

HB 899 INTRODUCED BY COBB  
DIRECT LOANS TO BUSINESSES FROM COAL TAX REVENUE

3/25 INTRODUCED  
3/25 REFERRED TO APPROPRIATIONS  
3/25 FISCAL NOTE REQUESTED  
3/31 HEARING  
3/31 TABLED IN COMMITTEE  
3/31 FISCAL NOTE RECEIVED

House BILL NO. 899  
 INTRODUCED BY Cobb

A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE MONTANA ECONOMIC DEVELOPMENT BOARD TO MAKE DIRECT LOANS TO QUALIFIED BUSINESS OPERATIONS; ESTABLISHING REQUIREMENTS FOR THE LOANS; APPROPRIATING \$40 MILLION FROM THE COAL SEVERANCE TAX TRUST FUND TO MAKE THE LOANS; AMENDING SECTIONS 2-15-1805 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 2-15-1805, MCA, is amended to read: "2-15-1805. Montana economic development board -- allocation -- composition -- quasi-judicial powers. (1) There is a Montana economic development board. Except as otherwise provided in this section, the board is allocated to the department of commerce for administrative purposes only as provided in 2-15-121. The board has authority over its own personnel as provided in 2-15-1806 and 2-15-1807.

(2) The board is composed of seven members, to be appointed by the governor as prescribed in 2-15-124. The board must be broadly representative of the state, seeking to balance professional expertise and public interest and accountability and shall include at least one person

representing each of the following:  
 (a) the financial community;  
 (b) small business;  
 (c) agriculture; and  
 (d) labor.  
 (3) The board is designated as a quasi-judicial board for the purposes of 2-15-124.  
 (4) (a) The board shall invest the Montana in-state investment fund according to the provisions of 17-6-201, 17-6-211, and Title 17, chapter 6, part 3.  
 (b) The board shall make direct loans to qualified business operations as provided in [sections 2 through 9]."  
NEW SECTION. Section 2. Business loan state special revenue account created -- administration. (1) There is a business loan state special revenue account in the state special revenue fund to be used by the Montana economic development board established in 2-15-1805 for the purpose of making loans to qualified business operations under [this part]. There must be paid into the business loan state special revenue account:  
 (a) money appropriated under [section 11];  
 (b) principal and interest received in repayment of loans under [this part];  
 (c) income from investment, as provided in subsection 5, of money in the account; and

1       (d) fees and charges collected by the board for making  
 2 and servicing loans under [this part], including  
 3 arrangements for obtaining security interests.

4       (2) All money in the business loan state special  
 5 revenue account is statutorily appropriated, as provided in  
 6 17-7-502, to the board for use as provided in [this part].

7       (3) Application to the board for direct loans under  
 8 [this part] must be made on forms and in the manner  
 9 prescribed by the board.

10     (4) The board shall establish a loan loss reserve  
 11 account and shall establish by rule the ratio of reserve  
 12 funds required to be maintained in the account.

13     (5) Not more than 70% of the money in the business  
 14 loan state special revenue account may be loaned at any one  
 15 time. Money not immediately needed for purposes of [this  
 16 part] must be invested by the board of investments  
 17 established in 2-15-1005.

18     (6) (a) A loan made from the business loan state  
 19 special revenue account may not exceed 80% of the value of  
 20 property acquired with the loan proceeds or otherwise given  
 21 as security for the loan.

22     (b) The board shall obtain a first priority position  
 23 in any mortgage or financing statement held as security for  
 24 a loan, except that up to 15% of the total value of loans  
 25 for annual operating expenses may be secured by other than a

1       first priority security interest.

2       (7) The board may retain professional consultants and  
 3 assistance as necessary to administer the business loan  
 4 program.

5       NEW SECTION. Section 3. Direct loans -- purposes --  
 6 limits. (1) The board may authorize direct loans to a  
 7 business operation for the following purposes:

8       (a) purchase or lease of real or personal property  
 9 suitable and necessary for use in the startup and operation  
 10 of the business;

11     (b) acquisition, construction, and maintenance of  
 12 improvements to real property necessary for the operation of  
 13 the business; and

14     (c) annual operating expenses necessary for the  
 15 operation of the business.

16     (2) No applicant or single business operation may be  
 17 granted loans totaling more than \$100,000 under [this part].

18     (3) No direct loan may be made to finance:

19       (a) a personal residence;

20       (b) a nonbusiness vehicle;

21       (c) family living expenses;

22       (d) property used for household purposes;

23       (e) property purchased for the purpose of speculation;

24       or

25       (f) real property purchased for homes.

