

SENATE BILL 244

IN THE SENATE

January 30, 1979	Introduced and referred to Committee on Taxation.
January 31, 1979	Fiscal note requested.
February 5, 1979	Fiscal note returned.
March 9, 1979	Committee recommend bill, as amended.
March 10, 1979	Printed and placed on members' desks.
March 12, 1979	Second reading, indefinitely postponed.

1 *State* BILL NO. *244*  
 2 INTRODUCED BY *Steve Manning*  
 3 BY REQUEST OF THE COAL TAX OVERSIGHT COMMITTEE  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA  
 6 PRODUCT DEVELOPMENT CORPORATION, A PUBLIC CORPORATION TO  
 7 PROVIDE FINANCIAL AID FOR PRODUCTS AND INVENTIONS AND TO  
 8 APPROPRIATE \$2 MILLION FOR THE OPERATION OF THE CORPORATION  
 9 FOR THE BIENNIUM ENDING JUNE 30, 1981."

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

12 Section 1. Short title. This [act] shall be known and  
 13 may be cited as the "Montana Product Development Corporation  
 14 Act".

15 Section 2. Legislative findings and declaration of  
 16 purpose. (1) The legislature finds that there exists in this  
 17 state a growing need for commercial development to provide  
 18 and maintain job opportunities and tax revenue.

19 (2) The legislature further finds that:

20 (a) the assistance and encouragement of commercial  
 21 development is an important function of the state;

22 (b) the availability of financial assistance is an  
 23 important inducement to commercial enterprises to locate or  
 24 remain in the state;

25 (c) there exists in this state a serious shortage of

1 venture capital to promote the commercial development of  
 2 products and inventions;

3 (d) the shortage in venture capital has resulted and  
 4 will result in a serious decrease in the development of new  
 5 business enterprises and job opportunities in this state;

6 (e) by providing financial assistance for the  
 7 development of products and inventions the state will assist  
 8 in the creation of new business enterprises and job  
 9 opportunities.

10 (3) The legislature further finds that the assistance  
 11 and encouragement of new business enterprises and job  
 12 opportunities will benefit the state as a whole and is  
 13 therefore a public purpose.

14 (4) It is the purpose of this [act] to create a  
 15 nonprofit public corporation that will provide financial  
 16 assistance to stimulate the development of products and  
 17 inventions in this state.

18 Section 3. Definitions. As used in this [act] the  
 19 following definitions apply:

20 (1) "Board" means the board of directors of the  
 21 Montana product development corporation created by [section  
 22 5].

23 (2) "Corporation" means the Montana product  
 24 development corporation created by [section 4].

25 (3) "Financial aid" means providing risk capital to

1 persons in the commercial development of products and  
2 inventions.

3 (4) "Invention" means any new device, process, or  
4 technique without regard to whether a patent has or could be  
5 granted.

6 (5) "Person" means any individual, partnership,  
7 corporation, association, or joint venture carrying on  
8 business or proposing to carry on business in this state.  
9 This term does not mean a governmental organization.

10 (6) "Product" means any device, technique, or process  
11 that is or may be developed commercially. The term does not  
12 apply to pure research but to products, techniques, or  
13 processes that have advanced beyond the theoretical stage  
14 and are readily capable of being reduced to practice.

15 (7) "Venture" means a contractual arrangement with any  
16 person whereby the corporation obtains rights in a product  
17 or invention or the proceeds therefrom or equity in the  
18 business organization developing the product or invention  
19 for granting financial aid to such person.

20 Section 4. Creation of the Montana product development  
21 corporation. There is created a corporate body known as the  
22 Montana product development corporation. The corporation is  
23 a public nonprofit corporation and has a legal existence  
24 independent and separate from the state.

25 Section 5. Board of directors of the Montana product

1 development corporation -- appointment -- qualifications --  
2 allocation. (1) There is a board of directors of the  
3 corporation.

