

HOUSE BILL NO. 683

INTRODUCED BY MARKS, BRADLEY, THAYER, VINCENT, RAMIREZ,
REGAN, VAN VALKENBURG, MERCER, PAVLOVICH, CRIPPEN, QUILICI,
HALLIGAN, HARRINGTON, IVERSON, D. BROWN, O'KEEFE, HARP,
SWIFT, ADDY, DRISCOLL, GIACOMETTO, BENGTON, KADAS,
SPAETH, T. NELSON, WILLIAMS, MAZUREK, HARPER, MEYER,
BARDANOUE, PECK, BOYLAN, DEVLIN, JERGSON, DAILY,
BLAYLOCK, SIMON, REHBERG, FARRELL, NATHE

BY REQUEST OF THE GOVERNOR

IN THE HOUSE

FEBRUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 18, 1989	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 21, 1989	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 98; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 28, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON FINANCE & CLAIMS.
	FIRST READING.
MARCH 2, 1989	ON MOTION, REREFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
MARCH 10, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.

MARCH 14, 1989

THIRD READING, CONCURRED IN.
AYES, 46; NOES, 3.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 15, 1989

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

the state in order to keep pace with a changing economic structure and to create new jobs and expand business opportunities;

(2) using the in-state investment fund for the purposes adopted by the voters of Montana in 1982 in Initiative Measure No. 95, by providing financial programs for new and expanding businesses to encourage the creation of jobs and expansion of the tax base;

(3) assisting in the acceleration of development of technology in the state through the making of technology investments that have significant potential for commercialization in Montana;

(4) working to forge a partnership among the private sector, the university community, and government;

(5) creating a funding source for the board to use in making seed capital development project loans;

(6) creating a mechanism for the board to use in making seed capital project loans; and

(7) creating a mechanism for the board to use in making research and development project loans.

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

NEW SECTION. **Section 1.** Short title. This chapter may be cited as the "Montana Science and Technology Financing Act".

NEW SECTION. **Section 2.** Findings and purpose. (1) The legislature finds and declares that:

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

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

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

(d) the in-state investment fund created through adoption of Initiative Measure No. 95 by the voters of Montana in 1982 is the appropriate source for providing financing programs for the development of new and expanding businesses in Montana;

(e) the Science and Technology Development Board Seed Capital Bond Act contained provisions that were found to be

1 unconstitutional by the Montana supreme court, and the 51st
2 legislature of the state of Montana must remedy those
3 defects through legislation; and

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

9 (2) The purposes of this chapter are to provide:

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

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

14 (c) 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 NEW SECTION. **Section 3. Rulemaking authority.** The
18 board shall adopt rules necessary to implement the
19 provisions of this chapter, including but not limited to
20 rules:

21 (1) governing the conduct of board business;

22 (2) establishing application procedures that, at a
23 minimum, require the submittal of:

24 (a) an executive summary for a science and technology
25 development project loan;

1 (b) a business plan for a seed capital project loan;

2 (c) a research and development project proposal for a
3 research and development project loan; and

4 (d) other documents necessary to meet the criteria
5 established in this chapter;

6 (3) establishing the procedures to be followed by the
7 board in its review process prior to making a science and
8 technology development project loan; and

9 (4) establishing postdisbursement activities that
10 describe the ongoing involvement or follow-along management
11 of the board that may be required in a science and
12 technology development project loan agreement.

13 NEW SECTION. **Section 4. Science and technology**
14 **development project -- priorities.** (1) The board shall make
15 a loan for a science and technology development project if
16 it determines that the project has potential to stimulate
17 economic development in this state and meets the loan
18 criteria established in this chapter.

19 (2) The board shall give priority to project proposals
20 that it determines incorporate innovative technologies and
21 involve, but are not limited to, one or more of the
22 following target technologies:

23 (a) mineral technology;

24 (b) agricultural technology;

25 (c) forestry technology;

- (d) energy technology;
- (e) materials sciences;
- (f) information sciences;
- (g) biotechnology;
- (h) microelectronics and computer sciences; or
- (i) hazardous waste treatment and disposal.

NEW SECTION. Section 5. General criteria underlying science and technology development project loan program. The board may make a science and technology development project loan only upon a favorable determination that the proposed project:

- (1) is consistent with the findings and purposes of this chapter because it incorporates innovative technology;
- (2) has prospects for collaboration between the public and private sectors of the state's economy;
- (3) has prospects for achieving commercial success and for creating new jobs in the state;
- (4) has potential for commercial success related to the specific product or business development methodology proposed;
- (5) can provide matching funds to the project as required under 90-3-301; and
- (6) has a management structure that allows ongoing postdisbursement involvement by the board.