1       (4) No loan may be made to a nonprofit organization.  
2       (5) The board shall clearly identify its reasons and  
3 objectives for making a loan.

4       NEW SECTION. Section 4. Loan agreements -- interest  
5 -- prepayment incentives -- inspection. (1) The loan  
6 agreement shall specify a reasonable rate of interest, which  
7 may be a fixed or variable rate. If the rate is variable,  
8 the method of determination must be contained in the  
9 agreement.

10      (2) The loan agreement may provide incentives for  
11 prepayment of the loan as established by the board.

12      (3) The agreement must provide for inspection by a  
13 representative of the board, at reasonable times, of  
14 property used as collateral for a loan under [this part] and  
15 the operator's business records that relate to the loan.

16       NEW SECTION. Section 5. Eligibility for direct loans  
17 -- rules. (1) To be eligible for a direct loan under [this  
18 part], an applicant:

19       (a) must be a locally owned business operation;  
20       (b) shall demonstrate that the operators of the  
21 business have the experience, knowledge, and ability to  
22 succeed in the business operation and are willing to receive  
23 assistance from the university system or other sources as  
24 determined necessary by the board; and

25       (c) shall demonstrate that the business operation can

1       reasonably be expected to generate proceeds sufficient to  
2 repay the loan and to meet other obligations of the  
3 operation.

4       (2) The board may by rule establish additional  
5 eligibility requirements that it determines appropriate.

6       NEW SECTION. Section 6. Management and technical  
7 assistance agreements. The board may enter into agreements  
8 with units of the university system and other professional  
9 entities for the purpose of obtaining management and  
10 technical assistance for loan applicants under [this part].  
11 The costs of such agreements are administrative costs to be  
12 paid in the same manner as other administrative costs.

13       NEW SECTION. Section 7. Annual audit. The direct loan  
14 program established in [this part] must be audited each year  
15 for performance and financial compliance, by or at the  
16 direction of the legislative auditor. The actual cost of the  
17 audit must be paid by the board.

18       NEW SECTION. Section 8. Improvement recommendations.  
19 The board shall make recommendations to each legislature for  
20 improvements to the direct loan provisions provided in [this  
21 part].

22       NEW SECTION. Section 9. Powers of the Montana  
23 economic development board. For purposes of [this part], the  
24 board may:

25       (1) sue and be sued;

1        (2) adopt all substantive and procedural rules  
 2 necessary for the administration of [this part], including  
 3 but not limited to rules:

4        (a) prescribing the form and manner of application for  
 5 loans;

6        (b) governing the application of criteria for awarding  
 7 loans and the procedure for review of applications;

8        (c) providing for the servicing of loans, including  
 9 arrangements for obtaining security interests;

10       (d) establishing reasonable fees or charges;

11       (e) providing for confidentiality of financial  
 12 statements submitted; and

13       (f) prescribing the conditions of making loans;

14       (3) with regard to property:

15       (a) acquire real or personal property or any right,  
 16 interest, or easement therein by gift, purchase, transfer,  
 17 foreclosure, lease, or otherwise;

18       (b) hold, sell, assign, lease, encumber, mortgage, or  
 19 otherwise dispose of such property;

20       (c) hold, sell, assign, or otherwise dispose of any  
 21 lease, mortgage, or loan owned by it or in its control or  
 22 custody;

23       (d) release or relinquish any right, title, claim,  
 24 interest, easement, or demand, however acquired, including  
 25 any equity or right of redemption;

1        (e) make any disposition, by public or private sale,  
 2 with or without public bidding;

3        (f) commence any action to protect or enforce any  
 4 right conferred upon it by a law, mortgage, contract, or  
 5 other agreement;

6        (g) bid for and purchase property at a foreclosure or  
 7 other sale or acquire or take possession of it in lieu of  
 8 foreclosure;

9        (h) operate, manage, lease, dispose of, or otherwise  
 10 deal with such property in any manner necessary or desirable  
 11 to protect its interests or the holders of its bonds or  
 12 notes, provided such action is consistent with the agreement  
 13 with such holders;

14       (4) service, contract, and pay for the servicing of  
 15 loans;

16       (5) provide financial analysis and technical  
 17 assistance if considered appropriate;

18       (6) consent, whenever it considers necessary or  
 19 desirable in fulfilling its purposes, to the modification of  
 20 the rate of interest, time, and payment of an installment of  
 21 principal, interest, security, or any other term of a  
 22 contract, lease agreement, loan agreement, mortgage,  
 23 mortgage loan, mortgage loan commitment, construction loan,  
 24 advance contract, or agreement of any kind, subject to any  
 25 agreement with bondholders and noteholders;

1       (7) collect reasonable interest, fees, and charges in  
 2 connection with making and servicing its lease agreements,  
 3 loan agreements, mortgage loans, notes, bonds, commitments,  
 4 and other evidences of indebtedness. Fees and charges are  
 5 limited to the amounts required to pay the costs of the  
 6 board, including operating and administrative expenses and  
 7 reasonable allowances for losses that may be incurred.

