a medium of payment, at places inside
 11 or outside the state, and be subject to terms of redemption
 12 as provided in resolutions. The notes and bonds of the board
 13 may be sold at public or private sale, at prices above or
 14 below par, as determined by the board, and in a manner such
 15 that interest on the bonds is either exempt from or subject
 16 to federal income tax.

17 (5) The bonds issued under this part are exempt from
 18 the Montana Securities Act, but copies of all prospectus and
 19 disclosure documents must be deposited with the state
 20 securities commissioner for public inspection.

21 (6) The total amount of bonds secured under 17-5-1515
 22 and ~~17-5-1519~~ outstanding at any one time, except bonds as
 23 to which the board's obligations have been satisfied and
 24 discharged by refunding or bonds for which reserves for
 25 payment or other means of payment have been provided, may

1 not exceed \$75 million."

2 **Section 2.** Section 17-5-1525, MCA, is amended to read:

3 "17-5-1525. Bonds as legal investment. (1) Bonds issued
 4 by the board under the provisions of this part are
 5 securities in which all funds may be legally and properly
 6 invested, including capital in the control of or belonging
 7 to:

8 (a) public officers and public bodies of the state and
 9 its political subdivisions;

10 (b) insurance companies;

11 (c) credit unions, building and loan associations,
 12 investment companies, savings banks, banking associations,
 13 and trust companies;

14 (d) executors, administrators, trustees, and other
 15 fiduciaries; and

16 (e) pension, profit-sharing, and retirement funds.

17 (2) Bonds issued under 17-5-1505 through 17-5-1718 and
 18 17-5-1521 through 17-5-1529 are securities which that may
 19 properly and legally be deposited with and received by any
 20 state or municipal officer or any agency or municipality of
 21 the state for any purpose for which the deposit of bonds or
 22 obligations of the state is now or may hereafter be
 23 authorized by law."

24 **Section 3.** Section 17-5-1526, MCA, is amended to read:

25 "17-5-1526. Procedure prior to financing projects. (1)

1 The board may finance projects, other than major projects,
2 under this part only when it finds that:

3 (a) the financing is in the public interest and is
4 consistent with the legislative purposes and findings set
5 forth in 17-5-1502;

6 (b) the financing to be provided by the board for a
7 project does not exceed either \$800,000 or 90% of the cost
8 or appraised value of the project, whichever is less;

9 (c) a financial institution will participate in
10 financing the project, either directly or through a letter
11 of credit, to the extent of at least 10% of the financing to
12 be provided by the board;

13 (d) the financing for the project is insured or
14 guaranteed in whole or in part by a private or governmental
15 insurer or guarantor, ~~including but not limited to a~~
16 ~~guaranty by the board pursuant to 17-5-1519;~~

17 (e) an applicant has submitted a statement indicating
18 any contracts to construct the projects will require all
19 contractors to give preference to the employment of bona
20 fide Montana residents, as defined in 18-2-401, in the
21 performance of the work on the projects if their
22 qualifications are substantially equal to those of
23 nonresidents; "substantially equal qualifications" means the
24 qualifications of two or more persons among whom the
25 employer cannot make a reasonable determination that the

1 qualifications held by one person are significantly better
2 suited for the position than the qualifications held by the
3 other persons; and

4 (f) adequate provision is made in the loan agreement,
5 lease, or other credit arrangement regarding a project or
6 projects being financed to provide for payment of debt
7 service on bonds of the board issued to finance ~~such the~~
8 project or projects, to create and maintain reserves
9 therefor, and to meet all costs and expenses of issuing and
10 servicing the bonds.

11 (2) In order to make the findings as described in
12 subsection (1)(a), a hearing must be conducted in the
13 following manner:

14 (a) the city or county in which the project will be
15 located must be notified; and the city and county ~~must~~
16 shall, within 14 days after receipt of the notice, notify
17 the board if it elects to conduct the hearing; or

18 (b) if no request for a local hearing is received, the
19 board may hold the hearing at a time and place it
20 prescribes.

21 (3) If the hearing required by subsection (2) is
22 conducted by a local government, the governing body of the
23 local government ~~must~~ shall notify the board of its
24 determination of whether the project is in the public
25 interest within 14 days of the completion of the public

1 hearing.

2 (4) When a hearing is required either locally or at the
3 state level, notice must be given, at least once a week for
4 2 weeks prior to the date set for the hearing, by
5 publication in a newspaper of general circulation in the
6 city or county where the hearing will be held. The notice
7 must include the time and place of the hearing; the general
8 nature of the project; the name of the lessee, borrower, or
9 user of the project; and the estimated cost of the project.

10 (5) The requirements of subsections (1)(b) through
11 (1)(d) do not apply to bonds that are not secured by the
12 ~~board's guarantee under 17-5-1519~~ or the capital reserve
13 account authorized by 17-5-1515.

14 (6) The hearing requirements of subsections (2) through
15 (4) do not apply to projects financed with bonds the
16 interest on which is subject to federal income taxes."

17 **Section 4.** Section 17-5-1527, MCA, is amended to read:

18 "17-5-1527. Procedure prior to financing major
19 projects. (1) The board may finance major projects under
20 this part only when it finds that:

21 (a) the financing is in the public interest and is
22 consistent with legislative purposes and findings;

23 (b) the financing to be provided by the board for a
24 project does not exceed either \$10 million or 90% of the
25 cost or appraised value of the project, whichever is less;

1 (c) a financial institution will participate in
2 financing the project if the cost or appraised value is less
3 than \$1 million, either directly or through a letter of
4 credit, to the extent of at least 10% of the financing to be
5 provided by the board, provided, however, that participation
6 by a financial institution in projects of over \$1 million is
7 at the discretion of the board;

8 (d) the financing for the project is insured or
9 guaranteed in whole or in part by a private or governmental
10 insurer or guarantor, ~~including but not limited to a~~
11 ~~guaranty by the board pursuant to 17-5-1519~~;

12 (e) any contracts to construct the projects require all
13 contractors to give preference to the employment of bona
14 fide Montana residents, as defined in 18-2-401, in the
15 performance of the work on the projects if their
16 qualifications are substantially equal to those of
17 nonresidents; "substantially equal qualifications" means the
18 qualifications of two or more persons among whom the
19 employer cannot make a reasonable determination that the
20 qualifications held by one person are significantly better
21 suited for the position than the qualifications held by the
22 other persons; and

23 (f) adequate provision is made in the loan agreement,
24 lease, or other credit arrangement regarding a project or
25 projects being financed to provide for payment of debt

1 service on bonds of the board issued to finance such the
 2 project or projects, to create and maintain reserves
 3 therefor, and to meet all costs and expenses of issuing and
 4 servicing the bonds.

5 (2) In order to make the findings as described in
 6 subsection (1)(a), a hearing must be conducted in the
 7 following manner:

8 (a) the city or county in which the project will be
 9 located ~~shall~~ must be notified, and within 14 days ~~must~~
 10 shall advise the board if it elects to conduct the hearing;
 11 or

12 (b) if no request for a local hearing is received, the
 13 board may hold the hearing at a time and place it
 14 prescribes.

15 (3) If the hearing required by subsection (2) is
 16 conducted by a local government, the governing body of the
 17 local government must shall notify the board of its
 18 determination of whether the project is in the public
 19 interest within 14 days of the completion of the public
 20 hearing.

21 (4) When a hearing is required either locally or at the
 22 state level, notice must be given, at least once a week for
 23 2 weeks prior to the date set for the hearing, by
 24 publication in a newspaper of general circulation in the
 25 city or county where the hearing will be held. The notice

1 must include the time and place of the hearing; the general
 2 nature of the project; the name of the lessee, borrower, or
 3 user of the project; and the estimated cost of the project.

4 (5) The requirements of subsections (1)(b) through
 5 (1)(d) do not apply to bonds that are not secured by ~~the~~
 6 ~~board's-guarantee-under-17-5-1519--or~~ the capital reserve
 7 account authorized by 17-5-1515.

8 (6) The hearing requirements of subsections (2) through
 9 (4) do not apply to major projects financed with bonds the
 10 interest on which is subject to federal income taxes."

11 **Section 5.** Section 17-6-302, MCA, is amended to read:

12 "17-6-302. Definitions. As used in this part, unless
 13 the context requires otherwise, the following definitions
 14 apply:

15 (1) "Board" means the board of investments created in
 16 2-15-1808.

17 (2) "Capital company" means a Montana capital company
 18 created pursuant to Title 90, chapter 8.

19 (3) "Clean and healthful environment" means an
 20 environment that is relatively free from pollution which
 21 that threatens human health, including as a minimum,
 22 compliance with federal and state environmental and health
 23 standards.

24 (4) "Employee-owned enterprise" means any enterprise at
 25 least 51% of whose stock, partnership interests, or other

1 ownership interests is owned and controlled by residents of
2 Montana each of whose principal occupation is as an
3 employee, officer, or partner of the enterprise.

4 (5) "Financial institution" includes but is not limited
5 to a state- or federally chartered bank or a savings and
6 loan association, credit union, or development corporation
7 created pursuant to Title 32, chapter 4.

8 (6) "Loan participation" means loans or portions
9 thereof bought from a financial institution and does not
10 include the purchase of debentures issued by a capital
11 company.

12 (7) "Locally owned enterprise" means any enterprise 51%
13 of whose stock, partnership interests, or other ownership
14 interests are owned and controlled by residents of Montana.

15 (8) "Long-term benefit to the Montana economy" means an
16 activity that strengthens the Montana economy and that has
17 the potential to maintain and create jobs, increase per
18 capita income, or increase Montana tax revenues in the
19 future to the people of Montana, either directly or
20 indirectly.

21 (9) "Montana economy" means any business activity in
22 the state of Montana, including those which continue
23 existing jobs or create new jobs in Montana.

24 ~~(10) "Montana in-state investment fund" means the fund~~
25 ~~established by 17-6-306.~~

1 ~~(11)~~(10) "Service fees" means the fees normally charged
2 by a financial institution for servicing a loan, including
3 amounts charged for collecting payments and remitting
4 amounts to the fund."

5 **Section 6.** Section 17-6-305, MCA, is amended to read:

6 "17-6-305. Investment of up to twenty-five percent of
7 the coal tax trust fund in the Montana economy. (1)
8 ~~Twenty-five-percent-of-all-revenue-deposited-after-June--30,~~
9 ~~1983,--into~~ Subject to the provisions of 17-6-201(1), the
10 board shall endeavor to invest up to 25% of the permanent
11 coal tax trust fund established in 17-6-203(5)(6) and 15% of
12 the--annual--income--and--earnings--on--the--Montana--in--state
13 investment--fund--appropriated--to--the--coal--severance--tax
14 permanent--fund--by--17-5-704(2)--shall--be--invested in the
15 Montana economy with special emphasis on investments in new
16 or expanding locally owned enterprises.

17 (2) In determining the probable income to be derived
18 from investment of this revenue, the long-term benefit to
19 the Montana economy ~~shall~~ must be considered.

20 (3) The legislature may provide additional procedures
21 to implement this section."

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

23 "17-6-308. Authorized investments. (1) Except as
24 provided in ~~subsection--(4)~~ subsections (2) and (3) and
25 subject to the provisions of 17-6-201, the Montana in-state

1 investment permanent coal tax trust fund must be invested as
 2 authorized by rules adopted by the board. ~~Per purposes of~~
 3 ~~this section, "investment" includes the guaranty of loans or~~
 4 ~~bonds in consideration for a fee, in lieu of the actual~~
 5 ~~acquisition of such loans or bonds.~~

6 ~~(2) The board may use the in-state investment fund to~~
 7 ~~guarantee loans or bonds issued under the provisions of~~
 8 ~~17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16,~~
 9 ~~or Title 90, chapter 7. Each guaranty must be given in~~
 10 ~~consideration of a fee. The fees must be paid to the board.~~
 11 ~~The guaranty must provide directly or by separate agreement~~
 12 ~~that the board is fully subrogated to the rights of the~~
 13 ~~obligee under the loan or bond. The board shall by rule~~
 14 ~~establish the maximum ratio between guaranty funds available~~
 15 ~~and loans or bonds to be guaranteed. The board may covenant~~
 16 ~~in bond issues to maintain such ratio. Unless bonds issued~~
 17 ~~to finance a project are secured by a common capital reserve~~
 18 ~~account and a common guaranty fund, the maximum amount of~~
 19 ~~the guaranty authorized by this section may not exceed~~
 20 ~~\$3,000,000 with respect to the bonds or loans to finance the~~
 21 ~~project.~~

22 ~~(3)(2)~~ The board may make loans from the in-state
 23 investment permanent coal tax trust fund to the capital
 24 reserve account created pursuant to 17-5-1515 and ~~the~~
 25 ~~guaranty fund created pursuant to 17-5-1520~~ to establish

1 balances or restore deficiencies therein in the account. The
 2 board may agree in connection with the issuance of bonds or
 3 notes secured by such the account or fund to make such the
 4 loans. Loans must be on such terms and conditions as the
 5 board determines and must be repaid from revenues of the
 6 board realized from the exercise of its powers under
 7 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529,
 8 subject to the prior pledge of the revenues to the bonds and
 9 notes.

10 ~~(4)(3)~~ The board shall allow the Montana board of
 11 science and technology development provided for in 2-15-1818
 12 to administer \$7.5 million of the in-state investment
 13 permanent coal tax trust fund for seed capital project loans
 14 pursuant only to the provisions of Title 90, chapter 3. This
 15 authority does not extend beyond June 30, 1994. Until such
 16 time as the Montana board of science and technology
 17 development makes a loan pursuant to those provisions, the
 18 funds under its administration must be invested by the board
 19 of investments pursuant to the provisions of 17-6-201."

20 **Section 8.** Section 17-6-310, MCA, is amended to read:

21 "17-6-310. **No direct loans.** (1) The state may not use
 22 this revenue to make direct loans.

23 (2) ~~No money from the Montana in-state investment~~ The
 24 permanent coal tax trust fund may not be used to make direct
 25 loans to individual borrowers. The purchase of debentures

1 issued by a capital company and loans or portions thereof of
2 loans originated by a financial institution that are sold to
3 the trust are not direct loans."

4 **Section 9.** Section 17-6-311, MCA, is amended to read:

5 "17-6-311. **Limitation on size of investments.** (1)
6 Except as provided in subsections (2) and (3), no investment
7 may be made that will result in any one business enterprise
8 or person receiving a benefit from or incurring a debt to
9 the Montana-in-state-investment permanent coal tax trust
10 fund the total current accumulated amount of which exceeds
11 ~~10%~~ 1% of the ~~prior-fiscal-year's-coal-severance-tax-revenue~~
12 ~~deposited-in-the-Montana-in-state-investment permanent coal~~
13 ~~tax trust~~ fund.

14 (2) Subsection (1) does not limit the board's authority
15 to ~~guarantee--loans--or--bonds--or~~ make loans to the capital
16 reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2)
17 ~~and-(3).~~

18 (3) Subsection (1) does not apply to the purchase of
19 debentures issued by a capital company; however, the total
20 amount of such debentures purchased by the board may not
21 exceed ~~10%~~ 1% of the Montana in-state-investment permanent
22 coal tax trust fund at the time of purchase."

23 **Section 10.** Section 17-6-314, MCA, is amended to read:

24 "17-6-314. **Rate of return.** In calculating the rate of
25 return for any Montana investment to be made from the

1 Montana-in-state-investment permanent coal tax trust fund,
2 the board shall consider the long-term benefit to the
3 Montana economy and the additional service fee discount
4 provided for in [section 18]."

5 **Section 11.** Section 17-6-322, MCA, is amended to read:

6 "17-6-322. **Report.** The board shall include in its
7 annual report a section on the results of the previous
8 year's operations of the in-state investment in the Montana
9 economy from the permanent coal tax trust fund, as required
10 in 17-6-305, including:

11 (1) financial statements audited by independent
12 auditors;

13 (2) a summary report of loan activity; and

14 (3) a comparison of the Montana--in-state--investment
15 fund's performance of the investments in the Montana economy
16 in relation to the purposes contained in 17-6-303."