NEW SECTION. Section 6. Seed capital project --

goals. (1) The board may make a seed capital project loan in a company upon a determination by the board that the project meets the loan criteria established in [sections 5 and 7] and that the project meets the goals established in subsection (2) and involves the development and commercialization of innovative products or processes.

(2) The goals in making a seed capital project loan are:

- (a) to assist the development of innovative technology in the state by providing a source of capital to the technology-based entrepreneurial sector in the state's economy;
- (b) to provide financing and follow-along management support for entrepreneurial companies in the state that are attempting to develop products or processes based on innovative technologies; and
- (c) to provide a liaison between entrepreneurial companies in the state and other investors in an effort to enhance the pool of capital available to technology-based companies in the state.

NEW SECTION. Section 7. Specific criteria for seed capital project loans. The board may make a seed capital project loan only if it determines that the proposed project complies with the criteria and goals set forth in [sections 5 and 6] and the board further determines that:

1 (1) the project develops or employs innovative
2 technology to produce a product or process that promises a
3 significant competitive advantage;

4 (2) the project provides an opportunity to preserve
5 the principal of the loan amount and earn a monetary return;

6 (3) the project has potential to realize substantial
7 growth in sales and a sales revenue level that provides the
8 capacity to meet the board's payback requirements;

9 (4) the company is located or preparing to locate
10 within the state;

11 (5) the project demonstrates a capacity to diversify
12 or add value to the state's basic industries;

13 (6) the company's management team possesses sufficient
14 business experience to enable the company to reach its
15 commercial potential;

16 (7) the company has a strong potential for creating
17 and retaining jobs and stimulating tax revenue growth in the
18 state;

19 (8) the company's product or process is targeted for a
20 sizeable commercial market;

21 (9) the company's product or process is of sufficient
22 quality to significantly impact the target market; and

23 (10) the company's business plan is sufficiently
24 designed to complete financing, marketing, and production
25 objectives to accomplish the proposed commercialization.

1 NEW SECTION. Section 8. Research and development
2 project -- goals. (1) The board may make a research and
3 development project loan upon a determination by the board
4 that the proposed project meets the loan criteria
5 established in [sections 5 and 9] and that the project meets
6 one of the goals established in subsection (2).

7 (2) The goals of the research and development project
8 loan program are:

9 (a) to significantly upgrade existing research
10 capabilities within the state's research and development
11 institutions and organizations;

12 (b) to provide financial support to individual
13 research projects that have significant potential to:

14 (i) advance technology development in the state; or

15 (ii) be readily commercialized upon completion of the
16 research phase; or

17 (c) to facilitate the process of transferring research
18 from the laboratory to the commercial marketplace.

19 (3) These goals may be accomplished by:

20 (a) supporting the advanced technology centers of
21 excellence program that will institutionalize cooperative
22 arrangements between the public sector and the private
23 sector and significantly build on existing research and
24 development capabilities;

25 (b) providing financial support for individual

1 research and development projects that are at a preprototype
2 or early stage but that hold significant potential for
3 future commercial success;

4 (c) providing financial support for the development of
5 advanced research capabilities within the state's university
6 system through the acquisition of facilities, equipment, or
7 personnel;

8 (d) facilitating the flow of information to
9 technology-based entrepreneurial businesses in the state to
10 assist those businesses in reaching their full commercial
11 potential; or

12 (e) improving the information and resources available
13 to entrepreneurs in the state who are involved in
14 commercialization of innovative products and processes.

15 NEW SECTION. **Section 9.** Specific criteria for
16 research and development project loans. The board may make a
17 research and development project loan upon its determination
18 that the proposed project complies with the criteria and
19 goals set forth in [sections 5 and 8] and if the board
20 determines that:

21 (1) the project has the potential to diversify or add
22 value to a basic industry of the state's economy;

23 (2) the project demonstrates a clear path to
24 commercial development of the research results within the
25 state;

1 (3) the project involves university system research
2 participation whenever practical;

3 (4) the project employs or otherwise takes advantage
4 of existing research and development strengths within the
5 state's university and private research establishments;

6 (5) the project involves a realistic and achievable
7 research project design;

8 (6) the project develops or employs an innovative
9 technology;

10 (7) the project activity is located within the state;
11 and

12 (8) the project's research team possesses sufficient
13 expertise in the appropriate technology area to complete the
14 research objectives of the project.