8       (8) procure from any party, including a governmental  
 9 agency, insurance or guaranties, in amounts and in the form  
 10 the authority considers desirable or necessary, against any  
 11 loss in connection with loan agreements, mortgage loans, and  
 12 other assets or property; and

13       (9) perform any other acts necessary and convenient to  
 14 carry out the purposes of the authority and [this part].

15       Section 10. Section 17-7-502, MCA, is amended to read:  
 16       "17-7-502. Statutory appropriations -- definition --  
 17 requisites for validity. (1) A statutory appropriation is an  
 18 appropriation made by permanent law that authorizes spending  
 19 by a state agency without the need for a biennial  
 20 legislative appropriation or budget amendment.

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

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

1       (b) The law or portion of the law making a statutory  
 2 appropriation must specifically state that a statutory  
 3 appropriation is made as provided in this section.  
 4       (3) The following laws are the only laws containing  
 5 statutory appropriations:  
 6       (a) 2-9-202;  
 7       (b) 2-17-105;  
 8       (c) 2-18-812;  
 9       (d) 10-3-203;  
 10       (e) 10-3-312;  
 11       (f) 10-3-314;  
 12       (g) 10-4-301;  
 13       (h) 13-37-304;  
 14       (i) 15-31-702;  
 15       (j) 15-36-112;  
 16       (k) 15-70-101;  
 17       (l) 16-1-404;  
 18       (m) 16-1-410;  
 19       (n) 16-1-411;  
 20       (o) 17-3-212;  
 21       (p) 17-5-404;  
 22       (q) 17-5-424;  
 23       (r) 17-5-804;  
 24       (s) 19-8-504;  
 25       (t) 19-9-702;

1        (u) 19-9-1007;  
2        (v) 19-10-205;  
3        (w) 19-10-305;  
4        (x) 19-10-506;  
5        (y) 19-11-512;  
6        (z) 19-11-513;  
7        (aa) 19-11-606;  
8        (bb) 19-12-301;  
9        (cc) 19-13-604;  
10       (dd) 20-6-406;  
11       (ee) 20-8-111;  
12       (ff) 23-5-612;  
13       (gg) 37-51-501;  
14       (hh) 53-24-206;  
15       (ii) 75-1-1101;  
16       (jj) 75-7-305;  
17       (kk) 80-2-103;  
18       (ll) 80-2-228;  
19       (mm) 90-3-301;  
20       (nn) 90-3-302;  
21       (oo) 90-15-103; and  
22       (pp) Sec. 13, HB 861, L. 1985; and  
23       (qq) [section 2].  
24       (4) There is a statutory appropriation to pay the  
25       principal, interest, premiums, and costs of issuing, paying,

1        and securing all bonds, notes, or other obligations, as due,  
2        that have been authorized and issued pursuant to the laws of  
3        Montana. Agencies that have entered into agreements  
4        authorized by the laws of Montana to pay the state  
5        treasurer, for deposit in accordance with 17-2-101 through  
6        17-2-107, as determined by the state treasurer, an amount  
7        sufficient to pay the principal and interest as due on the  
8        bonds or notes have statutory appropriation authority for  
9        such payments."

10       NEW SECTION. Section 11. Appropriation. (1) There is  
11       appropriated \$40 million from the coal severance tax trust  
12       fund to the Montana economic development board for the  
13       purpose of making direct loans to qualified business  
14       operators under [sections 2 through 9].

15       (2) The board shall repay \$40 million to the coal  
16       severance tax trust fund within 20 years from the effective  
17       date of this act.

18       (3) On June 30 of each year the board shall pay to the  
19       coal severance tax trust fund an amount calculated to offset  
20       the loss of value, due to inflation, of the balance of the  
21       \$40 million remaining unpaid. The amount is determined by  
22       multiplying the balance remaining unpaid on June 30 of each  
23       year by the consumer price index as published by the bureau  
24       of labor statistics of the United States department of labor  
25       for the previous calendar year.

1        NEW SECTION. Section 12. Three-fourths vote required.  
2        Because this act appropriates money from the coal severance  
3        tax trust fund, Article IX, section 5, of the Montana  
4        constitution requires a vote of three-fourths of the members  
5        of each house of the legislature for passage.

