

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

1 House BILL NO. 899
2 INTRODUCED BY Cobb
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE THE
5 MONTANA ECONOMIC DEVELOPMENT BOARD TO MAKE DIRECT LOANS TO
6 QUALIFIED BUSINESS OPERATIONS; ESTABLISHING REQUIREMENTS FOR
7 THE LOANS; APPROPRIATING \$40 MILLION FROM THE COAL SEVERANCE
8 TAX TRUST FUND TO MAKE THE LOANS; AMENDING SECTIONS
9 2-15-1805 AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE
10 DATE."

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

13 Section 1. Section 2-15-1805, MCA, is amended to read:

14 "2-15-1805. Montana economic development board --
15 allocation -- composition -- quasi-judicial powers. (1)
16 There is a Montana economic development board. Except as
17 otherwise provided in this section, the board is allocated
18 to the department of commerce for administrative purposes
19 only as provided in 2-15-121. The board has authority over
20 its own personnel as provided in 2-15-1806 and 2-15-1807.

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

1 representing each of the following:

- 2 (a) the financial community;
3 (b) small business;
4 (c) agriculture; and
5 (d) labor.

6 (3) The board is designated as a quasi-judicial board
7 for the purposes of 2-15-124.

8 (4) (a) The board shall invest the Montana in-state
9 investment fund according to the provisions of 17-6-201,
10 17-6-211, and Title 17, chapter 6, part 3.

11 (b) The board shall make direct loans to qualified
12 business operations as provided in [sections 2 through 9]."

13 NEW SECTION. Section 2. Business loan state special
14 revenue account created -- administration. (1) There is a
15 business loan state special revenue account in the state
16 special revenue fund to be used by the Montana economic
17 development board established in 2-15-1805 for the purpose
18 of making loans to qualified business operations under [this
19 part]. There must be paid into the business loan state
20 special revenue account:

- 21 (a) money appropriated under [section 11];
22 (b) principal and interest received in repayment of
23 loans under [this part];
24 (c) income from investment, as provided in subsection
25 5, of money in the account; and

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

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

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

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

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

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

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

first priority security interest.

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

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

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

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

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

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

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

(a) a personal residence;

(b) a nonbusiness vehicle;

(c) family living expenses;

(d) property used for household purposes;

(e) property purchased for the purpose of speculation;

or

(f) real property purchased for homes.

(4) No loan may be made to a nonprofit organization.

(5) The board shall clearly identify its reasons and objectives for making a loan.

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

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

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

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

(a) must be a locally owned business operation;

(b) shall demonstrate that the operators of the business have the experience, knowledge, and ability to succeed in the business operation and are willing to receive assistance from the university system or other sources as determined necessary by the board; and

(c) shall demonstrate that the business operation can

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

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

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

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

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

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

(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:

1. 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.
2. 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).
3. The beginning balance of the coal severance tax trust fund will be \$313,757,000 (June 30, 1987). (REAC)
4. 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.

General Fund

	<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:

	FY88		FY89
STIP \$30 million avg. balance X .0639 =	\$1,917,000	STIP \$12,500,000 avg. balance X .0711 =	\$ 888,750
LOANS \$10 million avg. balance X .10 =	1,000,000	LOANS \$27,500,000 avg. balance X .10	2,750,000
TOTAL	\$2,917,000	TOTAL	\$3,638,750

Expenditures:

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

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