4 (2) The first board shall be appointed in the  
5 following manner:

6 (a) The legislative coal tax oversight committee shall  
7 select a committee to nominate individuals for the board.  
8 The nominating committee shall consist of:

9 (i) one individual with experience in manufacturing;

10 (ii) one individual with experience in finance and  
11 credit evaluation;

12 (iii) one individual with experience in small business;

13 (iv) one individual with experience in local  
14 development corporations; and

15 (v) one representative of the public.

16 (b) The nominating committee shall submit a list of 15  
17 names of residents of this state to the governor. The  
18 governor shall select five persons from the list as  
19 directors of the corporation as follows:

20 (i) one individual with experience in manufacturing;

21 (ii) one individual with experience in finance and  
22 credit evaluation;

23 (iii) one individual with experience in small business;

24 (iv) one individual with experience in local  
25 development corporations; and

1 (v) one representative of the public.

2 (3) The first board shall adopt bylaws governing their  
3 terms of office and the method of appointment of future  
4 members of the board. Future board members shall be  
5 appointed by the board subject to senate confirmation. A  
6 member appointed by the board when the senate is not in  
7 session may serve on the board with all powers of a regular  
8 member until the senate confirms or rejects the appointment.

9 (4) To be eligible for membership on the board an  
10 individual must have a favorable reputation for skills,  
11 knowledge, and experience in technological development or  
12 investments.

13 (5) The board is allocated to the department of  
14 administration for administrative purposes only as  
15 prescribed in 2-15-121. The board may hire its own  
16 personnel, seek and receive federal and private funds in the  
17 name of the corporation, and determine all matters of policy  
18 concerning the use of its budget.

19 Section 6. Compensation of board members. (1) Each  
20 board member is entitled to receive from the corporation \$25  
21 for each day in which the board member is actually and  
22 necessarily engaged in the performance of board duties. Each  
23 board member is also entitled to be reimbursed for travel  
24 expenses incurred while in the performance of board duties.  
25 The board shall adopt bylaws governing the amount and method

1 of computing travel expenses.

2 (2) Members of the board are not entitled to receive a  
3 salary and may not profit from the activities of the  
4 corporation.

5 Section 7. Financial aid to board members prohibited.  
6 A member of the board of directors, his family, or business  
7 associates may not receive financial aid from the  
8 corporation.

9 Section 8. Conflict of interests. (1) Upon appointment  
10 and during term of office a board member must declare to the  
11 board in writing any financial or other interest that might  
12 conflict with his membership on the board.

13 (2) If there is a conflict, the board may require him  
14 to abstain from decisions resulting in a conflict or to  
15 resign from the board.

16 (3) A loan or contract of the corporation that is  
17 otherwise valid is not invalid because of a personal  
18 interest of a board member if the interest is declared and  
19 the board member abstains from decisions pertaining to the  
20 loan or contract.

21 Section 9. Records of corporation. (1) The corporation  
22 shall keep complete financial records and minutes of  
23 meetings of the board.

24 (2) Records of the corporation shall be available to  
25 the governor and the legislature.

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1 (3) The board shall maintain the following records  
2 which are available for public inspection:

3 (a) the names of the persons receiving financial aid  
4 from the corporation;

5 (b) the nature of the business of each person  
6 receiving financial aid from the corporation;

7 (c) the amount of financial aid received by each  
8 person; and

9 (d) the royalties, equity, or other rights received by  
10 the corporation and the conditions imposed on the granting  
11 of financial aid to each person.

12 (4) The board shall adopt bylaws to provide for  
13 confidentiality of information necessary to protect the  
14 legitimate business interests of a person receiving  
15 financial aid from the corporation.

16 Section 10. Annual audit. Annually, the legislative  
17 auditor shall audit the corporation's financial records.

18 Section 11. Executive director -- appointment --  
19 qualifications -- salary. (1) There is an executive director  
20 of the corporation.

21 (2) The executive director is appointed by the board  
22 and may not be a member of the board.

23 (3) To be eligible for appointment as executive  
24 director an individual must have the skill, knowledge, and  
25 ability to manage the corporation and at least 5 years'

1 experience in a related product development organization.

2 (4) The executive director may not have any financial  
3 or business interests that might conflict with the  
4 management of the corporation.