15 NEW SECTION. **Section 10.** Science and technology
16 development project loans -- board action. (1) If the board
17 determines that a science and technology development project
18 meets the criteria established in this chapter and has
19 complied with the applicable procedures and review processes
20 established by the board, the board may enter into a science
21 and technology development project loan agreement with the
22 loan recipient and authorize the disbursement of funds to
23 the loan recipient.

24 (2) All decisions of the board are final and not
25 subject to the contested case provisions of Title 2, chapter

1 4.

2 NEW SECTION. Section 11. Science and technology
3 development project loan agreement. (1) The board shall
4 enter into a science and technology development project loan
5 agreement with a loan recipient whose product or process
6 will be developed and commercialized as a result of a
7 science and technology development project loan.

8 (2) The loan agreement, at a minimum, must contain the
9 following provisions:

- 10 (a) the project budget;
- 11 (b) the financing, marketing, and production
- 12 milestones for the project that describe project tasks to be
- 13 achieved in each phase of the project at designated times;
- 14 (c) the reporting requirements, including but not
- 15 limited to:
 - 16 (i) quarterly financial statements;
 - 17 (ii) quarterly commercialization progress reports;
 - 18 (iii) annual reports; and
 - 19 (iv) reports on any significant project transactions;
 - 20 (d) the disbursement schedule for the loan;
 - 21 (e) the payback to the board;
 - 22 (f) the causes for loan revocation, suspension, or
 - 23 termination; and
 - 24 (g) the intellectual property provisions.

25 NEW SECTION. Section 12. Seed capital project loan

1 agreement -- specific requirements -- payback. (1) In
2 addition to the loan agreement provisions required in
3 [section 11], a seed capital project loan must be structured
4 as contracted debt that includes but is not limited to the
5 following terms:

6 (a) an interest rate set at the level that provides a
7 return to the board, from paybacks by all of its portfolio
8 companies, in an amount at least equal to the principal
9 amount of the loans and that provides for a market rate of
10 return when considering the overall benefit to the state
11 derived from the projects;

12 (b) a provision in the note that may defer debt
13 service until maturity of the note, the term of which may
14 not exceed 8 years;

15 (c) a loan amount that may not exceed \$350,000 in any
16 one round of financing. Successive rounds of financing in
17 which the board participates for any one company may not
18 occur within a 9-month period. The total amount that may be
19 loaned to any one company may not exceed \$750,000.

20 (d) a provision that the note becomes due in full upon
21 dissolution or liquidation of the company.

22 (2) (a) In addition to the provisions in [section 11]
23 and subsection (1), a seed capital project loan agreement
24 may provide for any of the following:

- 25 (i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) However, the board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise.

NEW SECTION. Section 13. Research and development project loan agreement -- specific requirements -- payback.
In addition to the loan agreement provisions described in [section 11], a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing. This percentage rate may not exceed 5%.

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects.

NEW SECTION. Section 14. Deposit of payback -- seed capital and research and development project loans. (1) The payback of principal and earnings on a seed capital project loan executed under this chapter must be administered pursuant to section 17-6-306.

(2) The payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15].

(3) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15] for use by the board. The paybacks include all those received after January 1, 1989.

NEW SECTION. Section 15. Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

(2) There must be paid into the science and technology development account:

(a) the payback of principal and earnings on a research and development project loan executed under this chapter; and

(b) all payback of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989.

NEW SECTION. Section 16. Montana board of science and technology development -- allocation -- composition -- quasi-judicial powers. (1) There is a Montana board of science and technology development. The board is allocated to the department of commerce. The department shall select, prescribe the duties for, and supervise staff to administer board activities.

(2) The board consists of nine members appointed by the governor as prescribed in 2-15-124.

(3) In making appointments to the board, the governor shall consider people with extensive interest and experience in science and technology and the application of such interest and experience to economic development in Montana.

(4) The membership of the board must include:

(a) at least two members with knowledge of early stage financing of private businesses;

(b) at least one member with expertise in applied technology development; and

(c) at least five members from the private sector.

(5) The board is designated a quasi-judicial board for purposes of 2-15-124.

