

Senate Bill 21

In The Senate

January 5, 1981	Introduced and referred to Committee on Business and Industry.
January 6, 1981	Fiscal note requested.
January 12, 1981	Fiscal note returned.
January 15, 1981	Referred to Committee on Taxation.
March 2, 1981	Committee recommend bill do not pass.

SENATE BILL NO. 21

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO CREATE THE MONTANA PRODUCT DEVELOPMENT CORPORATION, A PUBLIC CORPORATION TO PROVIDE FINANCIAL AID FOR PRODUCTS AND INVENTIONS."

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

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

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

(2) The legislature further finds that:

(a) the assistance and encouragement of commercial 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;

(d) the shortage in venture capital has resulted and

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].

(3) "Financial aid" means providing risk capital to persons in the commercial development of products and inventions.

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

1 granted.

2 (5) "Person" means any individual, partnership,  
3 corporation, association, or joint venture carrying on  
4 business or proposing to carry on business in this state.

5 This term does not mean a governmental organization.

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

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

16 Section 4. Creation of the Montana product development  
17 corporation. There is created a corporate body known as the  
18 Montana product development corporation. The corporation is  
19 a public nonprofit corporation and has a legal existence  
20 independent and separate from the state.

21 Section 5. Board of directors of the Montana product  
22 development corporation -- appointment -- qualifications --  
23 allocation. (1) There is a board of directors of the  
24 corporation.

25 (2) The first board shall be appointed in the following

1 manner:

2 (a) The legislative coal tax oversight subcommittee  
3 shall select a committee to nominate individuals for the  
4 board. The nominating committee shall consist of:

5 (i) one individual with experience in manufacturing;

6 (ii) one individual with experience in finance and  
7 credit evaluation;

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

9 (iv) one individual with experience in local development  
10 corporations; and

11 (v) one representative of the public.

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

16 (i) one individual with experience in manufacturing;

17 (ii) one individual with experience in finance and  
18 credit evaluation;

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

20 (iv) one individual with experience in local development  
21 corporations; and

22 (v) one representative of the public.

23 (3) The first board shall adopt bylaws governing their  
24 terms of office and the method of appointment of future  
25 members of the board. Future board members shall be

1 appointed by the board subject to senate confirmation. A  
 2 member appointed by the board when the senate is not in  
 3 session may serve on the board with all powers of a regular  
 4 member until the senate confirms or rejects the appointment.

5 (4) To be eligible for membership on the board an  
 6 individual must have a favorable reputation for skill,  
 7 knowledge, and experience in technological development or  
 8 investments.

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

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

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

1 Section 7. Financial aid to board members prohibited.  
 2 A member of the board of directors, his family, or business  
 3 associates may not receive financial aid from the  
 4 corporation.

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

9 (2) If there is a conflict, the board may require him  
 10 to abstain from decisions resulting in a conflict or to  
 11 resign from the board.

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

17 Section 9. Records of corporation. (1) The corporation  
 18 shall keep complete financial records and minutes of  
 19 meetings of the board.

20 (2) Records of the corporation shall be available to  
 21 the governor and the legislature.

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

24 (a) the names of the persons receiving financial aid  
 25 from the corporation;

1 (b) the nature of the business of each person receiving  
2 financial aid from the corporation;

3 (c) the amount of financial aid received by each  
4 person; and

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

8 (4) The board shall adopt bylaws to provide for  
9 confidentiality of information necessary to protect the  
10 legitimate business interests of a person receiving  
11 financial aid from the corporation.

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

14 Section 11. Executive director -- appointment --  
15 qualifications -- salary. (1) There is an executive director  
16 of the corporation.

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

19 (3) To be eligible for appointment as executive  
20 director an individual must have the skill, knowledge, and  
21 ability to manage the corporation and at least 5 years'  
22 experience in a related product development organization.