17 **Section 12.** Section 90-3-101, MCA, is amended to read:

18 "90-3-101. **Short title -- findings -- purpose.** (1) This
19 chapter may be cited as the "Montana Science and Technology
20 Financing Act".

21 (2) The legislature finds and declares that:

22 (a) it is the policy of the state of Montana to promote
23 the health, safety, and general welfare of all the people of
24 the state;

25 (b) this policy will be furthered through strengthening

1 and diversifying the state's economy by facilitating a
2 public sector-private sector partnership to encourage
3 scientific and technological development within the state in
4 order to keep pace with a changing economic structure and to
5 create new jobs and expand business opportunities;

6 (c) this strengthening and diversification will be
7 fostered by assisting in the acceleration of development of
8 technology in the state through participation with the
9 private sector in the financing of science and technology
10 development projects that have significant potential for
11 commercialization in Montana;

12 (d) the ~~in-state-investment~~ permanent coal tax trust
13 fund created ~~through-adoption-of-Initiative-Measure-No-95~~
14 ~~by-the-voters-of-Montana-in-1982~~ by Article IX, section 5,
15 of the Montana constitution is the appropriate source for
16 providing financing programs for the development of new and
17 expanding businesses in Montana;

18 (e) the Science and Technology Development Board Seed
19 Capital Bond Act contained provisions that were found to be
20 unconstitutional by the Montana supreme court, and the 51st
21 legislature of the state of Montana must remedy those
22 defects through legislation; and

23 (f) the Montana science and technology development
24 board has demonstrated success in forging a partnership
25 among the private sector, the university community, and

1 government, and this success should be continued through an
2 ongoing legislative commitment to the board's programs.

3 (3) The purposes of this chapter are to:

4 (a) strengthen and diversify Montana's economy by
5 establishing a public-private sector partnership to
6 encourage scientific and technological development within
7 the state in order to keep pace with a transforming economic
8 structure and to create new jobs and expand small business
9 opportunities;

10 (b) provide a funding source for the board to make seed
11 capital project loans;

12 (c) provide a mechanism for the board to use in making
13 seed capital project loans; and

14 (d) provide a mechanism for the board to use in making
15 research and development project loans, the funding source
16 of which will be provided by separate legislation."

17 **Section 13.** Section 90-3-525, MCA, is amended to read:

18 "90-3-525. Deposit of ~~payback~~ -- seed capital and
19 research and development project loans. (1) The payback of
20 principal and earnings on a seed capital project loan
21 executed under this chapter ~~must-be-administered-pursuant-to~~
22 ~~section-17-6-306.~~

23 ~~(2)--The~~ or the payback of principal and earnings on a
24 research and development project loan must be deposited to
25 the state special revenue fund to the credit of the science

1 and technology development account created in 90-3-305.

2 ~~(3)~~(2) All paybacks of principal and earnings to the
3 board from any agreements executed by the board between July
4 1, 1985, and March 31, 1989, must be deposited to the state
5 special revenue fund to the credit of the science and
6 technology development account created in 90-3-305 for use
7 by the board. The paybacks include all those received after
8 January 1, 1989."

9 **Section 14.** Section 90-6-104, MCA, is amended to read:

10 **"90-6-104. General powers of the board.** The board may:

11 (1) sue and be sued;

12 (2) have a seal;

13 (3) adopt all procedural and substantive rules
14 necessary for the administration of this part, including
15 rules concerning its mortgage, construction, and temporary
16 lending programs;

17 (4) make contracts, agreements, and other instruments
18 necessary or convenient for the exercise of its powers under
19 this part;

20 (5) enter into agreements or other transactions with
21 any federal, state, or local governmental agency, any
22 persons, and any domestic or foreign partnership,
23 corporation, association, or organization in carrying out
24 this part;

25 (6) enter into agreements under its rules with

1 sponsors, mortgagors, or lending institutions for the
2 purpose of regulating the analysis, planning, development,
3 and management of housing developments financed in whole or
4 in part by the proceeds of its loans or securities and
5 mortgage purchase programs;

6 (7) enter into agreements or other transactions with,
7 and accept grants and the cooperation of, any governmental
8 agency in furtherance of this part, including but not
9 limited to the development, leasing, maintenance, operation,
10 and financing of any housing development;

11 (8) accept services, appropriations, gifts, grants,
12 bequests, and devise and utilize or dispose of them in
13 carrying out this part;

14 (9) acquire real or personal property or any right,
15 interest, or easement therein by gift, purchase, transfer,
16 foreclosure, lease, or otherwise; hold, sell, assign, lease,
17 encumber, mortgage, or otherwise dispose thereof; hold,
18 sell, assign, or otherwise dispose of any mortgage or loan
19 owned by it or in its control or custody; release or
20 relinquish any right, title, claim, interest, easement, or
21 demand, however acquired, including any equity or right of
22 redemption; do any of the foregoing by public or private
23 sale, with or without public bidding; commence any action to
24 protect or enforce any right conferred upon it by any law,
25 mortgage, contract, or other agreement; bid for and purchase

1 property at any foreclosure or other sale or acquire or take
 2 possession of it in lieu of foreclosure; and operate,
 3 manage, lease, dispose of, and otherwise deal with such
 4 property in any manner necessary or desirable to protect its
 5 interests and the holders of its bonds or notes and
 6 consistent with any agreement with such holders;

7 (10) service and contract and pay for the servicing of
 8 loans;

9 (11) provide general technical services in the analysis,
 10 planning, design, processing, construction, rehabilitation,
 11 and management of housing developments for persons and
 12 families of lower income where these services are not
 13 otherwise available;

14 (12) provide general consultative services to housing
 15 developments for persons and families of lower income and
 16 the residents thereof with respect to counseling and
 17 training in management, home ownership, and maintenance
 18 where these services are not otherwise available;

19 (13) invest any funds not required for immediate use,
 20 subject to any agreements with its bondholders and
 21 noteholders, as provided in Title 17, chapter 6, except all
 22 investment income from funds of the board less the cost for
 23 investment as prescribed by law ~~shall~~ must be deposited in
 24 the housing authority enterprise fund;

25 (14) sell its loans or securities to the federal

1 national mortgage association or any other agency or
 2 instrumentality of the United States and invest in the
 3 capital stock issued by the association or other agency or
 4 instrumentality to the extent, if any, required as a
 5 condition of ~~such~~ the sale;

6 (15) consent, whenever it ~~deems~~ considers it necessary
 7 or desirable in fulfilling its purposes, to the modification
 8 of the rate of interest, time, and payment of any
 9 installment of principal or interest, security, or any other
 10 term of any contract, mortgage, mortgage loan, mortgage loan
 11 commitment, construction loan, advance contract, or
 12 agreement of any kind, subject to any agreement with
 13 bondholders and noteholders;

14 (16) collect reasonable interest, fees, and charges in
 15 connection with making and servicing its loans, notes,
 16 bonds, commitments, and other evidences of indebtedness and
 17 in connection with providing technical, consultative, and
 18 project assistance services. Interest fees and charges ~~shall~~
 19 be are limited to the amounts required to pay the costs of
 20 the board, including operating and administrative expenses
 21 and reasonable allowances for losses ~~which~~ that may be
 22 incurred.

23 (17) procure insurance against any loss in connection
 24 with its mortgages and mortgage loans and other assets or
 25 property in amounts and from insurers as the board considers

1 desirable or necessary;

2 (18) act as agent for governmental agencies concerning
3 acquisition, construction, leasing, operation, or management
4 of a housing development;

5 (19) issue notes and bonds and replace lost, destroyed,
6 or mutilated notes and bonds; and

7 (20) develop special programs for housing developments
8 for veterans of the armed forces of the United States who
9 are unable to acquire safe and sanitary housing through
10 lending institutions by conventional means; ~~and~~

11 ~~{21}--lend-money-to-the-board-of-investments-to-establish~~
12 ~~the-Montana-economic-development-guaranty--fund--created--by~~
13 ~~17-5-1520."~~

14 **Section 15.** Section 90-8-102, MCA, is amended to read:

15 "90-8-102. Declaration of policy. (1) The legislature
16 finds and declares that:

17 (a) economic insecurity due to unemployment is a
18 serious menace to the health, safety, and general welfare of
19 not only the affected people but of the people of the entire
20 state;

21 (b) involuntary unemployment, with its resulting burden
22 of indigency, falls with crushing force upon unemployed
23 workers and ultimately on the state itself in the form of
24 public assistance and unemployment compensation payments;
25 and

1 (c) unemployment causes a migration of Montana workers
2 and families seeking jobs and establishing homes elsewhere,
3 which deprives the state of its most valuable resource, its
4 people, and reduces the tax base of local governments,
5 impairing their ability to provide basic services.

6 (2) (a) The legislature further finds that the best
7 method of combating unemployment and protecting Montana
8 against the loss of its people is by promoting, stimulating,
9 developing, rehabilitating, and revitalizing the business
10 prosperity and economic welfare of the state and its
11 citizens.

12 (b) To accomplish this goal, the legislature seeks to
13 encourage the formation of venture and equity capital in
14 Montana for use in diversifying, strengthening, and
15 stabilizing the Montana economy by increasing Montana
16 employment and business opportunities while protecting the
17 people's constitutional right to a clean and healthful
18 environment.

19 (3) The legislature further finds that:

20 (a) private investment of venture and equity capital in
21 the Montana economy will be encouraged and promoted by
22 making tax credits available to taxpayers investing in
23 Montana capital companies;

24 (b) demands on state revenues restrict the financial
25 ability of the state to make unlimited tax credits available

1 for investment purposes and require that the state place
2 reasonable limits on the total amount of tax credits to be
3 made available for investment incentive;

4 (c) establishment of a rational tax credit program
5 ~~which~~ that gives priority to investments in capital
6 companies in the order in which they are qualified will
7 encourage prompt private investment in Montana businesses.

8 (4) The legislature further finds that use of money
9 from the Montana ~~in-state--investment--fund--established--by~~
10 ~~17-6-306~~ permanent coal tax trust fund to purchase
11 debentures issued by a capital company will promote the
12 business prosperity and economic welfare of the state and
13 its citizens."

14 **Section 16.** Section 90-8-305, MCA, is amended to read:

15 **"90-8-305. Sale of debentures.** (1) A qualified Montana
16 capital company is authorized to issue and sell debentures
17 to the ~~in-state-investment~~ permanent coal tax trust fund
18 ~~established-in-17-6-306.~~

19 (2) Proceeds received by a qualified Montana capital
20 company from the sale of debentures authorized in subsection
21 (1) must be invested in accordance with the provisions of
22 90-8-301, except that the time periods for making qualified
23 investments must be calculated from the date the company
24 sells the debentures to the ~~in-state-investment~~ permanent
25 coal tax trust fund."

1 NEW SECTION. **Section 17. Job credit interest rate**
2 **reduction for small business loan participations.** (1) A
3 borrower who uses the proceeds of a small business loan
4 participation funded under the provisions of this part to
5 create jobs employing Montana residents is entitled to a job
6 credit interest rate reduction for each job created over a
7 2-year period to employ a Montana resident. The date of the
8 formal written interim or permanent loan application to the
9 financial institution will be used as a beginning date for
10 counting the number of jobs created. The job credit interest
11 rate reduction may not apply to a loan participation of more
12 than 1% of the total of the permanent coal tax trust fund
13 determined at the end of the last completed fiscal year. The
14 job credit interest rate reduction is equal to 0.05% for
15 each job created to employ a Montana resident up to a
16 maximum interest rate reduction of 2.5%.

17 (2) If the salary or wage of the job created:

18 (a) exceeds the average weekly wage, as defined in
19 39-71-116, the amount of the job credit interest rate
20 reduction may be increased proportionately for each
21 increment of 25% above the average weekly wage to a maximum
22 of two times the average weekly wage; or

23 (b) is less than the average weekly wage, as defined in
24 39-71-116, the job credit interest rate reduction is reduced
25 proportionately for each 25% increment below the average

1 wage.

2 (3) A job credit interest rate reduction may not be
3 allowed for a job created by the borrower using the proceeds
4 of the loan for which the salary or wage is less than the
5 minimum wage provided for in 39-3-409.

6 (4) No job credit will be given unless one whole job is
7 created.

8 (5) To qualify for the job credit interest rate
9 reduction, the borrower shall provide satisfactory evidence
10 of the creation of jobs and make application in writing,
11 through its financial institution, to the board when the
12 loan is delivered to the board or not later than 45 days
13 after the first and second anniversary dates of the loan.

14 NEW SECTION. Section 18. Incentive to financial
15 institution for small business loan participation. A
16 financial institution that originates a small business loan
17 no larger than 0.05% of the balance of the Montana permanent
18 coal tax trust fund at the end of the last completed fiscal
19 year is entitled to an additional service fee in the form of
20 a discount equal to 0.5% of the board's participation in the
21 loan. The board shall consider the additional service fee
22 discount to the financial institution as part of the rate of
23 return provided in 17-6-314.

24 NEW SECTION. Section 19. Repealer. Sections 17-5-1519,
25 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

1 NEW SECTION. Section 20. Saving clause. [This act]
2 does not affect rights and duties that matured, penalties
3 that were incurred, or proceedings that were begun before
4 [the effective date of this act].

5 NEW SECTION. Section 21. Severability. If a part of
6 [this act] is invalid, all valid parts that are severable
7 from the invalid part remain in effect. If a part of [this
8 act] is invalid in one or more of its applications, the part
9 remains in effect in all valid applications that are
10 severable from the invalid applications.

11 NEW SECTION. Section 22. Codification instruction.
12 [Sections 17 and 18] are intended to be codified as an
13 integral part of Title 17, chapter 6, part 3, and the
14 provisions of Title 17, chapter 6, part 3, apply to
15 [sections 17 and 18].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0026, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to revise the authority of the board of investments to invest the permanent coal tax trust fund; eliminate the authority of the board of investments to guarantee loans; eliminate the economic development guaranty fund and the in-state investment fund; allow the Board of Investments to invest up to 25% of the permanent coal tax trust fund in the Montana economy; eliminate the loan loss reserve fund; authorize Montana capital companies to issue and sell debentures to the permanent coal tax trust fund; allow an interest rate reduction incentive for job creation by small businesses; allow an additional service fee discount to financial institutions on certain small business loan participation.

ASSUMPTIONS:

1. Current law establishes the in-state investment fund as 25% of income to the coal trust. As of June 30, 1990, the in-state fund totaled \$68 million.
2. This act would establish 25% of the entire coal trust as available for in-state investment. The amount available for in-state investment would increase to \$112 million plus 12.5% of the FY91 coal tax receipts.
3. A greater number of in-state loans would be made at reduced interest rates.
4. SB0026 does not change the loan program because the Board of Investments manages the entire fund.
5. The proposed repeal of 17-6-315, MCA, would transfer the loan loss reserve to the general fund and future reserve revenue will go to the general fund. The loan loss reserve is assumed to grow at the same \$100,000 rate as it did from FY89 to FY90.

FISCAL IMPACT:


	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>Revenues:</u>						
General Fund	0	425,000	425,000	0	100,000	100,000

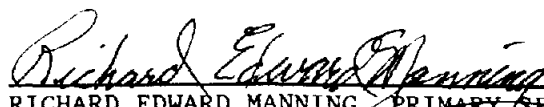
LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A larger portion of the permanent coal trust is available for in-state loans at reduced interest rates, a maximum loan size is established by statute, and the job creation interest rate reduction is established in statute.

TECHNICAL NOTES:

The bill does not contain an effective date. If it were to be effective upon passage and approval, the general fund transfer will be made prior to fiscal year end rather than in FY92.