Section 17. Section 90-3-102, MCA, is amended to read:

"90-3-102. Definitions. As used in this chapter the following definitions apply:

(1) "Act" means the Montana science and technology financing act.

~~{1}~~(2) "Board" means the Montana board of science and technology development board provided for in 2-15-1818 [section 16].

~~{2}~~"Business and industry" means a privately owned and operated agricultural or commercial enterprise or association that maintains a research, development, commercial, or manufacturing facility in Montana. The enterprise or association need not have its headquarters within the state.

(3) "Company" means a firm, partnership, corporation, association, or any other entity authorized to conduct business in Montana.

(4) "Convertible debenture" means a debenture convertible into stock under certain conditions by any individual or company. The debenture may not be converted by the board.

(5) "Debenture" or "note" means a writing or certificate issued as evidence of debt.

~~{3}~~(6) "Department" means the department of commerce created in 2-15-1801.

(7) "Expansion capital project" means a science and

technology development project undertaken to enable a company to expand its manufacturing and marketing activities in order to move its products or services into new markets or to expand existing markets.

(8) "Innovative technology" means the involvement of a product or process that embodies the use of implements, machinery, equipment, chemical formulations, resources, materials, methods, or other items in a manner that departs from previous commercial developments, practices, or applications.

(9) "Matching funds" means the funds received in cash by the science and technology development project loan recipient from nonstate-appropriated sources and committed by the loan recipient to the project in an amount that is at least equal to the funds loaned to the recipient by the board for use in the science and technology development project.

(10) "Portfolio company" means a startup or expansion stage company that has received a seed capital project loan from the board.

{4}{11} "Private sector" means any entity or individual, not principally a part of or associated with a governmental unit, that is associated with or involved in commercial activity.

(12) "Research and development project" means a science

and technology development project that falls into the category of research capability development, applied technology research, or technology transfer and assistance.

(13) "Research and development project loan" means a science and technology development project loan entered into between the board and a loan recipient for a research and development project.

{5}{14} "Technology Science and technology development project" means an-activity either a seed capital project or research and development project designed to discover, develop, transfer, utilize, or commercialize existing or new, innovative technology in order to strengthen and enhance economic development in Montana.

{6}--"Technology-investment"--means-an--award--of--funds for--a--technology-development-project,-including-technology transfer,-to-stimulate--Montana's--economy.--The--technology investments--authorized--by--this-act-are-not-investments-of public-funds-for-purposes-of-Article-Viii,-section--13,-of the--Montana--constitution,-or-Title-17,-chapter-6,-relating to--the--unified--investment--of--public--funds,-but--are investments--of--public--resources--intended--to--encourage technologically--based--economic--development--that--may eventually--result--in--a--financial--return--on--those investments:-

(15) "Science and technology development project loan

1 agreement" or "loan" means an agreement entered into between
 2 the board and the loan recipient of a seed capital project
 3 loan or a research and development project loan that:

- 4 (a) creates a debt relationship between the parties;
- 5 (b) provides for a financial return to the board;
- 6 (c) provides economic development potential to the
 7 state; and
- 8 (d) contains the applicable provisions and terms
 9 required by this chapter.

10 (16) "Seed capital project" means a startup capital
 11 project or expansion capital project.

12 (17) "Seed capital project loan" means a science and
 13 technology development project loan entered into between the
 14 board and a loan recipient for a seed capital project.

15 (18) "Startup capital project" means a science and
 16 technology development project that assists a company in
 17 initiating commercial operations.

18 (19) "State" means the state of Montana.

19 (20) "Warrant" means an instrument issued by a
 20 corporation that gives a holder other than the board the
 21 right to purchase stock of a corporation either for a
 22 limited time or perpetually."

23 **Section 18.** Section 90-3-203, MCA, is amended to read:

24 **"90-3-203. Powers and duties of board.** The board
 25 shall:

1 ~~{1}--establish policies and priorities that will expand~~
 2 ~~and--develop--the use of science and technology for economic~~
 3 ~~development in Montana;~~

4 ~~{2}--provide technical assistance for the--transfer--of~~
 5 ~~technology--to--Montana businesses in order to encourage the~~
 6 ~~use of new technology by Montana business and industry;~~

7 ~~{3}{1} make technology investments loans in science~~
 8 ~~and technology development projects pursuant to the~~
 9 ~~provisions of this act in the following areas that have~~
 10 ~~short---or---long-term potential to stimulate economic~~
 11 ~~development in Montana:~~