5 (5) The executive director is entitled to receive a  
6 salary to be determined by the board.

7 Section 12. Purpose of the corporation. The purpose of  
8 the corporation is to stimulate and encourage the  
9 development of products and inventions within Montana by  
10 providing financial aid to persons for commercial  
11 development of products and inventions in situations for  
12 which financial aid would not otherwise be reasonably  
13 available from commercial sources. The corporation will be  
14 perpetual through the use of funds from successful ventures.

15 Section 13. Powers of the corporation. In order to  
16 effectuate its purpose, the corporation may:

17 (1) continue to exist perpetually;

18 (2) sue and be sued in its corporate name;

19 (3) adopt a corporate seal that may be altered at  
20 pleasure and use the same by reproducing it in any manner;

21 (4) enter into venture agreements with persons doing  
22 business in Montana, upon terms and conditions as are  
23 consistent with the purposes of the corporation for the  
24 advancement of financial aid to persons to develop specific  
25 products and inventions;

1 (5) receive and accept aid or other contributions from  
 2 any source of money, property, labor, or other things of  
 3 value, to be used to carry out the purposes of the  
 4 corporation, subject to the conditions upon which the aid  
 5 and contributions may be made, including gifts or grants  
 6 from any department or agency of the United States or the  
 7 state;

8 (6) purchase, lease, or otherwise acquire, own, hold,  
 9 improve, use, or otherwise deal with real and personal  
 10 property or any interest therein when necessary to further  
 11 the purposes of the corporation;

12 (7) hold patents, copyrights, trademarks, or any other  
 13 evidences of protection or exclusivity as to any products or  
 14 inventions issued under the laws of the United States or any  
 15 state or nation;

16 (8) invest any funds not needed for immediate use or  
 17 disbursement in investments permissible for funds from the  
 18 state pooled investment fund under the provisions of  
 19 17-6-211;

20 (9) make and enter into contracts and agreements  
 21 necessary or incidental to the performance of its duties and  
 22 the execution of its powers;

23 (10) employ assistants, agents, and other employees as  
 24 may be necessary to carry out the purposes of the  
 25 corporation;

1 (11) consent to any termination, modification,  
 2 forgiveness, or other change of any term of any contractual  
 3 right, payment, royalty, contract, or agreement of any kind  
 4 to which the corporation is a party;

5 (12) borrow money and issue secured and unsecured  
 6 evidence of indebtedness for a corporate purpose or fund and  
 7 refund, pay, or discharge outstanding obligations and enter  
 8 into agreements and contracts concerning these obligations;

9 (13) acquire, hold, and dispose of stocks, memberships,  
 10 contracts, bonds, or other interests in another corporation  
 11 or legal entity and exercise the powers or rights in  
 12 connection with these interests that are provided in  
 13 contracts or agreements that are allowed by law concerning  
 14 the satisfaction of debts;

15 (14) make and alter bylaws, consistent with this [act]  
 16 or with other laws of this state, for the administration and  
 17 regulation of affairs of the corporation;

18 (15) do what is necessary to carry out the powers  
 19 granted by this [act] or other laws of this state or the  
 20 laws or regulations of the federal government.

21 Section 14. Applications for financial aid. (1)  
 22 Applications for financial assistance must be made through  
 23 the executive director of the corporation. The executive  
 24 director shall forward each application to the staff of the  
 25 corporation for an investigation and report concerning the

1 advisability of approving the proposed financial aid.

2 (2) The investigation and report must include but are  
3 not limited to facts concerning the following:

4 (a) the history of the applicant;

5 (b) the standard of wages paid by the applicant;

6 (c) the job opportunities that would result from the  
7 development of the applicant's product or invention;

8 (d) the stability of employment that would result from  
9 development of the applicant's product or invention;

10 (e) the past and present financial condition of the  
11 applicant;

12 (f) the present and future markets and prospects of  
13 the product or invention;

14 (g) the integrity of the management of the applicant's  
15 business as well as the feasibility of the proposed product  
16 or invention;

17 (h) the environmental pollution that may result from  
18 the development of the product or invention;

19 (i) whether the product or invention would be labor  
20 intensive or capital intensive; and

21 (j) whether the product or invention, if marketed  
22 commercially, would be in direct competition with an  
23 existing business operating in this state.