 _____ 1-8-91
 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 _____ 1/10/91
 RICHARD EDWARD MANNING, PRIMARY SPONSOR DATE
 Fiscal Note for SB0026, as introduced. **SB 26**

APPROVED BY COMMITTEE
ON TAXATION

SENATE BILL NO. 26

INTRODUCED BY MANNING

BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE

1 SENATE BILL NO. 26
2 INTRODUCED BY MANNING
3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE
7 PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF
8 THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE
9 ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STAT
10 INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST
11 UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE
12 MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO
13 REPORT BIENNIALY TO THE LEGISLATURE; ELIMINATING THE LOAN
14 LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO
15 ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST
16 FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB
17 CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE
18 FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL
19 BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506,
20 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305,
21 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101,
22 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND
23 REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND
24 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE."
25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2 **Section 1.** Section 17-5-1506, MCA, is amended to read:
3 "17-5-1506. Bonds and notes for projects and major
4 projects. (1) The board may by resolution issue negotiable
5 notes and bonds in a principal amount as the board
6 determines necessary to provide sufficient funds for
7 achieving any of its purposes, including the payment of
8 interest on notes and bonds of the board, establishment of
9 reserves to secure the notes and bonds, including the
10 reserve funds created under 17-5-1515, and all other
11 expenditures of the board incident to and necessary or
12 convenient to carry out this part.
13 (2) The board may by resolution, from time to time,
14 issue notes to renew notes and bonds or to pay notes,
15 including interest, and whenever it considers refunding
16 expedient, refund any bonds by the issuance of new bonds,
17 whether or not the bonds to be refunded have matured, or
18 issue bonds partly to refund bonds outstanding and partly
19 for any of its other purposes.
20 (3) Except as otherwise expressly provided by
21 resolution of the board, every issue of its bonds is an
22 obligation of the board payable out of any revenue, assets,
23 or money of the board, subject only to agreements with the
24 holders of particular notes or bonds pledging particular
25 revenues, assets, or money.

SECOND READING



1 (4) The notes and bonds ~~shall~~ must be authorized by
 2 resolutions of the board, bear a date, and mature at the
 3 times the resolutions provide. A note may not mature more
 4 than 5 years from the date of its issue. A bond may not
 5 mature more than 40 years from the date of its issue. The
 6 bonds may be issued as serial bonds payable in annual
 7 installments, as term bonds, or as a combination thereof.
 8 The notes and bonds ~~shall~~ must bear interest at a stated
 9 rate or rates or at a rate or rate determination as stated,
 10 be in denominations, be in a form, either coupon or
 11 registered, carry registration privileges, be executed in a
 12 manner, be payable in a medium of payment, at places inside
 13 or outside the state, and be subject to terms of redemption
 14 as provided in resolutions. The notes and bonds of the board
 15 may be sold at public or private sale, at prices above or
 16 below par, as determined by the board, and in a manner such
 17 that interest on the bonds is either exempt from or subject
 18 to federal income tax.

19 (5) The bonds issued under this part are exempt from
 20 the Montana Securities Act, but copies of all prospectus and
 21 disclosure documents must be deposited with the state
 22 securities commissioner for public inspection.

23 (6) The total amount of bonds secured under 17-5-1515
 24 and--17-5-1519 outstanding at any one time, except bonds as
 25 to which the board's obligations have been satisfied and

1 discharged by refunding or bonds for which reserves for
 2 payment or other means of payment have been provided, may
 3 not exceed \$75 million."

4 **Section 2.** Section 17-5-1525, MCA, is amended to read:

5 "17-5-1525. Bonds as legal investment. (1) Bonds issued
 6 by the board under the provisions of this part are
 7 securities in which all funds may be legally and properly
 8 invested, including capital in the control of or belonging
 9 to:

10 (a) public officers and public bodies of the state and
 11 its political subdivisions;

12 (b) insurance companies;

13 (c) credit unions, building and loan associations,
 14 investment companies, savings banks, banking associations,
 15 and trust companies;

16 (d) executors, administrators, trustees, and other
 17 fiduciaries; and

18 (e) pension, profit-sharing, and retirement funds.

19 (2) Bonds issued under 17-5-1505 through 17-5-1718 and
 20 17-5-1521 through 17-5-1529 are securities ~~which~~ that may
 21 properly and legally be deposited with and received by any
 22 state or municipal officer or any agency or municipality of
 23 the state for any purpose for which the deposit of bonds or
 24 obligations of the state is now or may hereafter be
 25 authorized by law."

1 **Section 3.** Section 17-5-1526, MCA, is amended to read:

2 "17-5-1526. Procedure prior to financing projects. (1)

3 The board may finance projects, other than major projects,
4 under this part only when it finds that:

5 (a) the financing is in the public interest and is
6 consistent with the legislative purposes and findings set
7 forth in 17-5-1502;

8 (b) the financing to be provided by the board for a
9 project does not exceed either \$800,000 or 90% of the cost
10 or appraised value of the project, whichever is less;

11 (c) a financial institution will participate in
12 financing the project, either directly or through a letter
13 of credit, to the extent of at least 10% of the financing to
14 be provided by the board;

15 (d) the financing for the project is insured or
16 guaranteed in whole or in part by a private or governmental
17 insurer or guarantor; ~~including but not limited to a~~
18 ~~guaranty by the board pursuant to 17-5-1519;~~

19 (e) an applicant has submitted a statement indicating
20 any contracts to construct the projects will require all
21 contractors to give preference to the employment of bona
22 fide Montana residents, as defined in 18-2-401, in the
23 performance of the work on the projects if their
24 qualifications are substantially equal to those of
25 nonresidents; "substantially equal qualifications" means the

1 qualifications of two or more persons among whom the
2 employer cannot make a reasonable determination that the
3 qualifications held by one person are significantly better
4 suited for the position than the qualifications held by the
5 other persons; and

6 (f) adequate provision is made in the loan agreement,
7 lease, or other credit arrangement regarding a project or
8 projects being financed to provide for payment of debt
9 service on bonds of the board issued to finance such the
10 project or projects, to create and maintain reserves
11 therefor, and to meet all costs and expenses of issuing and
12 servicing the bonds.

13 (2) In order to make the findings as described in
14 subsection (1)(a), a hearing must be conducted in the
15 following manner:

16 (a) the city or county in which the project will be
17 located must be notified; and the city and county ~~must~~
18 shall, within 14 days after receipt of the notice, notify
19 the board if it elects to conduct the hearing; or

20 (b) if no request for a local hearing is received, the
21 board may hold the hearing at a time and place it
22 prescribes.

23 (3) If the hearing required by subsection (2) is
24 conducted by a local government, the governing body of the
25 local government ~~must~~ shall notify the board of its

1 determination of whether the project is in the public
2 interest within 14 days of the completion of the public
3 hearing.

4 (4) When a hearing is required either locally or at the
5 state level, notice must be given, at least once a week for
6 2 weeks prior to the date set for the hearing, by
7 publication in a newspaper of general circulation in the
8 city or county where the hearing will be held. The notice
9 must include the time and place of the hearing; the general
10 nature of the project; the name of the lessee, borrower, or
11 user of the project; and the estimated cost of the project.

12 (5) The requirements of subsections (1)(b) through
13 (1)(d) do not apply to bonds that are not secured by the
14 ~~board's guarantee under 17-5-1519 or the~~ capital reserve
15 account authorized by 17-5-1515.

16 (6) The hearing requirements of subsections (2) through
17 (4) do not apply to projects financed with bonds the
18 interest on which is subject to federal income taxes."

19 **Section 4.** Section 17-5-1527, MCA, is amended to read:

20 "17-5-1527. Procedure prior to financing major
21 projects. (1) The board may finance major projects under
22 this part only when it finds that:

23 (a) the financing is in the public interest and is
24 consistent with legislative purposes and findings;

25 (b) the financing to be provided by the board for a

1 project does not exceed either \$10 million or 90% of the
2 cost or appraised value of the project, whichever is less;

3 (c) a financial institution will participate in
4 financing the project if the cost or appraised value is less
5 than \$1 million, either directly or through a letter of
6 credit, to the extent of at least 10% of the financing to be
7 provided by the board, provided, however, that participation
8 by a financial institution in projects of over \$1 million is
9 at the discretion of the board;

10 (d) the financing for the project is insured or
11 guaranteed in whole or in part by a private or governmental
12 insurer or guarantor, ~~including but not limited to a~~
13 ~~guaranty by the board pursuant to 17-5-1519;~~

14 (e) any contracts to construct the projects require all
15 contractors to give preference to the employment of bona
16 fide Montana residents, as defined in 18-2-401, in the
17 performance of the work on the projects if their
18 qualifications are substantially equal to those of
19 nonresidents; "substantially equal qualifications" means the
20 qualifications of two or more persons among whom the
21 employer cannot make a reasonable determination that the
22 qualifications held by one person are significantly better
23 suited for the position than the qualifications held by the
24 other persons; and

25 (f) adequate provision is made in the loan agreement,

1 lease, or other credit arrangement regarding a project or
 2 projects being financed to provide for payment of debt
 3 service on bonds of the board issued to finance such the
 4 project or projects, to create and maintain reserves
 5 therefor, and to meet all costs and expenses of issuing and
 6 servicing the bonds.

7 (2) In order to make the findings as described in
 8 subsection (1)(a), a hearing must be conducted in the
 9 following manner:

10 (a) the city or county in which the project will be
 11 located ~~shall~~ must be notified, and within 14 days must
 12 shall advise the board if it elects to conduct the hearing;
 13 or

14 (b) if no request for a local hearing is received, the
 15 board may hold the hearing at a time and place it
 16 prescribes.

17 (3) If the hearing required by subsection (2) is
 18 conducted by a local government, the governing body of the
 19 local government must shall notify the board of its
 20 determination of whether the project is in the public
 21 interest within 14 days of the completion of the public
 22 hearing.

23 (4) When a hearing is required either locally or at the
 24 state level, notice mus. be given, at least once a week for
 25 2 weeks prior to the date set for the hearing, by

1 publication in a newspaper of general circulation in the
 2 city or county where the hearing will be held. The notice
 3 must include the time and place of the hearing; the general
 4 nature of the project; the name of the lessee, borrower, or
 5 user of the project; and the estimated cost of the project.

6 (5) The requirements of subsections (1)(b) through
 7 (1)(d) do not apply to bonds that are not secured by ~~the~~
 8 ~~board's--guarantee--under--17-5-1519--or~~ the capital reserve
 9 account authorized by 17-5-1515.

10 (6) The hearing requirements of subsections (2) through
 11 (4) do not apply to major projects financed with bonds the
 12 interest on which is subject to federal income taxes."

13 **Section 5.** Section 17-6-302, MCA, is amended to read:

14 "17-6-302. Definitions. As used in this part, unless
 15 the context requires otherwise, the following definitions
 16 apply:

17 (1) "Board" means the board of investments created in
 18 2-15-1808.

19 (2) "Capital company" means a Montana capital company
 20 created pursuant to Title 90, chapter 8.

21 (3) "Clean and healthful environment" means an
 22 environment that is relatively free from pollution ~~which~~
 23 that threatens human health, including as a minimum,
 24 compliance with federal and state environmental and health
 25 standards.

1 (4) "Employee-owned enterprise" means any enterprise at
2 least 51% of whose stock, partnership interests, or other
3 ownership interests is owned and controlled by residents of
4 Montana each of whose principal occupation is as an
5 employee, officer, or partner of the enterprise.

6 (5) "Financial institution" includes but is not limited
7 to a state- or federally chartered bank or a savings and
8 loan association, credit union, or development corporation
9 created pursuant to Title 32, chapter 4.

10 (6) "Loan participation" means loans or portions
11 thereof bought from a financial institution and does not
12 include the purchase of debentures issued by a capital
13 company.

14 (7) "Locally owned enterprise" means any enterprise 51%
15 of whose stock, partnership interests, or other ownership
16 interests are owned and controlled by residents of Montana.

17 (8) "Long-term benefit to the Montana economy" means an
18 activity that strengthens the Montana economy and that has
19 the potential to maintain and create jobs, increase per
20 capita income, or increase Montana tax revenues in the
21 future to the people of Montana, either directly or
22 indirectly.

23 (9) "Montana economy" means any business activity in
24 the state of Montana, including those which continue
25 existing jobs or create new jobs in Montana.

1 ~~{10}~~ "Montana in-state investment fund" means the fund
2 established by 17-6-306.

3 ~~{11}~~ (10) "Service fees" means the fees normally charged
4 by a financial institution for servicing a loan, including
5 amounts charged for collecting payments and remitting
6 amounts to the fund."

7 **Section 6.** Section 17-6-305, MCA, is amended to read:

8 "17-6-305. Investment of up to twenty-five percent of
9 the coal tax trust fund in the Montana economy -- REPORT BY
10 THE BOARD. (1) ~~Twenty-five percent of all revenue deposited~~
11 ~~after June 30, 1983, into~~ Subject to the provisions of
12 17-6-201(1), the board shall endeavor to invest up to 25% of
13 the permanent coal tax trust fund established in
14 17-6-203(5)(6) ~~and 15% of the annual income and earnings on~~
15 ~~the Montana in-state investment fund appropriated to the~~
16 ~~coal severance tax permanent fund by 17-5-704(2) shall be~~
17 invested in the Montana economy with special emphasis on
18 investments in new or expanding locally owned enterprises.

19 (2) In determining the probable income to be derived
20 from investment of this revenue, the long-term benefit to
21 the Montana economy shall must be considered.

22 (3) The legislature may provide additional procedures
23 to implement this section.

24 {4} THE BOARD SHALL REPORT BIENNIALY TO THE
25 LEGISLATURE ON THE INVESTMENTS MADE UNDER THIS SECTION."

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

2 "17-6-308. Authorized investments. (1) Except as
3 provided in ~~subsection~~ subsections (2) and (3) and
4 subject to the provisions of 17-6-201, the Montana in-state
5 investment permanent coal tax trust fund must be invested as
6 authorized by rules adopted by the board. For ~~purposes of~~
7 ~~this section~~, "investment" ~~includes the guaranty of loans or~~
8 ~~bonds in consideration for a fee, in lieu of the actual~~
9 ~~acquisition of such loans or bonds;~~

10 ~~(2) The board may use the in-state investment fund to~~
11 ~~guarantee loans or bonds issued under the provisions of~~
12 ~~17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16,~~
13 ~~or Title 90, chapter 7. Each guaranty must be given in~~
14 ~~consideration of a fee. The fees must be paid to the board.~~
15 ~~The guaranty must provide directly or by separate agreement~~
16 ~~that the board is fully subrogated to the rights of the~~
17 ~~obligee under the loan or bond. The board shall by rule~~
18 ~~establish the maximum ratio between guaranty funds available~~
19 ~~and loans or bonds to be guaranteed. The board may covenant~~
20 ~~in bond issues to maintain such ratio. Unless bonds issued~~
21 ~~to finance a project are secured by a common capital reserve~~
22 ~~account and a common guaranty fund, the maximum amount of~~
23 ~~the guaranty authorized by this section may not exceed~~
24 ~~\$3,000,000 with respect to the bonds or loans to finance the~~
25 ~~project.~~

1 ~~(3)~~ (2) The board may make loans from the ~~in-state~~
2 ~~investment permanent coal tax trust~~ fund to the capital
3 reserve account created pursuant to 17-5-1515 ~~and the~~
4 ~~guaranty fund created pursuant to 17-5-1520~~ to establish
5 balances or restore deficiencies ~~therein in the account~~. The
6 board may agree in connection with the issuance of bonds or
7 notes secured by ~~such the~~ account or fund to make ~~such the~~
8 loans. Loans must be on such terms and conditions as the
9 board determines and must be repaid from revenues of the
10 board realized from the exercise of its powers under
11 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529,
12 subject to the prior pledge of the revenues to the bonds and
13 notes.

14 ~~(4)~~ (3) The board shall allow the Montana board of
15 science and technology development provided for in 2-15-1818
16 to administer \$7.5 million of the ~~in-state investment~~
17 permanent coal tax trust fund for seed capital project loans
18 pursuant only to the provisions of Title 90, chapter 3. This
19 authority does not extend beyond June 30, 1994. Until such
20 time as the Montana board of science and technology
21 development makes a loan pursuant to those provisions, the
22 funds under its administration must be invested by the board
23 of investments pursuant to the provisions of 17-6-201."

24 **Section 8.** Section 17-6-310, MCA, is amended to read:

25 "17-6-310. No direct loans. (1) The state may not use

1 this revenue to make direct loans.

2 (2) ~~No-money-from-the-Montana-in-state--investment~~ The
3 permanent coal tax trust fund may not be used to make direct
4 loans to individual borrowers. The purchase of debentures
5 issued by a capital company and loans or portions thereof of
6 loans originated by a financial institution that are sold to
7 the trust are not direct loans."