12 ~~(a) research capability development;~~

13 ~~(b) applied technological technology research;~~

14 ~~(c) technology assistance and transfer and assistance;~~

15 and

16 ~~(d) seed capital awards startup capital or expansion~~
 17 ~~capital projects for development and commercialization of~~
 18 ~~new innovative products and processes;~~

19 ~~{4}{2} accept grants or receive devises of money or~~
 20 ~~property to be used in Montana for investments described in~~
 21 ~~loans made pursuant to this chapter; and~~

22 ~~{5}{3} submit to the governor and the legislature a~~
 23 ~~report describing the board's programs and accomplishments~~
 24 ~~by November January 1 of each even-numbered odd-numbered~~
 25 ~~year or at the request of the governor;~~

1 {6}--adopt--rules-necessary-to-implement-the-provisions
 2 of-this-chapter-including-but-not-limited-to-rules;
 3 {a}--governing-the-conduct-of-board-business;
 4 {b}--establishing--matching---fund---requirements---for
 5 capability;--basic--research;--and--seed--capital-investment
 6 programs;
 7 {c}--establishing---criteria---for---determining---the
 8 eligibility---of---projects---and--programs--for--technology
 9 investments;
 10 {d}--establishing-methods-of--committing--funds;--types
 11 and-amounts-of-fees;--and-types-of-research-investments-to-be
 12 made;--and
 13 {7}--adopt--specific--goals--and--objectives--for--each
 14 program-administered-by-the-board."

15 **Section 19.** Section 90-3-301, MCA, is amended to read:

16 "90-3-301. Appropriation authority and funding --
 17 matching funds. (1) The board has authority to accept and
 18 expend all funds received by it as grants, donations, or
 19 other private or public income. These funds are statutorily
 20 appropriated as provided in 17-7-502. No-award-may-be-made
 21 for--activities-for-which-matching-funds-or-participation-of
 22 financial-intermediaries-is-required-until-such--funds--have
 23 been-committed;

24 {2}--Dollar-for-dollar---matching--funds---are---required
 25 prior--to--any--expenditure--of--state--funds--for--research

1 capability--development;--applied-technological-research;--or
 2 seed-capital-awards-or-investments-provided-for-in-90-3-203;
 3 {3}{2} The appropriations and investments loans made
 4 to and by the board are in addition to and separate from
 5 general fund appropriations to the university system and
 6 other state agencies.

7 (3) A loan may not be made for a project for which
 8 matching funds have not been received. Matching funds are
 9 required prior to any expenditure of board funds for
 10 research and development projects or seed capital projects.
 11 The board may accept as matching funds those received by the
 12 loan recipient within 1 year prior to the execution of the
 13 loan agreement. The board may require additional matching
 14 funds, depending on the capital need and the degree of risk
 15 encountered in the science and technology development
 16 project."

17 **Section 20.** Section 90-3-304, MCA, is amended to read:

18 "90-3-304. Accountability -- audits. {1}--The-board
 19 shall-develop-independent-review--and--audit--procedures--to
 20 ensure-that-investments-made-by-it-are-used-for-the-purposes
 21 identified-in-its-investment-agreements;

22 {2}--The--board's-technology-investment-agreements-must
 23 contain-provisions-considered--necessary--by--the--board--to
 24 ensure--the--proper--inspection--and--review-of-projects;--the
 25 attainment-of-project-goals;--and--the-maintenance-of-adequate

~~financial records by recipients of board funds:~~

{3} The board's books and records must be audited by or at the direction of the legislative auditor. The legislative auditor must shall conduct a performance audit of the board's goals, objectives, and statutory duties prior to the ~~51st~~ 52nd legislative session and at such times as determined necessary by the legislative audit committee. The actual costs of audits must be paid from the board's funds."

Section 21. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1 and 2 do not apply to the following positions in state government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the governor, appointed by the legislature, or appointed by other elected state officials;
- (6) officers or members of the militia;
- (7) agency heads appointed by the governor;
- (8) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;
- (9) academic and professional administrative personnel

and live-in houseparents who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(10) teachers under the authority of the department of institutions;

(11) investment officer, assistant investment officer, executive director, and three professional staff positions of the board of investments;

(12) four professional staff positions under the board of oil and gas conservation; and

(13) assistant director for security of the Montana state lottery; and

(14) executive director and senior investment officer of the Montana board of science and technology development."