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

12       NEW SECTION. Section 14. Effective date. This act is  
13      effective July 1, 1987.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB899, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:

An act to authorize the Montana economic development board to make direct loans to qualified business operations; establishing requirements for the loans; appropriating \$40 million from the coal severance tax trust fund to make the loans; and providing an effective date.

Coal Severance Tax Trust Fund ImpactASSUMPTIONS:

- Under the proposed law the economic development board will pay the coal severance tax trust fund an amount to offset the loss in value, due to inflation, of an unpaid balance which will be \$40,000,000 in FY88 and \$38,880,000 in FY89.
- The change in the consumer price index for all urban consumers for all items will be 2.8% in CY 1987 and 3.8% in CY 1988. (Wharton Econometrics).
- The beginning balance of the coal severance tax trust fund will be \$313,757,000 (June 30, 1987). (REAC)
- This analysis does not include investment earnings foregone as a result of shifting \$40,000,000 from the coal severance tax trust fund to the economic development board in FY88.

Fund Information:

<u>Coal Severance Tax Trust Fund</u>	<u>Current Law</u>	<u>Proposed Law</u>
Beginning Balance 6/30/87	\$313,757,000	\$313,757,000
FY88 Receipts	\$ 39,332,000	\$ 39,332,000
FY88 Interest Earnings	\$ 5,482,000	\$ 5,482,000*
FY88 Appropriation	-	(\$ 40,000,000)
Trust Fund Payback 6/30/88	-	\$ 1,120,000
Ending Balance 6/30/88	\$358,571,000	\$319,691,000
FY89 Receipts	\$ 40,928,000	\$ 40,928,000
FY89 Interest Earnings	\$ 6,054,000	\$ 6,054,000*
Trust Fund Payback 6/30/89	-	\$ 1,477,000
Ending Balance 6/30/89	\$405,553,000	\$368,150,000

\* These amounts would be reduced by approximately \$600,000 if the \$40,000,000 were expended or transferred from the permanent trust on July 1, 1987.

<u>General Fund</u>	<u>FY88</u>	<u>FY89</u>
Interest Earnings (Loss)	\$3,400,000	\$3,400,000

*David L. Hunter* DATE 3/31/87  
 DAVID L. HUNTER, BUDGET DIRECTOR  
 Office of Budget and Program Planning

*John Cobb* DATE  
 JOHN COBB, PRIMARY SPONSOR  
 Fiscal Note for HB899, as introduced.

HB 899

Economic Development Board Loan Program

ASSUMPTIONS:

1. \$50,000 average loan; 20 loan applications per week; 40% approval rate; 416 loans originated per year.
2. Interest rates on loans represent market rates of 10%. Money invested with Board of Investments in STIP on an interim basis earns 6.39% in FY88 and 7.11% in FY89.
3. All staff are hired initially with the exception of the collectors with one collector being hired in mid FY88 and the other in mid FY89.
4. Examination of loan quality and collateral documentation is required every two years by the Financial Division of the Department of Commerce (State Bank Examiners) with the first exam being performed during FY89.
5. None of the \$40 million appropriation affects in-state investment fund.
6. The Legislative Auditor will perform audit work costing \$5,065 in FY89.

FISCAL IMPACT: (Business Loan State Special Revenue Account)

Revenues:

	<u>FY88</u>	<u>FY89</u>
STIP \$30 million avg. balance X .0639	\$ 1,917,000	\$ 888,750
LOANS \$10 million avg. balance X .10	= 1,000,000	2,750,000
TOTAL	<u>\$2,917,000</u>	<u>\$3,638,750</u>

Expenditures:

Personal Services	\$ 155,659	\$ 178,730
Operating Expenses	170,400	184,100
Equipment	15,000	4,000
TOTAL	<u>\$ 341,059</u>	<u>\$ 366,830</u>

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

1. Legislation does not stipulate where administrative costs will come from.
2. Legislation does not require an examination by the Financial Division of the Department of Commerce as to loan quality and collateral documentation. The annual audit required by the Legislative Auditor would not review matters concerning loan quality and portfolio management.
3. Section 11 (3) states that the amount paid by the Board on June 30 of each year to offset the loss of value, due to inflation, to the Coal Severance Tax Trust Fund shall be determined by multiplying the balance remaining unpaid on June 30 of each year by the Consumer Price Index for the previous calendar year. The balance should actually be multiplied by the "change in" the Consumer Price Index for the previous calendar year.
4. Legislation does not consider SB298 which proposed to merge MEDB with Montana Board of Investments.
5. All operations of the Economic Development Board are currently in the Enterprise Fund. In order to provide consistency and simplify the accounting requirements, the bill could be modified to place the loan funds in the Enterprise Fund.

HB899