8 **Section 9.** Section 17-6-311, MCA, is amended to read:

9 "17-6-311. Limitation on size of investments. (1)
10 Except as provided in subsections (2) and (3), no investment
11 may be made that will result in any one business enterprise
12 or person receiving a benefit from or incurring a debt to
13 the ~~Montana--in-state--investment~~ permanent coal tax trust
14 fund the total current accumulated amount of which exceeds
15 ~~10% 1%~~ of the ~~prior-fiscal-year's-coal-severance-tax-revenue~~
16 ~~deposited--in-the-Montana-in-state-investment~~ permanent coal
17 tax trust fund.

18 (2) Subsection (1) does not limit the board's authority
19 to ~~guarantee-loans-or-bonds-or~~ make loans to the capital
20 reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2)
21 ~~and-(3)}~~.

22 (3) Subsection (1) does not apply to the purchase of
23 debentures issued by a capital company; however, the total
24 amount of such debentures purchased by the board may not
25 exceed ~~10% 1%~~ of the Montana ~~in-state--investment~~ permanent

1 coal tax trust fund at the time of purchase."

2 **Section 10.** Section 17-6-314, MCA, is amended to read:

3 "17-6-314. Rate of return. In calculating the rate of
4 return for any Montana investment to be made from the
5 ~~Montana--in-state--investment~~ permanent coal tax trust fund,
6 the board shall consider the long-term benefit to the
7 Montana economy and the additional service fee discount
8 provided for in [section 18]."

9 **Section 11.** Section 17-6-322, MCA, is amended to read:

10 "17-6-322. Report. The board shall include in its
11 annual report a section on the results of the previous
12 year's operations of the ~~in-state investment in the Montana~~
13 economy from the permanent coal tax trust fund, as required
14 in 17-6-305, including:

15 (1) financial statements audited by independent
16 auditors;

17 (2) a summary report of loan activity; and

18 (3) a comparison of the ~~Montana-in-state-investment~~
19 fund's performance of the investments in the Montana economy
20 in relation to the purposes contained in 17-6-303."

21 **Section 12.** Section 90-3-101, MCA, is amended to read:

22 "90-3-101. Short title -- findings -- purpose. (1) This
23 chapter may be cited as the "Montana Science and Technology
24 Financing Act".

25 (2) The legislature finds and declares that:

1 (a) it is the policy of the state of Montana to promote
2 the health, safety, and general welfare of all the people of
3 the state;

4 (b) this policy will be furthered through strengthening
5 and diversifying the state's economy by facilitating a
6 public sector-private sector partnership to encourage
7 scientific and technological development within the state in
8 order to keep pace with a changing economic structure and to
9 create new jobs and expand business opportunities;

10 (c) this strengthening and diversification will be
11 fostered by assisting in the acceleration of development of
12 technology in the state through participation with the
13 private sector in the financing of science and technology
14 development projects that have significant potential for
15 commercialization in Montana;

16 (d) the ~~in-state--investment~~ permanent coal tax trust
17 ~~fund created through adoption of Initiative Measure--No. 95~~
18 ~~by the voters of Montana in 1982~~ by Article IX, section 5,
19 of the Montana constitution is the appropriate source for
20 providing financing programs for the development of new and
21 expanding businesses in Montana;

22 (e) the Science and Technology Development Board Seed
23 Capital Bond Act contained provisions that were found to be
24 unconstitutional by the Montana supreme court, and the 51st
25 legislature of the state of Montana must remedy those

1 defects through legislation; and

2 (f) the Montana science and technology development
3 board has demonstrated success in forging a partnership
4 among the private sector, the university community, and
5 government, and this success should be continued through an
6 ongoing legislative commitment to the board's programs.

7 (3) The purposes of this chapter are to:

8 (a) strengthen and diversify Montana's economy by
9 establishing a public-private sector partnership to
10 encourage scientific and technological development within
11 the state in order to keep pace with a transforming economic
12 structure and to create new jobs and expand small business
13 opportunities;

14 (b) provide a funding source for the board to make seed
15 capital project loans;

16 (c) provide a mechanism for the board to use in making
17 seed capital project loans; and

18 (d) provide a mechanism for the board to use in making
19 research and development project loans, the funding source
20 of which will be provided by separate legislation."

21 **Section 13.** Section 90-3-525, MCA, is amended to read:

22 "90-3-525. Deposit of payback -- seed capital and
23 research and development project loans. (1) The payback of
24 principal and earnings on a seed capital project loan
25 executed under this chapter ~~must be administered pursuant to~~

1 ~~section-17-6-306-~~

2 ~~{2}~~--The or the payback of principal and earnings on a
3 research and development project loan must be deposited to
4 the state special revenue fund to the credit of the science
5 and technology development account created in 90-3-305.

6 ~~{3}~~{2} All paybacks of principal and earnings to the
7 board from any agreements executed by the board between July
8 1, 1985, and March 31, 1989, must be deposited to the state
9 special revenue fund to the credit of the science and
10 technology development account created in 90-3-305 for use
11 by the board. The paybacks include all those received after
12 January 1, 1989."

13 **Section 14.** Section 90-6-104, MCA, is amended to read:

14 **"90-6-104. General powers of the board.** The board may:

15 (1) sue and be sued;

16 (2) have a seal;

17 (3) adopt all procedural and substantive rules
18 necessary for the administration of this part, including
19 rules concerning its mortgage, construction, and temporary
20 lending programs;

21 (4) make contracts, agreements, and other instruments
22 necessary or convenient for the exercise of its powers under
23 this part;

24 (5) enter into agreements or other transactions with
25 any federal, state, or local governmental agency, any

1 persons, and any domestic or foreign partnership,
2 corporation, association, or organization in carrying out
3 this part;

4 (6) enter into agreements under its rules with
5 sponsors, mortgagors, or lending institutions for the
6 purpose of regulating the analysis, planning, development,
7 and management of housing developments financed in whole or
8 in part by the proceeds of its loans or securities and
9 mortgage purchase programs;

10 (7) enter into agreements or other transactions with,
11 and accept grants and the cooperation of, any governmental
12 agency in furtherance of this part, including but not
13 limited to the development, leasing, maintenance, operation,
14 and financing of any housing development;

15 (8) accept services, appropriations, gifts, grants,
16 bequests, and devises and utilize or dispose of them in
17 carrying out this part;

18 (9) acquire real or personal property or any right,
19 interest, or easement therein by gift, purchase, transfer,
20 foreclosure, lease, or otherwise; hold, sell, assign, lease,
21 encumber, mortgage, or otherwise dispose thereof; hold,
22 sell, assign, or otherwise dispose of any mortgage or loan
23 owned by it or in its control or custody; release or
24 relinquish any right, title, claim, interest, easement, or
25 demand, however acquired, including any equity or right of

1 redemption; do any of the foregoing by public or private
 2 sale, with or without public bidding; commence any action to
 3 protect or enforce any right conferred upon it by any law,
 4 mortgage, contract, or other agreement; bid for and purchase
 5 property at any foreclosure or other sale or acquire or take
 6 possession of it in lieu of foreclosure; and operate,
 7 manage, lease, dispose of, and otherwise deal with such
 8 property in any manner necessary or desirable to protect its
 9 interests and the holders of its bonds or notes and
 10 consistent with any agreement with such holders;

11 (10) service and contract and pay for the servicing of
 12 loans;

13 (11) provide general technical services in the analysis,
 14 planning, design, processing, construction, rehabilitation,
 15 and management of housing developments for persons and
 16 families of lower income where these services are not
 17 otherwise available;

18 (12) provide general consultative services to housing
 19 developments for persons and families of lower income and
 20 the residents thereof with respect to counseling and
 21 training in management, home ownership, and maintenance
 22 where these services are not otherwise available;

23 (13) invest any funds not required for immediate use,
 24 subject to any agreements with its bondholders and
 25 noteholders, as provided in Title 17, chapter 6, except all

1 investment income from funds of the board less the cost for
 2 investment as prescribed by law ~~shall~~ must be deposited in
 3 the housing authority enterprise fund;

4 (14) sell its loans or securities to the federal
 5 national mortgage association or any other agency or
 6 instrumentality of the United States and invest in the
 7 capital stock issued by the association or other agency or
 8 instrumentality to the extent, if any, required as a
 9 condition of ~~such the~~ sale;

10 (15) consent, whenever it ~~deems~~ considers it necessary
 11 or desirable in fulfilling its purposes, to the modification
 12 of the rate of interest, time, and payment of any
 13 installment of principal or interest, security, or any other
 14 term of any contract, mortgage, mortgage loan, mortgage loan
 15 commitment, construction loan, advance contract, or
 16 agreement of any kind, subject to any agreement with
 17 bondholders and noteholders;

18 (16) collect reasonable interest, fees, and charges in
 19 connection with making and servicing its loans, notes,
 20 bonds, commitments, and other evidences of indebtedness and
 21 in connection with providing technical, consultative, and
 22 project assistance services. Interest fees and charges ~~shall~~
 23 be are limited to the amounts required to pay the costs of
 24 the board, including operating and administrative expenses
 25 and reasonable allowances for losses which that may be

1 incurred.

2 (17) procure insurance against any loss in connection
3 with its mortgages and mortgage loans and other assets or
4 property in amounts and from insurers as the board considers
5 desirable or necessary;

6 (18) act as agent for governmental agencies concerning
7 acquisition, construction, leasing, operation, or management
8 of a housing development;

9 (19) issue notes and bonds and replace lost, destroyed,
10 or mutilated notes and bonds; and

11 (20) develop special programs for housing developments
12 for veterans of the armed forces of the United States who
13 are unable to acquire safe and sanitary housing through
14 lending institutions by conventional means; ~~and~~

15 ~~{21} lend money to the board of investments to establish~~
16 ~~the--Montana--economic--development--guaranty--fund--created--by~~
17 ~~17-5-1520."~~

18 **Section 15.** Section 90-8-102, MCA, is amended to read:

19 **"90-8-102. Declaration of policy.** (1) The legislature
20 finds and declares that:

21 (a) economic insecurity due to unemployment is a
22 serious menace to the health, safety, and general welfare of
23 not only the affected people but of the people of the entire
24 state;

25 (b) involuntary unemployment, with its resulting burden

1 of indigency, falls with crushing force upon unemployed
2 workers and ultimately on the state itself in the form of
3 public assistance and unemployment compensation payments;
4 and

5 (c) unemployment causes a migration of Montana workers
6 and families seeking jobs and establishing homes elsewhere,
7 which deprives the state of its most valuable resource, its
8 people, and reduces the tax base of local governments,
9 impairing their ability to provide basic services.

10 (2) (a) The legislature further finds that the best
11 method of combating unemployment and protecting Montana
12 against the loss of its people is by promoting, stimulating,
13 developing, rehabilitating, and revitalizing the business
14 prosperity and economic welfare of the state and its
15 citizens.

16 (b) To accomplish this goal, the legislature seeks to
17 encourage the formation of venture and equity capital in
18 Montana for use in diversifying, strengthening, and
19 stabilizing the Montana economy by increasing Montana
20 employment and business opportunities while protecting the
21 people's constitutional right to a clean and healthful
22 environment.

23 (3) The legislature further finds that:

24 (a) private investment of venture and equity capital in
25 the Montana economy will be encouraged and promoted by

1 making tax credits available to taxpayers investing in
2 Montana capital companies;

3 (b) demands on state revenues restrict the financial
4 ability of the state to make unlimited tax credits available
5 for investment purposes and require that the state place
6 reasonable limits on the total amount of tax credits to be
7 made available for investment incentive;

8 (c) establishment of a rational tax credit program
9 which that gives priority to investments in capital
10 companies in the order in which they are qualified will
11 encourage prompt private investment in Montana businesses.

12 (4) The legislature further finds that use of money
13 from the Montana in-state--investment-fund-established-by
14 17-6-306 permanent coal tax trust fund to purchase
15 debentures issued by a capital company will promote the
16 business prosperity and economic welfare of the state and
17 its citizens."

18 **Section 16.** Section 90-8-305, MCA, is amended to read:

19 "90-8-305. Sale of debentures. (1) A qualified Montana
20 capital company is authorized to issue and sell debentures
21 to the in-state--investment permanent coal tax trust fund
22 established-in-17-6-306.

23 (2) Proceeds received by a qualified Montana capital
24 company from the sale of debentures authorized in subsection
25 (1) must be invested in accordance with the provisions of

1 90-8-301, except that the time periods for making qualified
2 investments must be calculated from the date the company
3 sells the debentures to the in-state--investment permanent
4 coal tax trust fund."

5 NEW SECTION. **Section 17.** Job credit interest rate
6 reduction for small business loan participations. (1) A
7 borrower who uses the proceeds of a small business loan
8 participation funded under the provisions of this part to
9 create jobs employing Montana residents is entitled to a job
10 credit interest rate reduction for each job created over a
11 2-year period to employ a Montana resident. The date of the
12 formal written interim or permanent loan application to the
13 financial institution will be used as a beginning date for
14 counting the number of jobs created. The job credit interest
15 rate reduction may not apply to a loan participation of more
16 than 1% of the total of the permanent coal tax trust fund
17 determined at the end of the last completed fiscal year. The
18 job credit interest rate reduction is equal to 0.05% for
19 each job created to employ a Montana resident up to a
20 maximum interest rate reduction of 2.5%.

21 (2) If the salary or wage of the job created:

22 (a) exceeds the average weekly wage, as defined in
23 39-71-116, the amount of the job credit interest rate
24 reduction may be increased proportionately for each
25 increment of 25% above the average weekly wage to a maximum

1 of two times the average weekly wage; or

2 (b) is less than the average weekly wage, as defined in
3 39-71-116, the job credit interest rate reduction is reduced
4 proportionately for each 25% increment below the average
5 wage.

6 (3) A job credit interest rate reduction may not be
7 allowed for a job created by the borrower using the proceeds
8 of the loan for which the salary or wage is less than the
9 minimum wage provided for in 39-3-409.

10 (4) No job credit will be given unless one whole job is
11 created.

12 (5) To qualify for the job credit interest rate
13 reduction, the borrower shall provide satisfactory evidence
14 of the creation of jobs and make application in writing,
15 through its financial institution, to the board when the
16 loan is delivered to the board or not later than 45 days
17 after the first and second anniversary dates of the loan.

18 NEW SECTION. Section 18. Incentive to financial
19 institution for small business loan participation. A
20 financial institution that originates a small business loan
21 no larger than 0.05% of the balance of the Montana permanent
22 coal tax trust fund at the end of the last completed fiscal
23 year is entitled to an additional service fee in the form of
24 a discount equal to 0.5% of the board's participation in the
25 loan. The board shall consider the additional service fee

1 discount to the financial institution as part of the rate of
2 return provided in 17-6-314.

3 NEW SECTION. Section 19. Repealer. Sections 17-5-1519,
4 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

5 NEW SECTION. Section 20. Saving clause. [This act]
6 does not affect rights and duties that matured, penalties
7 that were incurred, or proceedings that were begun before
8 [the effective date of this act].

9 NEW SECTION. Section 21. Severability. If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. Section 22. Codification instruction.
16 [Sections 17 and 18] are intended to be codified as an
17 integral part of Title 17, chapter 6, part 3, and the
18 provisions of Title 17, chapter 6, part 3, apply to
19 [sections 17 and 18].

20 NEW SECTION. SECTION 23. EFFECTIVE DATE. [THIS ACT] IS
21 EFFECTIVE JULY 1, 1991.

-End-

1 SENATE BILL NO. 26
2 INTRODUCED BY MANNING
3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE
7 PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF
8 THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE
9 ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STAT
10 INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST
11 UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE
12 MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO
13 REPORT BIENNIALY TO THE LEGISLATURE; ELIMINATING THE LOAN
14 LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO
15 ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST
16 FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB
17 CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE
18 FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL
19 BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506,
20 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305,
21 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101,
22 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND
23 REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND
24 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE."
25

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

2 **Section 1.** Section 17-5-1506, MCA, is amended to read:

3 "17-5-1506. Bonds and notes for projects and major
4 projects. (1) The board may by resolution issue negotiable
5 notes and bonds in a principal amount as the board
6 determines necessary to provide sufficient funds for
7 achieving any of its purposes, including the payment of
8 interest on notes and bonds of the board, establishment of
9 reserves to secure the notes and bonds, including the
10 reserve funds created under 17-5-1515, and all other
11 expenditures of the board incident to and necessary or
12 convenient to carry out this part.