24 (3) After consideration of the report and any other  
25 action considered appropriate, the board shall approve or

1 deny the application. The applicant shall be promptly  
2 notified of the board's decision.

3 (4) The corporation shall enter into ventures that  
4 will return adequate funds to allow the corporation to  
5 continue to operate without additional appropriations beyond  
6 those contemplated by [section 15].

7 Section 15. Appropriation. (1) There is appropriated  
8 to the corporation from the income and interest of the coal  
9 tax trust fund created by Article IX, section 5, of the  
10 Montana constitution \$2 million for the biennium ending June  
11 30, 1981.

12 (2) The money appropriated to the corporation by this  
13 section is to be used by the board for purposes authorized  
14 by this [act].

15 (3) Ten percent of all money received by the  
16 corporation as a result of venture agreements shall be  
17 returned to the state general fund until the corporation has  
18 paid back the amount appropriated to it by this section.

19 (4) After all money appropriated to the corporation by  
20 this section has been returned to the state general fund,  
21 all money received by the corporation may be used for  
22 purposes authorized by this [act].

23 (5) A similar appropriation from the interest and  
24 income of the coal tax trust fund may be considered for the  
25 next four bienniums. Requests for additional appropriations

1 in excess of \$2 million for the next four bienniums may not  
2 be made by the corporation.

3 Section 16. Powers to be interpreted broadly. The  
4 powers enumerated in this [act] shall be interpreted broadly  
5 to effectuate the purposes of the corporation and may not be  
6 construed as a limitation of powers.

7 Section 17. Severability. If a part of this act is  
8 invalid, all valid parts that are severable from the invalid  
9 part remain in effect. If a part of this act is invalid in  
10 one or more of its applications, the part remains in effect  
11 in all valid applications that are severable from the  
12 invalid applications.

13 Section 18. Codification. Sections 4 and 5 are  
14 intended to be codified as an integral part of Title 2,  
15 chapter 15, and the provisions contained in Title 2, chapter  
16 15, apply to sections 4 and 5.

-End-



Approved by Committee  
on Taxation

SENATE BILL NO. 244

INTRODUCED BY TOWE, MANNING

BY REQUEST OF THE COAL TAX OVERSIGHT COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA  
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state a growing need for commercial development to provide  
and maintain job opportunities and tax revenue.

(2) The legislature further finds that:

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development is an important function of the state;

(b) the availability of financial assistance is an  
important inducement to commercial enterprises to locate or  
remain in the state;

(c) there exists in this state a serious shortage of

venture capital to promote the commercial development of  
products and inventions;

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will result in a serious decrease in the development of new  
business enterprises and job opportunities in this state;

(e) by providing financial assistance for the  
development of products and inventions the state will assist  
in the creation of new business enterprises and job  
opportunities.

(3) The legislature further finds that the assistance  
and encouragement of new business enterprises and job  
opportunities will benefit the state as a whole and is  
therefore a public purpose.

(4) It is the purpose of this [act] to create a  
nonprofit public corporation that will provide financial  
assistance to stimulate the development of products and  
inventions in this state.

Section 3. Definitions. As used in this [act] the  
following definitions apply:

(1) "Board" means the board of directors of the  
Montana product development corporation created by [section  
5].

(2) "Corporation" means the Montana product  
development corporation created by [section 4].

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1 persons in the commercial development of products and  
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21 corporation. There is created a corporate body known as the  
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23 a public nonprofit corporation and has a legal existence  
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4 (2) The first board shall be appointed in the  
5 following manner:

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17 names of residents of this state to the governor. The  
18 governor shall select five persons from the list as  
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3 terms of office and the method of appointment of future  
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8 member until the senate confirms or rejects the appointment.

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10 individual must have a favorable reputation for skill,  
11 knowledge, and experience in technological development or  
12 investments.