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

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

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

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

13 (1) continue to exist perpetually;

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

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

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

22 (5) receive and accept aid or other contributions from  
23 any source of money, property, labor, or other things of  
24 value, to be used to carry out the purposes of the  
25 corporation, subject to the conditions upon which the aid

1 and contributions may be made, including gifts or grants  
2 from any department or agency of the United States or the  
3 state;

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

8 (7) hold patents, copyrights, trademarks, or any other  
9 evidences of protection or exclusivity as to any products or  
10 inventions issued under the laws of the United States or any  
11 state or nation;

12 (8) invest any funds not needed for immediate use or  
13 disbursement in investments permissible for funds from the  
14 state pooled investment fund under the provisions of  
15 17-6-211;

16 (9) make and enter into contracts and agreements  
17 necessary or incidental to the performance of its duties and  
18 the execution of its powers;

19 (10) employ assistants, agents, and other employees as  
20 may be necessary to carry out the purposes of the  
21 corporation;

22 (11) consent to any termination, modification,  
23 forgiveness, or other change of any term of any contractual  
24 right, payment, royalty, contract, or agreement of any kind  
25 to which the corporation is a party;

1 (12) borrow money and issue secured and unsecured  
2 evidence of indebtedness for a corporate purpose or fund and  
3 refund, pay, or discharge outstanding obligations and enter  
4 into agreements and contracts concerning these obligations;

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

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

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

17 Section 14. Applications for financial aid. (1)  
18 Applications for financial assistance must be made through  
19 the executive director of the corporation. The executive  
20 director shall forward each application to the staff of the  
21 corporation for an investigation and report concerning the  
22 advisability of approving the proposed financial aid.

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

25 (a) the history of the applicant;

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

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

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

6 (e) the past and present financial condition of the  
7 applicant;

8 (f) the present and future markets and prospects of the  
9 product or invention;

10 (g) the integrity of the management of the applicant's  
11 business as well as the feasibility of the proposed product  
12 or invention;

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

15 (i) whether the product or invention would be labor  
16 intensive or capital intensive; and

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

20 (3) After consideration of the report and any other  
21 action considered appropriate, the board shall approve or  
22 deny the application. The applicant shall be promptly  
23 notified of the board's decision.

24 (4) The corporation shall enter into ventures that will  
25 return adequate funds to allow the corporation to continue

1 to operate without additional appropriations beyond those  
2 contemplated by [section 15].

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

-End-

## STATE OF MONTANA

REQUEST NO. 7-81

## FISCAL NOTE

Form BD-15

In compliance with a written request received January 6, 19 81, there is hereby submitted a Fiscal Note for Senate Bill 21 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). 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

A proposal to create a public, non-profit corporation which will stimulate and encourage the development of products and inventions within Montana by providing financial aid to persons in situations when commercial financing would not otherwise be available. The Legislative Auditor will annually audit the corporation's financial records.

FISCAL IMPACT FOR THE LEGISLATIVE AUDITORAssumptions

1. The annual audit will be performed at the direction of the Legislative Auditor by an independent CPA firm.
2. Total loans and/or investments outstanding will not exceed \$2,000,000.
3. Administrative costs of the corporation will be approximately \$100,000 per year.
4. The corporation will prepare annual financial statements in accordance with Generally Accepted Accounting Principles.

Fiscal Impact

	<u>FY 1982</u>	<u>FY 1983</u>
Expenditures under proposed law		
Operating Expenses	\$8,000	\$8,000
Expenditures under current law	<u>0</u>	<u>0</u>
Increased expenditures under proposed law	\$8,000	\$8,000
General Fund	<u>\$8,000</u>	<u>\$8,000</u>

FISCAL IMPACT FOR THE DEPARTMENT OF BUSINESS REGULATIONAssumptions

Board costs were projected based on the assumption they would meet bimonthly and that members would be paid meals and lodging at the same rate as other state employees.

## NOT ACTUAL EXPENSES

Assuming SB21 would be similar to the Wyoming Industrial Development Corporation, they were contacted for information.

Salary for the Executive Director was based on a Professional with 5 years related experience.

*David M Lewis*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-10-81



Estimates

Called the Wyoming Industrial Development Corporation for guidelines.

3 FTE	<u>1981-82</u>	<u>1982-83</u>
Salaries and benefits	\$94,840	\$103,424
Contracted Services	23,200	23,200
Supplies and Materials	2,650	2,800
Communications	10,400	10,800
Travel	35,905	36,620
Rent	3,000	3,000
Repair and Maintenance	100	100
Other	600	600
Equipment	<u>4,030</u>	<u>130</u>
	<u>\$174,725</u>	<u>\$180,674</u>

COMMENTS

The bill does not indicate where the money is going to come from to fund the program. In addition, there may be Constitutional problems if the state were to fund a nonprofit corporation which has a legal existence independent and separate from the state. The bill does state that the corporation will be funded through the use of funds from successful ventures. If this is feasible, then it appears that the operation of the enterprise would have no direct affect on the revenues, expenditures, or fiscal liability of the state. However, in the event the Legislature does grant money to the proposed corporation, we have provided the above numbers.