13 (2) The board may by resolution, from time to time,
14 issue notes to renew notes and bonds or to pay notes,
15 including interest, and whenever it considers refunding
16 expedient, refund any bonds by the issuance of new bonds,
17 whether or not the bonds to be refunded have matured, or
18 issue bonds partly to refund bonds outstanding and partly
19 for any of its other purposes.

20 (3) Except as otherwise expressly provided by
21 resolution of the board, every issue of its bonds is an
22 obligation of the board payable out of any revenue, assets,
23 or money of the board, subject only to agreements with the
24 holders of particular notes or bonds pledging particular
25 revenues, assets, or money.

THIRD READING



1 (4) The notes and bonds ~~shall~~ must be authorized by
 2 resolutions of the board, bear a date, and mature at the
 3 times the resolutions provide. A note may not mature more
 4 than 5 years from the date of its issue. A bond may not
 5 mature more than 40 years from the date of its issue. The
 6 bonds may be issued as serial bonds payable in annual
 7 installments, as term bonds, or as a combination thereof.
 8 The notes and bonds ~~shall~~ must bear interest at a stated
 9 rate or rates or at a rate or rate determination as stated,
 10 be in denominations, be in a form, either coupon or
 11 registered, carry registration privileges, be executed in a
 12 manner, be payable in a medium of payment, at places inside
 13 or outside the state, and be subject to terms of redemption
 14 as provided in resolutions. The notes and bonds of the board
 15 may be sold at public or private sale, at prices above or
 16 below par, as determined by the board, and in a manner such
 17 that interest on the bonds is either exempt from or subject
 18 to federal income tax.

19 (5) The bonds issued under this part are exempt from
 20 the Montana Securities Act, but copies of all prospectus and
 21 disclosure documents must be deposited with the state
 22 securities commissioner for public inspection.

23 (6) The total amount of bonds secured under 17-5-1515
 24 ~~and 17-5-1519~~ outstanding at any one time, except bonds as
 25 to which the board's obligations have been satisfied and

1 discharged by refunding or bonds for which reserves for
 2 payment or other means of payment have been provided, may
 3 not exceed \$75 million."

4 **Section 2.** Section 17-5-1525, MCA, is amended to read:

5 "17-5-1525. Bonds as legal investment. (1) Bonds issued
 6 by the board under the provisions of this part are
 7 securities in which all funds may be legally and properly
 8 invested, including capital in the control of or belonging
 9 to:

10 (a) public officers and public bodies of the state and
 11 its political subdivisions;

12 (b) insurance companies;

13 (c) credit unions, building and loan associations,
 14 investment companies, savings banks, banking associations,
 15 and trust companies;

16 (d) executors, administrators, trustees, and other
 17 fiduciaries; and

18 (e) pension, profit-sharing, and retirement funds.

19 (2) Bonds issued under 17-5-1505 through 17-5-1718 and
 20 17-5-1521 through 17-5-1529 are securities which that may
 21 properly and legally be deposited with and received by any
 22 state or municipal officer or any agency or municipality of
 23 the state for any purpose for which the deposit of bonds or
 24 obligations of the state is now or may hereafter be
 25 authorized by law."

1 **Section 3.** Section 17-5-1526, MCA, is amended to read:
2 "17-5-1526. Procedure prior to financing projects. (1)
3 The board may finance projects, other than major projects,
4 under this part only when it finds that:
5 (a) the financing is in the public interest and is
6 consistent with the legislative purposes and findings set
7 forth in 17-5-1502;
8 (b) the financing to be provided by the board for a
9 project does not exceed either \$800,000 or 90% of the cost
10 or appraised value of the project, whichever is less;
11 (c) a financial institution will participate in
12 financing the project, either directly or through a letter
13 of credit, to the extent of at least 10% of the financing to
14 be provided by the board;
15 (d) the financing for the project is insured or
16 guaranteed in whole or in part by a private or governmental
17 insurer or guarantor, ~~including but not limited to a~~
18 ~~guaranty by the board pursuant to 17-5-1519;~~
19 (e) an applicant has submitted a statement indicating
20 any contracts to construct the projects will require all
21 contractors to give preference to the employment of bona
22 fide Montana residents, as defined in 18-2-401, in the
23 performance of the work on the projects if their
24 qualifications are substantially equal to those of
25 nonresidents; "substantially equal qualifications" means the

1 qualifications of two or more persons among whom the
2 employer cannot make a reasonable determination that the
3 qualifications held by one person are significantly better
4 suited for the position than the qualifications held by the
5 other persons; and
6 (f) adequate provision is made in the loan agreement,
7 lease, or other credit arrangement regarding a project or
8 projects being financed to provide for payment of debt
9 service on bonds of the board issued to finance ~~such~~ the
10 project or projects, to create and maintain reserves
11 therefor, and to meet all costs and expenses of issuing and
12 servicing the bonds.
13 (2) In order to make the findings as described in
14 subsection (1)(a), a hearing must be conducted in the
15 following manner:
16 (a) the city or county in which the project will be
17 located must be notified; and the city and county ~~must~~
18 shall, within 14 days after receipt of the notice, notify
19 the board if it elects to conduct the hearing; or
20 (b) if no request for a local hearing is received, the
21 board may hold the hearing at a time and place it
22 prescribes.
23 (3) If the hearing required by subsection (2) is
24 conducted by a local government, the governing body of the
25 local government ~~must~~ shall notify the board of its

1 determination of whether the project is in the public
2 interest within 14 days of the completion of the public
3 hearing.

4 (4) When a hearing is required either locally or at the
5 state level, notice must be given, at least once a week for
6 2 weeks prior to the date set for the hearing, by
7 publication in a newspaper of general circulation in the
8 city or county where the hearing will be held. The notice
9 must include the time and place of the hearing; the general
10 nature of the project; the name of the lessee, borrower, or
11 user of the project; and the estimated cost of the project.

12 (5) The requirements of subsections (1)(b) through
13 (1)(d) do not apply to bonds that are not secured by the
14 board's ~~guarantee under 17-5-1519~~ or the capital reserve
15 account authorized by 17-5-1515.

16 (6) The hearing requirements of subsections (2) through
17 (4) do not apply to projects financed with bonds the
18 interest on which is subject to federal income taxes."

19 **Section 4.** Section 17-5-1527, MCA, is amended to read:

20 "17-5-1527. Procedure prior to financing major
21 projects. (1) The board may finance major projects under
22 this part only when it finds that:

23 (a) the financing is in the public interest and is
24 consistent with legislative purposes and findings;

25 (b) the financing to be provided by the board for a

1 project does not exceed either \$10 million or 90% of the
2 cost or appraised value of the project, whichever is less;

3 (c) a financial institution will participate in
4 financing the project if the cost or appraised value is less
5 than \$1 million, either directly or through a letter of
6 credit, to the extent of at least 10% of the financing to be
7 provided by the board, provided, however, that participation
8 by a financial institution in projects of over \$1 million is
9 at the discretion of the board;

10 (d) the financing for the project is insured or
11 guaranteed in whole or in part by a private or governmental
12 insurer or guarantor, ~~including but not limited to a~~
13 ~~guaranty by the board pursuant to 17-5-1519;~~

14 (e) any contracts to construct the projects require all
15 contractors to give preference to the employment of bona
16 fide Montana residents, as defined in 18-2-401, in the
17 performance of the work on the projects if their
18 qualifications are substantially equal to those of
19 nonresidents; "substantially equal qualifications" means the
20 qualifications of two or more persons among whom the
21 employer cannot make a reasonable determination that the
22 qualifications held by one person are significantly better
23 suited for the position than the qualifications held by the
24 other persons; and

25 (f) adequate provision is made in the loan agreement,

1 lease, or other credit arrangement regarding a project or
 2 projects being financed to provide for payment of debt
 3 service on bonds of the board issued to finance such the
 4 project or projects, to create and maintain reserves
 5 therefor, and to meet all costs and expenses of issuing and
 6 servicing the bonds.

7 (2) In order to make the findings as described in
 8 subsection (1)(a), a hearing must be conducted in the
 9 following manner:

10 (a) the city or county in which the project will be
 11 located shall must be notified, and within 14 days must
 12 shall advise the board if it elects to conduct the hearing;
 13 or

14 (b) if no request for a local hearing is received, the
 15 board may hold the hearing at a time and place it
 16 prescribes.

17 (3) If the hearing required by subsection (2) is
 18 conducted by a local government, the governing body of the
 19 local government must shall notify the board of its
 20 determination of whether the project is in the public
 21 interest within 14 days of the completion of the public
 22 hearing.

23 (4) When a hearing is required either locally or at the
 24 state level, notice must be given, at least once a week for
 25 2 weeks prior to the date set for the hearing, by

1 publication in a newspaper of general circulation in the
 2 city or county where the hearing will be held. The notice
 3 must include the time and place of the hearing; the general
 4 nature of the project; the name of the lessee, borrower, or
 5 user of the project; and the estimated cost of the project.

6 (5) The requirements of subsections (1)(b) through
 7 (1)(d) do not apply to bonds that are not secured by the
 8 ~~board's guarantee under 17-5-1519~~ or the capital reserve
 9 account authorized by 17-5-1515.

10 (6) The hearing requirements of subsections (2) through
 11 (4) do not apply to major projects financed with bonds the
 12 interest on which is subject to federal income taxes."

13 **Section 5.** Section 17-6-302, MCA, is amended to read:

14 "17-6-302. Definitions. As used in this part, unless
 15 the context requires otherwise, the following definitions
 16 apply:

17 (1) "Board" means the board of investments created in
 18 2-15-1808.

19 (2) "Capital company" means a Montana capital company
 20 created pursuant to Title 90, chapter 8.

21 (3) "Clean and healthful environment" means an
 22 environment that is relatively free from pollution which
 23 that threatens human health, including as a minimum,
 24 compliance with federal and state environmental and health
 25 standards.

1 (4) "Employee-owned enterprise" means any enterprise at
2 least 51% of whose stock, partnership interests, or other
3 ownership interests is owned and controlled by residents of
4 Montana each of whose principal occupation is as an
5 employee, officer, or partner of the enterprise.

6 (5) "Financial institution" includes but is not limited
7 to a state- or federally chartered bank or a savings and
8 loan association, credit union, or development corporation
9 created pursuant to Title 32, chapter 4.

10 (6) "Loan participation" means loans or portions
11 thereof bought from a financial institution and does not
12 include the purchase of debentures issued by a capital
13 company.

14 (7) "Locally owned enterprise" means any enterprise 51%
15 of whose stock, partnership interests, or other ownership
16 interests are owned and controlled by residents of Montana.

17 (8) "Long-term benefit to the Montana economy" means an
18 activity that strengthens the Montana economy and that has
19 the potential to maintain and create jobs, increase per
20 capita income, or increase Montana tax revenues in the
21 future to the people of Montana, either directly or
22 indirectly.

23 (9) "Montana economy" means any business activity in
24 the state of Montana, including those which continue
25 existing jobs or create new jobs in Montana.

1 ~~{10}~~ "Montana in-state investment fund" means the fund
2 established by 17-6-306.

3 ~~{11}~~{10} "Service fees" means the fees normally charged
4 by a financial institution for servicing a loan, including
5 amounts charged for collecting payments and remitting
6 amounts to the fund."

7 **Section 6.** Section 17-6-305, MCA, is amended to read:

8 "17-6-305. Investment of up to twenty-five percent of
9 the coal tax trust fund in the Montana economy -- REPORT BY
10 THE BOARD. (1) ~~Twenty-five percent of all revenue deposited~~
11 ~~after June 30, 1983, into~~ Subject to the provisions of
12 17-6-201(1), the board shall endeavor to invest up to 25% of
13 the permanent coal tax trust fund established in
14 17-6-203(5)(6) and 15% of the annual income and earnings on
15 the Montana in-state investment fund appropriated to the
16 coal severance tax permanent fund by 17-5-704(2) shall be
17 invested in the Montana economy with special emphasis on
18 investments in new or expanding locally owned enterprises.

19 (2) In determining the probable income to be derived
20 from investment of this revenue, the long-term benefit to
21 the Montana economy shall must be considered.

22 (3) The legislature may provide additional procedures
23 to implement this section.

24 (4) THE BOARD SHALL REPORT BIENNIALY TO THE
25 LEGISLATURE ON THE INVESTMENTS MADE UNDER THIS SECTION."

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

"17-6-308. Authorized investments. (1) Except as provided in subsection ~~{4}~~ subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana in-state investment permanent coal tax trust fund must be invested as authorized by rules adopted by the board. ~~For purposes of this section, "investment" includes the guaranty of loans or bonds in consideration for a fee in lieu of the actual acquisition of such loans or bonds.~~

~~{2} The board may use the in-state investment fund to guarantee loans or bonds issued under the provisions of 17-5-1501 through 17-5-1529, Title 17, chapter 5, part 16, or Title 90, chapter 7. Each guaranty must be given in consideration of a fee. The fees must be paid to the board. The guaranty must provide directly or by separate agreement that the board is fully subrogated to the rights of the obligee under the loan or bond. The board shall by rule establish the maximum ratio between guaranty funds available and loans or bonds to be guaranteed. The board may covenant in bond issues to maintain such ratio. Unless bonds issued to finance a project are secured by a common capital reserve account and a common guaranty fund, the maximum amount of the guaranty authorized by this section may not exceed \$3,000,000 with respect to the bonds or loans to finance the project.~~

~~{3}{2}~~ The board may make loans from the in-state investment permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 ~~and the guaranty fund created pursuant to 17-5-1520~~ to establish balances or restore deficiencies therein in the account. The board may agree in connection with the issuance of bonds or notes secured by such the account or fund to make such the loans. Loans must be on such terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

~~{4}{3}~~ The board shall allow the Montana board of science and technology development provided for in 2-15-1818 to administer \$7.5 million of the in-state investment permanent coal tax trust fund for seed capital project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994. Until such time as the Montana board of science and technology development makes a loan pursuant to those provisions, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201."

Section 8. Section 17-6-310, MCA, is amended to read:

"17-6-310. No direct loans. (1) The state may not use

1 this revenue to make direct loans.

2 (2) ~~No-money-from-the-Montana-in-state--investment~~ The
3 permanent coal tax trust fund may not be used to make direct
4 loans to individual borrowers. The purchase of debentures
5 issued by a capital company and loans or portions ~~thereof~~ of
6 loans originated by a financial institution that are sold to
7 the trust are not direct loans."

8 **Section 9.** Section 17-6-311, MCA, is amended to read:

9 "17-6-311. Limitation on size of investments. (1)
10 Except as provided in subsections (2) and (3), no investment
11 may be made that will result in any one business enterprise
12 or person receiving a benefit from or incurring a debt to
13 the ~~Montana--in-state--investment~~ permanent coal tax trust
14 fund the total current accumulated amount of which exceeds
15 ~~10%~~ 1% of the ~~prior-fiscal-year's-coal-severance-tax-revenue~~
16 ~~deposited--in-the-Montana-in-state-investment~~ permanent coal
17 tax trust fund.

18 (2) Subsection (1) does not limit the board's authority
19 to ~~guarantee-loans-or-bonds-or~~ make loans to the capital
20 reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2)
21 and ~~{3}~~.

22 (3) Subsection (1) does not apply to the purchase of
23 debentures issued by a capital company; however, the total
24 amount of such debentures purchased by the board may not
25 exceed ~~10%~~ 1% of the Montana ~~in-state--investment~~ permanent

1 coal tax trust fund at the time of purchase."

2 **Section 10.** Section 17-6-314, MCA, is amended to read:

3 "17-6-314. Rate of return. In calculating the rate of
4 return for any Montana investment to be made from the
5 ~~Montana--in-state--investment~~ permanent coal tax trust fund,
6 the board shall consider the long-term benefit to the
7 Montana economy and the additional service fee discount
8 provided for in [section 18]."