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14 administration for administrative purposes only as  
15 prescribed in 2-15-121. The board may hire its own  
16 personnel, seek and receive federal and private funds in the  
17 name of the corporation, and determine all matters of policy  
18 concerning the use of its budget.

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20 board member is entitled to receive from the corporation \$25  
21 for each day in which the board member is actually and  
22 necessarily engaged in the performance of board duties. Each  
23 board member is also entitled to be reimbursed for travel  
24 expenses incurred while in the performance of board duties.  
25 The board shall adopt bylaws governing the amount and method

1 of computing travel expenses.

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3 salary and may not profit from the activities of the  
4 corporation.

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7 associates may not receive financial aid from the  
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10 and during term of office a board member must declare to the  
11 board in writing any financial or other interest that might  
12 conflict with his membership on the board.

13 (2) If there is a conflict, the board may require him  
14 to abstain from decisions resulting in a conflict or to  
15 resign from the board.

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17 otherwise valid is not invalid because of a personal  
18 interest of a board member if the interest is declared and  
19 the board member abstains from decisions pertaining to the  
20 loan or contract.

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22 shall keep complete financial records and minutes of  
23 meetings of the board.

24 (2) Records of the corporation shall be available to  
25 the governor and the legislature.

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2 which are available for public inspection:

3 (a) the names of the persons receiving financial aid  
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6 receiving financial aid from the corporation;

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8 person; and

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10 the corporation and the conditions imposed on the granting  
11 of financial aid to each person.

12 (4) The board shall adopt bylaws to provide for  
13 confidentiality of information necessary to protect the  
14 legitimate business interests of a person receiving  
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17 auditor shall audit the corporation's financial records.

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20 of the corporation.

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22 and may not be a member of the board.

23 (3) To be eligible for appointment as executive  
24 director an individual must have the skill, knowledge, and  
25 ability to manage the corporation and at least 5 years'

1 experience in a related product development organization.

2 (4) The executive director may not have any financial  
3 or business interests that might conflict with the  
4 management of the corporation.

5 (5) The executive director is entitled to receive a  
6 salary to be determined by the board.

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20 pleasure and use the same by reproducing it in any manner;

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22 business in Montana, upon terms and conditions as are  
23 consistent with the purposes of the corporation for the  
24 advancement of financial aid to persons to develop specific  
25 products and inventions;

1 (5) receive and accept aid or other contributions from  
 2 any source of money, property, labor, or other things of  
 3 value, to be used to carry out the purposes of the  
 4 corporation, subject to the conditions upon which the aid  
 5 and contributions may be made, including gifts or grants  
 6 from any department or agency of the United States or the  
 7 state;

8 (b) purchase, lease, or otherwise acquire, own, hold,  
 9 improve, use, or otherwise deal with real and personal  
 10 property or any interest therein when necessary to further  
 11 the purposes of the corporation;

12 (7) hold patents, copyrights, trademarks, or any other  
 13 evidences of protection or exclusivity as to any products or  
 14 inventions issued under the laws of the United States or any  
 15 state or nation;

16 (8) invest any funds not needed for immediate use or  
 17 disbursement in investments permissible for funds from the  
 18 state pooled investment fund under the provisions of  
 19 17-6-211;

20 (9) make and enter into contracts and agreements  
 21 necessary or incidental to the performance of its duties and  
 22 the execution of its powers;

23 (10) employ assistants, agents, and other employees as  
 24 may be necessary to carry out the purposes of the  
 25 corporation;

1 (11) consent to any termination, modification,  
 2 forgiveness, or other change of any term of any contractual  
 3 right, payment, royalty, contract, or agreement of any kind  
 4 to which the corporation is a party;

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 12 connection with these interests that are provided in  
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 14 the satisfaction of debts;

15 (14) make and alter bylaws, consistent with this [act]  
 16 or with other laws of this state, for the administration and  
 17 regulation of affairs of the corporation;

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 20 laws or regulations of the federal government.

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 25 corporation for an investigation and report concerning the

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9 development of the applicant's product or invention;

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11 applicant;

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13 the product or invention;

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15 business as well as the feasibility of the proposed product  
16 or invention;

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18 the development of the product or invention;

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20 intensive or capital intensive; and

21 (j) whether the product or invention, if marketed  
22 commercially, would be in direct competition with an  
23 existing business operating in this state.