9 **Section 11.** Section 17-6-322, MCA, is amended to read:

10 "17-6-322. Report. The board shall include in its
11 annual report a section on the results of the previous
12 year's operations of the in-state investment in the Montana
13 economy from the permanent coal tax trust fund, as required
14 in 17-6-305, including:

15 (1) financial statements audited by independent
16 auditors;

17 (2) a summary report of loan activity; and

18 (3) a comparison of the ~~Montana-in-state-investment~~
19 fund's performance of the investments in the Montana economy
20 in relation to the purposes contained in 17-6-303."

21 **Section 12.** Section 90-3-101, MCA, is amended to read:

22 "90-3-101. Short title -- findings -- purpose. (1) This
23 chapter may be cited as the "Montana Science and Technology
24 Financing Act".

25 (2) The legislature finds and declares that:

1 (a) it is the policy of the state of Montana to promote
2 the health, safety, and general welfare of all the people of
3 the state;

4 (b) this policy will be furthered through strengthening
5 and diversifying the state's economy by facilitating a
6 public sector-private sector partnership to encourage
7 scientific and technological development within the state in
8 order to keep pace with a changing economic structure and to
9 create new jobs and expand business opportunities;

10 (c) this strengthening and diversification will be
11 fostered by assisting in the acceleration of development of
12 technology in the state through participation with the
13 private sector in the financing of science and technology
14 development projects that have significant potential for
15 commercialization in Montana;

16 (d) the ~~in-state--investment~~ permanent coal tax trust
17 ~~fund created through adoption of Initiative Measure--No--95~~
18 ~~by--the--voters--of--Montana--in--1982~~ by Article IX, section 5,
19 of the Montana constitution is the appropriate source for
20 providing financing programs for the development of new and
21 expanding businesses in Montana;

22 (e) the Science and Technology Development Board Seed
23 Capital Bond Act contained provisions that were found to be
24 unconstitutional by the Montana supreme court, and the 51st
25 legislature of the state of Montana must remedy those

1 defects through legislation; and

2 (f) the Montana science and technology development
3 board has demonstrated success in forging a partnership
4 among the private sector, the university community, and
5 government, and this success should be continued through an
6 ongoing legislative commitment to the board's programs.

7 (3) The purposes of this chapter are to:

8 (a) strengthen and diversify Montana's economy by
9 establishing a public-private sector partnership to
10 encourage scientific and technological development within
11 the state in order to keep pace with a transforming economic
12 structure and to create new jobs and expand small business
13 opportunities;

14 (b) provide a funding source for the board to make seed
15 capital project loans;

16 (c) provide a mechanism for the board to use in making
17 seed capital project loans; and

18 (d) provide a mechanism for the board to use in making
19 research and development project loans, the funding source
20 of which will be provided by separate legislation."

21 **Section 13.** Section 90-3-525, MCA, is amended to read:

22 "90-3-525. Deposit of ~~payback~~ -- seed capital and
23 research and development project loans. (1) The payback of
24 principal and earnings on a seed capital project loan
25 executed under this chapter ~~must be administered pursuant to~~

1 ~~section-17-6-306:~~

2 ~~{2}--The or the payback of principal and earnings on a~~
3 ~~research and development project loan must be deposited to~~
4 ~~the state special revenue fund to the credit of the science~~
5 ~~and technology development account created in 90-3-305.~~

6 ~~{3}{2}~~ All paybacks of principal and earnings to the
7 board from any agreements executed by the board between July
8 1, 1985, and March 31, 1989, must be deposited to the state
9 special revenue fund to the credit of the science and
10 technology development account created in 90-3-305 for use
11 by the board. The paybacks include all those received after
12 January 1, 1989."

13 **Section 14.** Section 90-6-104, MCA, is amended to read:

14 **"90-6-104. General powers of the board.** The board may:

15 (1) sue and be sued;

16 (2) have a seal;

17 (3) adopt all procedural and substantive rules
18 necessary for the administration of this part, including
19 rules concerning its mortgage, construction, and temporary
20 lending programs;

21 (4) make contracts, agreements, and other instruments
22 necessary or convenient for the exercise of its powers under
23 this part;

24 (5) enter into agreements or other transactions with
25 any federal, state, or local governmental agency, any

1 persons, and any domestic or foreign partnership,
2 corporation, association, or organization in carrying out
3 this part;

4 (6) enter into agreements under its rules with
5 sponsors, mortgagors, or lending institutions for the
6 purpose of regulating the analysis, planning, development,
7 and management of housing developments financed in whole or
8 in part by the proceeds of its loans or securities and
9 mortgage purchase programs;

10 (7) enter into agreements or other transactions with,
11 and accept grants and the cooperation of, any governmental
12 agency in furtherance of this part, including but not
13 limited to the development, leasing, maintenance, operation,
14 and financing of any housing development;

15 (8) accept services, appropriations, gifts, grants,
16 bequests, and devises and utilize or dispose of them in
17 carrying out this part;

18 (9) acquire real or personal property or any right,
19 interest, or easement therein by gift, purchase, transfer,
20 foreclosure, lease, or otherwise; hold, sell, assign, lease,
21 encumber, mortgage, or otherwise dispose thereof; hold,
22 sell, assign, or otherwise dispose of any mortgage or loan
23 owned by it or in its control or custody; release or
24 relinquish any right, title, claim, interest, easement, or
25 demand, however acquired, including any equity or right of

1 redemption; do any of the foregoing by public or private
 2 sale, with or without public bidding; commence any action to
 3 protect or enforce any right conferred upon it by any law,
 4 mortgage, contract, or other agreement; bid for and purchase
 5 property at any foreclosure or other sale or acquire or take
 6 possession of it in lieu of foreclosure; and operate,
 7 manage, lease, dispose of, and otherwise deal with such
 8 property in any manner necessary or desirable to protect its
 9 interests and the holders of its bonds or notes and
 10 consistent with any agreement with such holders;

11 (10) service and contract and pay for the servicing of
 12 loans;

13 (11) provide general technical services in the analysis,
 14 planning, design, processing, construction, rehabilitation,
 15 and management of housing developments for persons and
 16 families of lower income where these services are not
 17 otherwise available;

18 (12) provide general consultative services to housing
 19 developments for persons and families of lower income and
 20 the residents thereof with respect to counseling and
 21 training in management, home ownership, and maintenance
 22 where these services are not otherwise available;

23 (13) invest any funds not required for immediate use,
 24 subject to any agreements with its bondholders and
 25 noteholders, as provided in Title 17, chapter 6, except all

1 investment income from funds of the board less the cost for
 2 investment as prescribed by law ~~shall~~ must be deposited in
 3 the housing authority enterprise fund;

4 (14) sell its loans or securities to the federal
 5 national mortgage association or any other agency or
 6 instrumentality of the United States and invest in the
 7 capital stock issued by the association or other agency or
 8 instrumentality to the extent, if any, required as a
 9 condition of such the sale;

10 (15) consent, whenever it ~~deems~~ considers it necessary
 11 or desirable in fulfilling its purposes, to the modification
 12 of the rate of interest, time, and payment of any
 13 installment of principal or interest, security, or any other
 14 term of any contract, mortgage, mortgage loan, mortgage loan
 15 commitment, construction loan, advance contract, or
 16 agreement of any kind, subject to any agreement with
 17 bondholders and noteholders;

18 (16) collect reasonable interest, fees, and charges in
 19 connection with making and servicing its loans, notes,
 20 bonds, commitments, and other evidences of indebtedness and
 21 in connection with providing technical, consultative, and
 22 project assistance services. Interest fees and charges ~~shall~~
 23 be are limited to the amounts required to pay the costs of
 24 the board, including operating and administrative expenses
 25 and reasonable allowances for losses which that may be

1 incurred.

2 (17) procure insurance against any loss in connection
3 with its mortgages and mortgage loans and other assets or
4 property in amounts and from insurers as the board considers
5 desirable or necessary;

6 (18) act as agent for governmental agencies concerning
7 acquisition, construction, leasing, operation, or management
8 of a housing development;

9 (19) issue notes and bonds and replace lost, destroyed,
10 or mutilated notes and bonds; and

11 (20) develop special programs for housing developments
12 for veterans of the armed forces of the United States who
13 are unable to acquire safe and sanitary housing through
14 lending institutions by conventional means; ~~and~~

15 ~~{21}-lend-money-to-the-board-of-investments-to-establish~~
16 ~~the--Montana--economic--development-guaranty-fund-created-by~~
17 ~~17-5-1520."~~

18 **Section 15.** Section 90-8-102, MCA, is amended to read:

19 **"90-8-102. Declaration of policy.** (1) The legislature
20 finds and declares that:

21 (a) economic insecurity due to unemployment is a
22 serious menace to the health, safety, and general welfare of
23 not only the affected people but of the people of the entire
24 state;

25 (b) involuntary unemployment, with its resulting burden

1 of indigency, falls with crushing force upon unemployed
2 workers and ultimately on the state itself in the form of
3 public assistance and unemployment compensation payments;
4 and

5 (c) unemployment causes a migration of Montana workers
6 and families seeking jobs and establishing homes elsewhere,
7 which deprives the state of its most valuable resource, its
8 people, and reduces the tax base of local governments,
9 impairing their ability to provide basic services.

10 (2) (a) The legislature further finds that the best
11 method of combating unemployment and protecting Montana
12 against the loss of its people is by promoting, stimulating,
13 developing, rehabilitating, and revitalizing the business
14 prosperity and economic welfare of the state and its
15 citizens.

16 (b) To accomplish this goal, the legislature seeks to
17 encourage the formation of venture and equity capital in
18 Montana for use in diversifying, strengthening, and
19 stabilizing the Montana economy by increasing Montana
20 employment and business opportunities while protecting the
21 people's constitutional right to a clean and healthful
22 environment.

23 (3) The legislature further finds that:

24 (a) private investment of venture and equity capital in
25 the Montana economy will be encouraged and promoted by

1 making tax credits available to taxpayers investing in
2 Montana capital companies;

3 (b) demands on state revenues restrict the financial
4 ability of the state to make unlimited tax credits available
5 for investment purposes and require that the state place
6 reasonable limits on the total amount of tax credits to be
7 made available for investment incentive;

8 (c) establishment of a rational tax credit program
9 which that gives priority to investments in capital
10 companies in the order in which they are qualified will
11 encourage prompt private investment in Montana businesses.

12 (4) The legislature further finds that use of money
13 from the Montana ~~in-state--investment-fund-established-by~~
14 ~~17-6-306~~ permanent coal tax trust fund to purchase
15 debentures issued by a capital company will promote the
16 business prosperity and economic welfare of the state and
17 its citizens."

18 **Section 16.** Section 90-8-305, MCA, is amended to read:

19 "90-8-305. Sale of debentures. (1) A qualified Montana
20 capital company is authorized to issue and sell debentures
21 to the ~~in-state--investment~~ permanent coal tax trust fund
22 ~~established-in-17-6-306~~.

23 (2) Proceeds received by a qualified Montana capital
24 company from the sale of debentures authorized in subsection
25 (1) must be invested in accordance with the provisions of

1 90-8-301, except that the time periods for making qualified
2 investments must be calculated from the date the company
3 sells the debentures to the ~~in-state--investment~~ permanent
4 coal tax trust fund."

5 NEW SECTION. **Section 17.** Job credit interest rate
6 reduction for small business loan participations. (1) A
7 borrower who uses the proceeds of a small business loan
8 participation funded under the provisions of this part to
9 create jobs employing Montana residents is entitled to a job
10 credit interest rate reduction for each job created over a
11 2-year period to employ a Montana resident. The date of the
12 formal written interim or permanent loan application to the
13 financial institution will be used as a beginning date for
14 counting the number of jobs created. The job credit interest
15 rate reduction may not apply to a loan participation of more
16 than 1% of the total of the permanent coal tax trust fund
17 determined at the end of the last completed fiscal year. The
18 job credit interest rate reduction is equal to 0.05% for
19 each job created to employ a Montana resident up to a
20 maximum interest rate reduction of 2.5%.

21 (2) If the salary or wage of the job created:

22 (a) exceeds the average weekly wage, as defined in
23 39-71-116, the amount of the job credit interest rate
24 reduction may be increased proportionately for each
25 increment of 25% above the average weekly wage to a maximum

1 of two times the average weekly wage; or

2 (b) is less than the average weekly wage, as defined in
3 39-71-116, the job credit interest rate reduction is reduced
4 proportionately for each 25% increment below the average
5 wage.

6 (3) A job credit interest rate reduction may not be
7 allowed for a job created by the borrower using the proceeds
8 of the loan for which the salary or wage is less than the
9 minimum wage provided for in 39-3-409.

10 (4) No job credit will be given unless one whole job is
11 created.

12 (5) To qualify for the job credit interest rate
13 reduction, the borrower shall provide satisfactory evidence
14 of the creation of jobs and make application in writing,
15 through its financial institution, to the board when the
16 loan is delivered to the board or not later than 45 days
17 after the first and second anniversary dates of the loan.

18 NEW SECTION. Section 18. Incentive to financial
19 institution for small business loan participation. A
20 financial institution that originates a small business loan
21 no larger than 0.05% of the balance of the Montana permanent
22 coal tax trust fund at the end of the last completed fiscal
23 year is entitled to an additional service fee in the form of
24 a discount equal to 0.5% of the board's participation in the
25 loan. The board shall consider the additional service fee

1 discount to the financial institution as part of the rate of
2 return provided in 17-6-314.

3 NEW SECTION. Section 19. Repealer. Sections 17-5-1519,
4 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

5 NEW SECTION. Section 20. Saving clause. [This act]
6 does not affect rights and duties that matured, penalties
7 that were incurred, or proceedings that were begun before
8 [the effective date of this act].

9 NEW SECTION. Section 21. Severability. If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. Section 22. Codification instruction.
16 [Sections 17 and 18] are intended to be codified as an
17 integral part of Title 17, chapter 6, part 3, and the
18 provisions of Title 17, chapter 6, part 3, apply to
19 [sections 17 and 18].

20 NEW SECTION. SECTION 23. EFFECTIVE DATE. [THIS ACT] IS
21 EFFECTIVE JULY 1, 1991.

-End-

1 SENATE BILL NO. 26
2 INTRODUCED BY MANNING
3 BY REQUEST OF THE COAL TAX OVERSIGHT SUBCOMMITTEE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
6 AUTHORITY OF THE BOARD OF INVESTMENTS TO INVEST THE
7 PERMANENT COAL TAX TRUST FUND; ELIMINATING THE AUTHORITY OF
8 THE BOARD OF INVESTMENTS TO GUARANTEE LOANS; ELIMINATING THE
9 ECONOMIC DEVELOPMENT GUARANTY FUND AND THE IN-STAT
10 INVESTMENT FUND; ALLOWING THE BOARD OF INVESTMENTS TO INVEST
11 UP TO 25 PERCENT OF THE PERMANENT COAL TAX TRUST FUND IN THE
12 MONTANA ECONOMY; REQUIRING THE BOARD OF INVESTMENTS TO
13 REPORT BIENNIALY TO THE LEGISLATURE; ELIMINATING THE LOAN
14 LOSS RESERVE FUND; AUTHORIZING MONTANA CAPITAL COMPANIES TO
15 ISSUE AND SELL DEBENTURES TO THE PERMANENT COAL TAX TRUST
16 FUND; ALLOWING AN INTEREST RATE REDUCTION INCENTIVE FOR JOB
17 CREATION BY SMALL BUSINESSES; ALLOWING AN ADDITIONAL SERVICE
18 FEE DISCOUNT TO FINANCIAL INSTITUTIONS ON CERTAIN SMALL
19 BUSINESS LOAN PARTICIPATIONS; AMENDING SECTIONS 17-5-1506,
20 17-5-1525, 17-5-1526, 17-5-1527, 17-6-302, 17-6-305,
21 17-6-308, 17-6-310, 17-6-311, 17-6-314, 17-6-322, 90-3-101,
22 90-3-525, 90-6-104, 90-8-102, AND 90-8-305, MCA; AND
23 REPEALING SECTIONS 17-5-1519, 17-5-1520, 17-6-306, AND
24 17-6-315, MCA; AND PROVIDING AN EFFECTIVE DATE."
25

1 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
2 **Section 1.** Section 17-5-1506, MCA, is amended to read:
3 "17-5-1506. Bonds and notes for projects and major
4 projects. (1) The board may by resolution issue negotiable
5 notes and bonds in a principal amount as the board
6 determines necessary to provide sufficient funds for
7 achieving any of its purposes, including the payment of
8 interest on notes and bonds of the board, establishment of
9 reserves to secure the notes and bonds, including the
10 reserve funds created under 17-5-1515, and all other
11 expenditures of the board incident to and necessary or
12 convenient to carry out this part.
13 (2) The board may by resolution, from time to time,
14 issue notes to renew notes and bonds or to pay notes,
15 including interest, and whenever it considers refunding
16 expedient, refund any bonds by the issuance of new bonds,
17 whether or not the bonds to be refunded have matured, or
18 issue bonds partly to refund bonds outstanding and partly
19 for any of its other purposes.
20 (3) Except as otherwise expressly provided by
21 resolution of the board, every issue of its bonds is an
22 obligation of the board payable out of any revenue, assets,
23 or money of the board, subject only to agreements with the
24 holders of particular notes or bonds pledging particular
25 revenues, assets, or money.