24 (3) After consideration of the report and any other  
25 action considered appropriate, the board shall approve or

1 deny the application. The applicant shall be promptly  
2 notified of the board's decision.

3 (4) The corporation shall enter into ventures that  
4 will return adequate funds to allow the corporation to  
5 continue to operate without additional appropriations beyond  
6 those contemplated by [section 15].

7 ~~Section 15--Appropriations--(1)--There-is-appropriated~~  
8 ~~to-the-corporation-from-the-income-and-interest-of-the-coat~~  
9 ~~tax-trust-fund-created-by-Article-IX-section-5v-of-the~~  
10 ~~Montana-constitution-\$2-million-for-the-biennium-ending-June~~  
11 ~~30v-1981v~~

12 ~~(2)--The-money-appropriated-to-the-corporation-by--this~~  
13 ~~section--is--to-be-used-by-the-board-for-purposes-authorized~~  
14 ~~by-this-[act]v~~

15 ~~(3)--Ten-percent-of--all--money---received---by---the~~  
16 ~~corporation--as--a--result--of--venture--agreements--shall--be~~  
17 ~~returned-to-the-state-general-fund-until--the-corporation-has~~  
18 ~~paid-back-the-amount-appropriated-to-it-by-this-sectionv~~

19 ~~(4)--After--all--money-appropriated-to-the-corporation-by~~  
20 ~~this-section-has-been-returned-to-the--state--general--fundv~~  
21 ~~all--money--received--by--the--corporation--may--be-used-for~~  
22 ~~purposes-authorized-by-this-[act]v~~

23 ~~(5)--A-similar--appropriation--from--the--interest--and~~  
24 ~~income--of-the-coat-tax-trust-fund-may-be-considered-for-the~~  
25 ~~next-four-bienniums--Requests-for-additional-appropriations~~

1 ~~in excess of \$2 million for the next four bienniums may not~~  
2 ~~be made by the corporation.~~

3 Section 15. Powers to be interpreted broadly. The  
4 powers enumerated in this [act] shall be interpreted broadly  
5 to effectuate the purposes of the corporation and may not be  
6 construed as a limitation of powers.

7 Section 16. Severability. If a part of this act is  
8 invalid, all valid parts that are severable from the invalid  
9 part remain in effect. If a part of this act is invalid in  
10 one or more of its applications, the part remains in effect  
11 in all valid applications that are severable from the  
12 invalid applications.

13 Section 17. Codification. Sections 4 and 5 are  
14 intended to be codified as an integral part of Title 2,  
15 chapter 15, and the provisions contained in Title 2, chapter  
16 15, apply to sections 4 and 5.

-End-

## STATE OF MONTANA

REQUEST NO. 192-79

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 19 79, there is hereby submitted a Fiscal Note for SB 244 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

SB 244 creates the Montana Products Development Corporation. This public corporation is to provide financial aid to stimulate the development of products and inventions in Montana. The corporation is appropriated \$2 million from the income and interest of the Coal Tax Trust Fund for the biennium ending June 30, 1981. Eventually the appropriation is to be paid back to the General Fund from monies received from previously executed venture agreements. This assumes the program is successful.

ASSUMPTIONS:

1. The corporation directors will meet quarterly.
2. The corporation will have a staff of four the first biennium.
3. Little, if any, financial returns will be realized the first biennium.
4. Future earnings and operating expenses, if any, can not be estimated at this time.

FISCAL IMPACT:

Proposed legislation will increase the cost of government as follows:

<u>DESCRIPTION</u>	<u>FY 80</u>	<u>FY 81</u>
Personal Services	\$ 60,800	\$ 81,000
Operating Expenses & Equipment	<u>16,100</u>	<u>18,200</u>
TOTAL	\$ <u>76,900</u>	\$ <u>99,200</u>

Funds will be taken from the Coal Tax Trust Fund.

*Richard J. Franz*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/5/79