REFERENCE BILL



1 (4) The notes and bonds shall must be authorized by
 2 resolutions of the board, bear a date, and mature at the
 3 times the resolutions provide. A note may not mature more
 4 than 5 years from the date of its issue. A bond may not
 5 mature more than 40 years from the date of its issue. The
 6 bonds may be issued as serial bonds payable in annual
 7 installments, as term bonds, or as a combination thereof.
 8 The notes and bonds shall must bear interest at a stated
 9 rate or rates or at a rate or rate determination as stated,
 10 be in denominations, be in a form, either coupon or
 11 registered, carry registration privileges, be executed in a
 12 manner, be payable in a medium of payment, at places inside
 13 or outside the state, and be subject to terms of redemption
 14 as provided in resolutions. The notes and bonds of the board
 15 may be sold at public or private sale, at prices above or
 16 below par, as determined by the board, and in a manner such
 17 that interest on the bonds is either exempt from or subject
 18 to federal income tax.

19 (5) The bonds issued under this part are exempt from
 20 the Montana Securities Act, but copies of all prospectus and
 21 disclosure documents must be deposited with the state
 22 securities commissioner for public inspection.

23 (6) The total amount of bonds secured under 17-5-1515
 24 and ~~17-5-1519~~ outstanding at any one time, except bonds as
 25 to which the board's obligations have been satisfied and

1 discharged by refunding or bonds for which reserves for
 2 payment or other means of payment have been provided, may
 3 not exceed \$75 million."

4 **Section 2.** Section 17-5-1525, MCA, is amended to read:

5 "17-5-1525. Bonds as legal investment. (1) Bonds issued
 6 by the board under the provisions of this part are
 7 securities in which all funds may be legally and properly
 8 invested, including capital in the control of or belonging
 9 to:

10 (a) public officers and public bodies of the state and
 11 its political subdivisions;

12 (b) insurance companies;

13 (c) credit unions, building and loan associations,
 14 investment companies, savings banks, banking associations,
 15 and trust companies;

16 (d) executors, administrators, trustees, and other
 17 fiduciaries; and

18 (e) pension, profit-sharing, and retirement funds.

19 (2) Bonds issued under 17-5-1505 through 17-5-1718 and
 20 17-5-1521 through 17-5-1529 are securities which that may
 21 properly and legally be deposited with and received by any
 22 state or municipal officer or any agency or municipality of
 23 the state for any purpose for which the deposit of bonds or
 24 obligations of the state is now or may hereafter be
 25 authorized by law."

1 **Section 3.** Section 17-5-1526, MCA, is amended to read:

2 "17-5-1526. Procedure prior to financing projects. (1)

3 The board may finance projects, other than major projects,
4 under this part only when it finds that:

5 (a) the financing is in the public interest and is
6 consistent with the legislative purposes and findings set
7 forth in 17-5-1502;

8 (b) the financing to be provided by the board for a
9 project does not exceed either \$800,000 or 90% of the cost
10 or appraised value of the project, whichever is less;

11 (c) a financial institution will participate in
12 financing the project, either directly or through a letter
13 of credit, to the extent of at least 10% of the financing to
14 be provided by the board;

15 (d) the financing for the project is insured or
16 guaranteed in whole or in part by a private or governmental
17 insurer or guarantor, ~~including but not limited to a~~
18 ~~guaranty by the board pursuant to 17-5-1519;~~

19 (e) an applicant has submitted a statement indicating
20 any contracts to construct the projects will require all
21 contractors to give preference to the employment of bona
22 fide Montana residents, as defined in 18-2-401, in the
23 performance of the work on the projects if their
24 qualifications are substantially equal to those of
25 nonresidents; "substantially equal qualifications" means the

1 qualifications of two or more persons among whom the
2 employer cannot make a reasonable determination that the
3 qualifications held by one person are significantly better
4 suited for the position than the qualifications held by the
5 other persons; and

6 (f) adequate provision is made in the loan agreement,
7 lease, or other credit arrangement regarding a project or
8 projects being financed to provide for payment of debt
9 service on bonds of the board issued to finance such the
10 project or projects, to create and maintain reserves
11 therefor, and to meet all costs and expenses of issuing and
12 servicing the bonds.

13 (2) In order to make the findings as described in
14 subsection (1)(a), a hearing must be conducted in the
15 following manner:

16 (a) the city or county in which the project will be
17 located must be notified; and the city and county must
18 shall, within 14 days after receipt of the notice, notify
19 the board if it elects to conduct the hearing; or

20 (b) if no request for a local hearing is received, the
21 board may hold the hearing at a time and place it
22 prescribes.

23 (3) If the hearing required by subsection (2) is
24 conducted by a local government, the governing body of the
25 local government must shall notify the board of its

1 determination of whether the project is in the public
2 interest within 14 days of the completion of the public
3 hearing.

4 (4) When a hearing is required either locally or at the
5 state level, notice must be given, at least once a week for
6 2 weeks prior to the date set for the hearing, by
7 publication in a newspaper of general circulation in the
8 city or county where the hearing will be held. The notice
9 must include the time and place of the hearing; the general
10 nature of the project; the name of the lessee, borrower, or
11 user of the project; and the estimated cost of the project.

12 (5) The requirements of subsections (1)(b) through
13 (1)(d) do not apply to bonds that are not secured by the
14 ~~board's guarantee under 17-5-1519 or the~~ capital reserve
15 account authorized by 17-5-1515.

16 (6) The hearing requirements of subsections (2) through
17 (4) do not apply to projects financed with bonds the
18 interest on which is subject to federal income taxes."

19 **Section 4.** Section 17-5-1527, MCA, is amended to read:

20 "17-5-1527. Procedure prior to financing major
21 projects. (1) The board may finance major projects under
22 this part only when it finds that:

23 (a) the financing is in the public interest and is
24 consistent with legislative purposes and findings;

25 (b) the financing to be provided by the board for a

1 project does not exceed either \$10 million or 90% of the
2 cost or appraised value of the project, whichever is less;

3 (c) a financial institution will participate in
4 financing the project if the cost or appraised value is less
5 than \$1 million, either directly or through a letter of
6 credit, to the extent of at least 10% of the financing to be
7 provided by the board, provided, however, that participation
8 by a financial institution in projects of over \$1 million is
9 at the discretion of the board;

10 (d) the financing for the project is insured or
11 guaranteed in whole or in part by a private or governmental
12 insurer or guarantor, ~~including but not limited to a~~
13 ~~guaranty by the board pursuant to 17-5-1519;~~

14 (e) any contracts to construct the projects require all
15 contractors to give preference to the employment of bona
16 fide Montana residents, as defined in 18-2-401, in the
17 performance of the work on the projects if their
18 qualifications are substantially equal to those of
19 nonresidents; "substantially equal qualifications" means the
20 qualifications of two or more persons among whom the
21 employer cannot make a reasonable determination that the
22 qualifications held by one person are significantly better
23 suited for the position than the qualifications held by the
24 other persons; and

25 (f) adequate provision is made in the loan agreement,

1 lease, or other credit arrangement regarding a project or
 2 projects being financed to provide for payment of debt
 3 service on bonds of the board issued to finance ~~such~~ the
 4 project or projects, to create and maintain reserves
 5 therefor, and to meet all costs and expenses of issuing and
 6 servicing the bonds.

7 (2) In order to make the findings as described in
 8 subsection (1)(a), a hearing must be conducted in the
 9 following manner:

10 (a) the city or county in which the project will be
 11 located ~~shall~~ must be notified, and within 14 days must
 12 shall advise the board if it elects to conduct the hearing;
 13 or

14 (b) if no request for a local hearing is received, the
 15 board may hold the hearing at a time and place it
 16 prescribes.

17 (3) If the hearing required by subsection (2) is
 18 conducted by a local government, the governing body of the
 19 local government ~~must~~ shall notify the board of its
 20 determination of whether the project is in the public
 21 interest within 14 days of the completion of the public
 22 hearing.

23 (4) When a hearing is required either locally or at the
 24 state level, notice ~~mus~~ be given, at least once a week for
 25 2 weeks prior to the date set for the hearing, by

1 publication in a newspaper of general circulation in the
 2 city or county where the hearing will be held. The notice
 3 must include the time and place of the hearing; the general
 4 nature of the project; the name of the lessee, borrower, or
 5 user of the project; and the estimated cost of the project.

6 (5) The requirements of subsections (1)(b) through
 7 (1)(d) do not apply to bonds that are not secured by ~~the~~
 8 ~~board's--guarantee--under--17-5-1519--or~~ the capital reserve
 9 account authorized by 17-5-1515.

10 (6) The hearing requirements of subsections (2) through
 11 (4) do not apply to major projects financed with bonds the
 12 interest on which is subject to federal income taxes."

13 **Section 5.** Section 17-6-302, MCA, is amended to read:

14 **"17-6-302. Definitions.** As used in this part, unless
 15 the context requires otherwise, the following definitions
 16 apply:

17 (1) "Board" means the board of investments created in
 18 2-15-1808.

19 (2) "Capital company" means a Montana capital company
 20 created pursuant to Title 90, chapter 8.

21 (3) "Clean and healthful environment" means an
 22 environment that is relatively free from pollution ~~which~~
 23 ~~that~~ threatens human health, including as a minimum,
 24 compliance with federal and state environmental and health
 25 standards.

1 (4) "Employee-owned enterprise" means any enterprise at
2 least 51% of whose stock, partnership interests, or other
3 ownership interests is owned and controlled by residents of
4 Montana each of whose principal occupation is as an
5 employee, officer, or partner of the enterprise.

6 (5) "Financial institution" includes but is not limited
7 to a state- or federally chartered bank or a savings and
8 loan association, credit union, or development corporation
9 created pursuant to Title 32, chapter 4.

10 (6) "Loan participation" means loans or portions
11 thereof bought from a financial institution and does not
12 include the purchase of debentures issued by a capital
13 company.

14 (7) "Locally owned enterprise" means any enterprise 51%
15 of whose stock, partnership interests, or other ownership
16 interests are owned and controlled by residents of Montana.

17 (8) "Long-term benefit to the Montana economy" means an
18 activity that strengthens the Montana economy and that has
19 the potential to maintain and create jobs, increase per
20 capita income, or increase Montana tax revenues in the
21 future to the people of Montana, either directly or
22 indirectly.

23 (9) "Montana economy" means any business activity in
24 the state of Montana, including those which continue
25 existing jobs or create new jobs in Montana.

1 ~~{10}~~ "Montana in-state investment fund" means the fund
2 established by 17-6-306.

3 ~~{11}~~{10} "Service fees" means the fees normally charged
4 by a financial institution for servicing a loan, including
5 amounts charged for collecting payments and remitting
6 amounts to the fund."

7 **Section 6.** Section 17-6-305, MCA, is amended to read:

8 "17-6-305. Investment of up to twenty-five percent of
9 the coal tax trust fund in the Montana economy -- REPORT BY
10 THE BOARD. (1) ~~Twenty-five percent of all revenue deposited~~
11 ~~after June 30, 1983, into~~ Subject to the provisions of
12 17-6-201(1), the board shall endeavor to invest up to 25% of
13 the permanent coal tax trust fund established in
14 17-6-203(5)(6) and 15% of the annual income and earnings on
15 the Montana in-state investment fund appropriated to the
16 coal severance tax permanent fund by 17-5-764(2) shall be
17 invested in the Montana economy with special emphasis on
18 investments in new or expanding locally owned enterprises.

19 (2) In determining the probable income to be derived
20 from investment of this revenue, the long-term benefit to
21 the Montana economy ~~shall~~ must be considered.

22 (3) The legislature may provide additional procedures
23 to implement this section.

24 {4} THE BOARD SHALL REPORT BIENNIALY TO THE
25 LEGISLATURE ON THE INVESTMENTS MADE UNDER THIS SECTION."

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

2 "17-6-308. Authorized investments. (1) Except as
3 provided in subsection--~~{4}~~ subsections (2) and (3) and
4 subject to the provisions of 17-6-201, the Montana in-state
5 investment permanent coal tax trust fund must be invested as
6 authorized by rules adopted by the board. For--purposes--of
7 this-section,--"investment"--includes-the-guaranty-of-loans-or
8 bonds--in--consideration--for--a--fee,--in-lieu-of-the-actual
9 acquisition-of-such-loans-or-bonds.

10 ~~{2}~~--The-board-may-use-the-in-state-investment--fund--to
11 guarantee--loans--or--bonds--issued--under-the-provisions-of
12 17-5-1501-through-17-5-1529,--Title-17,--chapter-5,--part--16,
13 or--Title--90,--chapter--7.--Each--guaranty-must-be-given-in
14 consideration-of-a-fee.--The-fees-must-be-paid-to-the--board.
15 The--guaranty-must-provide-directly-or-by-separate-agreement
16 that-the-board-is-fully-subrogated--to--the--rights--of--the
17 obligee--under--the--loan--or--bond.--The-board-shall-by-rule
18 establish-the-maximum-ratio-between-guaranty-funds-available
19 and-loans-or-bonds-to-be-guaranteed.--The-board-may--covenant
20 in--bond--issues-to-maintain-such-ratio.--Unless-bonds-issued
21 to-finance-a-project-are-secured-by-a-common-capital-reserve
22 account-and-a-common-guaranty-fund,--the--maximum--amount--of
23 the--guaranty--authorized--by--this--section--may-not-exceed
24 \$3,000,000-with-respect-to-the-bonds-or-loans-to-finance-the
25 project.

1 ~~{3}~~{2} The board may make loans from the in-state
2 investment permanent coal tax trust fund to the capital
3 reserve account created pursuant to 17-5-1515 and--the
4 guaranty-fund-created-pursuant--to--17-5-1520 to establish
5 balances or restore deficiencies therein in the account. The
6 board may agree in connection with the issuance of bonds or
7 notes secured by such the account or fund to make such the
8 loans. Loans must be on such terms and conditions as the
9 board determines and must be repaid from revenues of the
10 board realized from the exercise of its powers under
11 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529,
12 subject to the prior pledge of the revenues to the bonds and
13 notes.

14 ~~{4}~~{3} The board shall allow the Montana board of
15 science and technology development provided for in 2-15-1818
16 to administer \$7.5 million of the in-state--investment
17 permanent coal tax trust fund for seed capital project loans
18 pursuant only to the provisions of Title 90, chapter 3. This
19 authority does not extend beyond June 30, 1994. Until such
20 time as the Montana board of science and technology
21 development makes a loan pursuant to those provisions, the
22 funds under its administration must be invested by the board
23 of investments pursuant to the provisions of 17-6-201."

24 **Section 8.** Section 17-6-310, MCA, is amended to read:

25 "17-6-310. No direct loans. (1) The state may not use

1 this revenue to make direct loans.

2 (2) ~~No-money-from-the-Montana-in-state--investment~~ The
3 permanent coal tax trust fund may not be used to make direct
4 loans to individual borrowers. The purchase of debentures
5 issued by a capital company and loans or portions thereof of
6 loans originated by a financial institution that are sold to
7 the trust are not direct loans."

8 **Section 9.** Section 17-6-311, MCA, is amended to read:

9 "17-6-311. **Limitation on size of investments.** (1)
10 Except as provided in subsections (2) and (3), no investment
11 may be made that will result in any one business enterprise
12 or person receiving a benefit from or incurring a debt to
13 the ~~Montana--in-state--investment~~ permanent coal tax trust
14 fund the total current accumulated amount of which exceeds
15 ~~10% 1%~~ of the ~~prior-fiscal-year's-coal-severance-tax-revenue~~
16 ~~deposited--in-the-Montana-in-state-investment~~ permanent coal
17 tax trust fund.

18 (2) Subsection (1) does not limit the board's authority
19 to ~~guarantee-loans-or-bonds-or~~ make loans to the capital
20 reserve account ~~and-guaranty-fund~~ as provided in 17-6-308(2)
21 ~~and-(3)~~.

22 (3) Subsection (1) does not apply to the purchase of
23 debentures issued by a capital company; however, the total
24 amount of such debentures purchased by the board may not
25 exceed ~~10% 1%~~ of the ~~Montana in-state--investment~~ permanent

1 coal tax trust fund at the time of purchase."

2 **Section 10.** Section 17-6-314, MCA, is amended to read:

3 "17-6-314. **Rate of return.** In calculating the rate of
4 return for any Montana investment to be made from the
5 ~~Montana--in-state--investment~~ permanent coal tax trust fund,
6 the board shall consider the long-term benefit to the
7 Montana economy and the additional service fee discount
8 provided for in [section 10]."

9 **Section 11.** Section 17-6-322, MCA, is amended to read:

10 "17-6-322. **Report.** The board shall include in its
11 annual report a section on the results of the previous
12 year's operations of the ~~in-state investment~~ in the Montana
13 economy from the permanent coal tax trust fund, as required
14 in 17-6-305, including:

15 (1) financial statements audited by independent
16 auditors;

17 (2) a summary report of loan activity; and

18 (3) a comparison of the ~~Montana-in-state-investment~~
19 fund's performance of the investments in the Montana economy
20 in relation to the purposes contained in 17-6-303."

21 **Section 12.** Section 90-3-101, MCA, is amended to read:

22 "90-3-101. **Short title -- findings -- purpose.** (1) This
23 chapter may be cited as the "Montana Science and Technology
24 Financing Act".

25 (2) The legislature finds and declares that:

1 (a) it is the policy of the state of Montana to promote
2 the health, safety, and general welfare of all the people of
3 the state;

4 (b) this policy will be furthered through strengthening
5 and diversifying the state's economy by facilitating a
6 public sector-private sector partnership to encourage
7 scientific and technological development within the state in
8 order to keep pace with a changing economic structure and to
9 create new jobs and expand business opportunities;

10 (c) this strengthening and diversification will be
11 fostered by assisting in the acceleration of development of
12 technology in the state through participation with the
13 private sector in the financing of science and technology
14 development projects that have significant potential for
15 commercialization in Montana;

16 (d) the ~~in-state--investment~~ permanent coal tax trust
17 fund created through ~~adoption-of-initiative-Measure--No--95~~
18 ~~by--the--voters-of-Montana-in-1982~~ by Article IX, section 5,
19 of the Montana constitution is the appropriate source for
20 providing financing programs for the development of new and
21 expanding businesses in Montana;

22 (e) the Science and Technology Development Board Seed
23 Capital Bond Act contained provisions that were found to be
24 unconstitutional by the Montana supreme court, and the 51st
25 legislature of the state of Montana must remedy those

1 defects through legislation; and

2 (f) the Montana science and technology development
3 board has demonstrated success in forging a partnership
4 among the private sector, the university community, and
5 government, and this success should be continued through an
6 ongoing legislative commitment to the board's programs.

7 (3) The purposes of this chapter are to:

8 (a) strengthen and diversify Montana's economy by
9 establishing a public-private sector partnership to
10 encourage scientific and technological development within
11 the state in order to keep pace with a transforming economic
12 structure and to create new jobs and expand small business
13 opportunities;

14 (b) provide a funding source for the board to make seed
15 capital project loans;

16 (c) provide a mechanism for the board to use in making
17 seed capital project loans; and

18 (d) provide a mechanism for the board to use in making
19 research and development project loans, the funding source
20 of which will be provided by separate legislation."

21 **Section 13.** Section 90-3-525, MCA, is amended to read:

22 "90-3-525. Deposit of payback -- seed capital and
23 research and development project loans. (1) The payback of
24 principal and earnings on a seed capital project loan
25 executed under this chapter ~~must-be-administered-pursuant-to~~

1 ~~section-17-6-306:~~

2 {2}--The or the payback of principal and earnings on a
3 research and development project loan must be deposited to
4 the state special revenue fund to the credit of the science
5 and technology development account created in 90-3-305.

6 {3}{2} All paybacks of principal and earnings to the
7 board from any agreements executed by the board between July
8 1, 1985, and March 31, 1989, must be deposited to the state
9 special revenue fund to the credit of the science and
10 technology development account created in 90-3-305 for use
11 by the board. The paybacks include all those received after
12 January 1, 1989."

13 **Section 14.** Section 90-6-104, MCA, is amended to read:

14 *90-6-104. General powers of the board. The board may:

15 (1) sue and be sued;

16 (2) have a seal;

17 (3) adopt all procedural and substantive rules
18 necessary for the administration of this part, including
19 rules concerning its mortgage, construction, and temporary
20 lending programs;

21 (4) make contracts, agreements, and other instruments
22 necessary or convenient for the exercise of its powers under
23 this part;

24 (5) enter into agreements or other transactions with
25 any federal, state, or local governmental agency, any

1 persons, and any domestic or foreign partnership,
2 corporation, association, or organization in carrying out
3 this part;

4 (6) enter into agreements under its rules with
5 sponsors, mortgagors, or lending institutions for the
6 purpose of regulating the analysis, planning, development,
7 and management of housing developments financed in whole or
8 in part by the proceeds of its loans or securities and
9 mortgage purchase programs;

10 (7) enter into agreements or other transactions with,
11 and accept grants and the cooperation of, any governmental
12 agency in furtherance of this part, including but not
13 limited to the development, leasing, maintenance, operation,
14 and financing of any housing development;

15 (8) accept services, appropriations, gifts, grants,
16 bequests, and devises and utilize or dispose of them in
17 carrying out this part;

18 (9) acquire real or personal property or any right,
19 interest, or easement therein by gift, purchase, transfer,
20 foreclosure, lease, or otherwise; hold, sell, assign, lease,
21 encumber, mortgage, or otherwise dispose thereof; hold,
22 sell, assign, or otherwise dispose of any mortgage or loan
23 owned by it or in its control or custody; release or
24 relinquish any right, title, claim, interest, easement, or
25 demand, however acquired, including any equity or right of

1 redemption; do any of the foregoing by public or private
 2 sale, with or without public bidding; commence any action to
 3 protect or enforce any right conferred upon it by any law,
 4 mortgage, contract, or other agreement; bid for and purchase
 5 property at any foreclosure or other sale or acquire or take
 6 possession of it in lieu of foreclosure; and operate,
 7 manage, lease, dispose of, and otherwise deal with such
 8 property in any manner necessary or desirable to protect its
 9 interests and the holders of its bonds or notes and
 10 consistent with any agreement with such holders;

11 (10) service and contract and pay for the servicing of
 12 loans;

13 (11) provide general technical services in the analysis,
 14 planning, design, processing, construction, rehabilitation,
 15 and management of housing developments for persons and
 16 families of lower income where these services are not
 17 otherwise available;

18 (12) provide general consultative services to housing
 19 developments for persons and families of lower income and
 20 the residents thereof with respect to counseling and
 21 training in management, home ownership, and maintenance
 22 where these services are not otherwise available;

23 (13) invest any funds not required for immediate use,
 24 subject to any agreements with its bondholders and
 25 noteholders, as provided in Title 17, chapter 6, except all

1 investment income from funds of the board less the cost for
 2 investment as prescribed by law ~~shall~~ must be deposited in
 3 the housing authority enterprise fund;

4 (14) sell its loans or securities to the federal
 5 national mortgage association or any other agency or
 6 instrumentality of the United States and invest in the
 7 capital stock issued by the association or other agency or
 8 instrumentality to the extent, if any, required as a
 9 condition of such the sale;

10 (15) consent, whenever it ~~deems~~ considers it necessary
 11 or desirable in fulfilling its purposes, to the modification
 12 of the rate of interest, time, and payment of any
 13 installment of principal or interest, security, or any other
 14 term of any contract, mortgage, mortgage loan, mortgage loan
 15 commitment, construction loan, advance contract, or
 16 agreement of any kind, subject to any agreement with
 17 bondholders and noteholders;

18 (16) collect reasonable interest, fees, and charges in
 19 connection with making and servicing its loans, notes,
 20 bonds, commitments, and other evidences of indebtedness and
 21 in connection with providing technical, consultative, and
 22 project assistance services. Interest fees and charges ~~shall~~
 23 be are limited to the amounts required to pay the costs of
 24 the board, including operating and administrative expenses
 25 and reasonable allowances for losses which that may be

1 incurred.

2 (17) procure insurance against any loss in connection
3 with its mortgages and mortgage loans and other assets or
4 property in amounts and from insurers as the board considers
5 desirable or necessary;

6 (18) act as agent for governmental agencies concerning
7 acquisition, construction, leasing, operation, or management
8 of a housing development;

9 (19) issue notes and bonds and replace lost, destroyed,
10 or mutilated notes and bonds; and

11 (20) develop special programs for housing developments
12 for veterans of the armed forces of the United States who
13 are unable to acquire safe and sanitary housing through
14 lending institutions by conventional means; ~~and~~

15 ~~{21} lend money to the board of investments to establish~~
16 ~~the--Montana--economic--development--guaranty--fund--created--by~~
17 ~~17-5-1520."~~

18 **Section 15.** Section 90-8-102, MCA, is amended to read:

19 **"90-8-102. Declaration of policy.** (1) The legislature
20 finds and declares that:

21 (a) economic insecurity due to unemployment is a
22 serious menace to the health, safety, and general welfare of
23 not only the affected people but of the people of the entire
24 state;

25 (b) involuntary unemployment, with its resulting burden

1 of indigency, falls with crushing force upon unemployed
2 workers and ultimately on the state itself in the form of
3 public assistance and unemployment compensation payments;
4 and

5 (c) unemployment causes a migration of Montana workers
6 and families seeking jobs and establishing homes elsewhere,
7 which deprives the state of its most valuable resource, its
8 people, and reduces the tax base of local governments,
9 impairing their ability to provide basic services.

10 (2) (a) The legislature further finds that the best
11 method of combating unemployment and protecting Montana
12 against the loss of its people is by promoting, stimulating,
13 developing, rehabilitating, and revitalizing the business
14 prosperity and economic welfare of the state and its
15 citizens.

16 (b) To accomplish this goal, the legislature seeks to
17 encourage the formation of venture and equity capital in
18 Montana for use in diversifying, strengthening, and
19 stabilizing the Montana economy by increasing Montana
20 employment and business opportunities while protecting the
21 people's constitutional right to a clean and healthful
22 environment.

23 (3) The legislature further finds that:

24 (a) private investment of venture and equity capital in
25 the Montana economy will be encouraged and promoted by

1 making tax credits available to taxpayers investing in
2 Montana capital companies;

3 (b) demands on state revenues restrict the financial
4 ability of the state to make unlimited tax credits available
5 for investment purposes and require that the state place
6 reasonable limits on the total amount of tax credits to be
7 made available for investment incentive;

8 (c) establishment of a rational tax credit program
9 which that gives priority to investments in capital
10 companies in the order in which they are qualified will
11 encourage prompt private investment in Montana businesses.

12 (4) The legislature further finds that use of money
13 from the Montana ~~in-state--investment-fund-established-by~~
14 ~~17-6-306~~ permanent coal tax trust fund to purchase
15 debentures issued by a capital company will promote the
16 business prosperity and economic welfare of the state and
17 its citizens."

18 **Section 16.** Section 90-8-305, MCA, is amended to read:

19 "90-8-305. Sale of debentures. (1) A qualified Montana
20 capital company is authorized to issue and sell debentures
21 to the ~~in-state--investment~~ permanent coal tax trust fund
22 ~~established-in-17-6-306~~.

23 (2) Proceeds received by a qualified Montana capital
24 company from the sale of debentures authorized in subsection
25 (1) must be invested in accordance with the provisions of

1 90-8-301, except that the time periods for making qualified
2 investments must be calculated from the date the company
3 sells the debentures to the ~~in-state--investment~~ permanent
4 coal tax trust fund."

5 **NEW SECTION. Section 17.** Job credit interest rate
6 reduction for small business loan participations. (1) A
7 borrower who uses the proceeds of a small business loan
8 participation funded under the provisions of this part to
9 create jobs employing Montana residents is entitled to a job
10 credit interest rate reduction for each job created over a
11 2-year period to employ a Montana resident. The date of the
12 formal written interim or permanent loan application to the
13 financial institution will be used as a beginning date for
14 counting the number of jobs created. The job credit interest
15 rate reduction may not apply to a loan participation of more
16 than 1% of the total of the permanent coal tax trust fund
17 determined at the end of the last completed fiscal year. The
18 job credit interest rate reduction is equal to 0.05% for
19 each job created to employ a Montana resident up to a
20 maximum interest rate reduction of 2.5%.

21 (2) If the salary or wage of the job created:

22 (a) exceeds the average weekly wage, as defined in
23 39-71-116, the amount of the job credit interest rate
24 reduction may be increased proportionately for each
25 increment of 25% above the average weekly wage to a maximum

1 of two times the average weekly wage; or

2 (b) is less than the average weekly wage, as defined in
3 39-71-116, the job credit interest rate reduction is reduced
4 proportionately for each 25% increment below the average
5 wage.

6 (3) A job credit interest rate reduction may not be
7 allowed for a job created by the borrower using the proceeds
8 of the loan for which the salary or wage is less than the
9 minimum wage provided for in 39-3-409.

10 (4) No job credit will be given unless one whole job is
11 created.

12 (5) To qualify for the job credit interest rate
13 reduction, the borrower shall provide satisfactory evidence
14 of the creation of jobs and make application in writing,
15 through its financial institution, to the board when the
16 loan is delivered to the board or not later than 45 days
17 after the first and second anniversary dates of the loan.

18 NEW SECTION. Section 18. Incentive to financial
19 institution for small business loan participation. A
20 financial institution that originates a small business loan
21 no larger than 0.05% of the balance of the Montana permanent
22 coal tax trust fund at the end of the last completed fiscal
23 year is entitled to an additional service fee in the form of
24 a discount equal to 0.5% of the board's participation in the
25 loan. The board shall consider the additional service fee

1 discount to the financial institution as part of the rate of
2 return provided in 17-6-314.

3 NEW SECTION. Section 19. Repealer. Sections 17-5-1519,
4 17-5-1520, 17-6-306, and 17-6-315, MCA, are repealed.

5 NEW SECTION. Section 20. Saving clause. [This act]
6 does not affect rights and duties that matured, penalties
7 that were incurred, or proceedings that were begun before
8 [the effective date of this act].

9 NEW SECTION. Section 21. Severability. If a part of
10 [this act] is invalid, all valid parts that are severable
11 from the invalid part remain in effect. If a part of [this
12 act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are
14 severable from the invalid applications.

15 NEW SECTION. Section 22. Codification instruction.
16 [Sections 17 and 18] are intended to be codified as an
17 integral part of Title 17, chapter 6, part 3, and the
18 provisions of Title 17, chapter 6, part 3, apply to
19 [sections 17 and 18].

20 NEW SECTION. SECTION 23. EFFECTIVE DATE. [THIS ACT] IS
21 EFFECTIVE JULY 1, 1991.

-End-