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

"17-6-308. Authorized investments. (1) The Except as provided in subsection (4), the Montana in-state investment 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) The board may make loans from the in-state investment 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. The board may agree in connection with the issuance of bonds or notes secured by such account or fund to make such 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 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(4) The board shall allow the Montana board of science and technology development provided for in [section 16] to

administer \$7.5 million of the in-state investment 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 23. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

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

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

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;

1 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;
 2 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;
 3 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;
 4 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;
 5 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;
 6 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;
 7 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;
 8 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;
 9 90-3-301; 90-3-382; 90-3-412; 90-4-215; 90-9-306; 90-15-103;
 10 section 13, House Bill No. 861, Laws of 1985; and section 1,
 11 Chapter 454, Laws of 1987.

12 (4) There is a statutory appropriation to pay the
 13 principal, interest, premiums, and costs of issuing, paying,
 14 and securing all bonds, notes, or other obligations, as due,
 15 that have been authorized and issued pursuant to the laws of
 16 Montana. Agencies that have entered into agreements
 17 authorized by the laws of Montana to pay the state
 18 treasurer, for deposit in accordance with 17-2-101 through
 19 17-2-107, as determined by the state treasurer, an amount
 20 sufficient to pay the principal and interest as due on the
 21 bonds or notes have statutory appropriation authority for
 22 such payments. (In subsection (3): pursuant to sec. 15, Ch.
 23 607, L. 1987, the inclusion of 15-65-121 terminates June 30,
 24 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion
 25 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.

1 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.
 2 1987, terminates July 1, 1988.)"

3 NEW SECTION. Section 24. Repealer. Sections
 4 2-15-1810, 90-3-103, 90-3-302, and 90-3-401 through
 5 90-3-420, MCA, are repealed.

6 NEW SECTION. Section 25. Codification instruction.
 7 (1) [Sections 1 through 15] are intended to be codified as
 8 an integral part of Title 90, chapter 3, and the provisions
 9 of Title 90, chapter 3, apply to the provisions of [sections
 10 1 through 15].

11 (2) [Section 16] is intended to be codified as an
 12 integral part of Title 2, chapter 15, part 18, and the
 13 provisions of Title 2, chapter 15, part 18, apply to
 14 [section 16].

15 NEW SECTION. Section 26. Severability. If a part of
 16 [this act] is invalid, all valid parts that are severable
 17 from the invalid part remain in effect. If a part of [this
 18 act] is invalid in one or more of its applications, the part
 19 remains in effect in all valid applications that are
 20 severable from the invalid applications.

21 NEW SECTION. Section 27. Effective date. [This act]
 22 is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB683, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

A bill to establish a science and technology development project loan program consisting of specific goals and criteria for seed capital projects; to authorize the Montana Board of Science and Technology Development to administer \$7,500,000 of the in-state investment fund for seed capital loans; and to generate a financial return-on-investment and stimulate economic development and job creation in Montana.

ASSUMPTIONS:

1. Dollar-for-dollar matching funds are required for all seed capital financings by the Montana Science and Technology Alliance (MSTA).
2. The MSTa will be authorized to manage a portion of the in-state investment fund for economic development proposed under its Seed Capital Financing Program, but with monetary return-on-investment as a priority (as the MSTa currently conducts business). Under this management requirement, the most that the MSTa can appropriately utilize is \$1.5 million per year for the five years beginning on July 1, 1989 (for a total of \$7.5 million).
3. Administrative costs of the seed capital financing program will be paid from the general fund and appropriated through the general appropriations act beginning on July 1, 1989. (Including Legislative Auditor charges for the audit requirements in Section 20.)
4. The MSTa will manage its portion of the in-state investment fund to receive a market rate of return.
5. Earnings on the in-state investment fund are divided with 100% of the principal returned to the in-state investment fund, 15% of the interest earnings appropriated to the coal severance tax permanent fund and 85% of the interest earnings appropriated to the general fund. (This distribution formula is contained in Section 17-6-306, MCA).

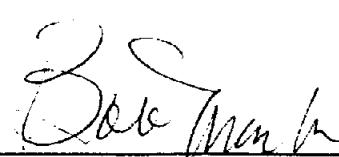
FISCAL IMPACT:Revenues: NoneExpenditures: NoneLONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The MSTa's 1:1 statutory matching funds requirement would generate an additional \$7.5 million of private capital for a total amount of funds to be expended by Montana companies as follows:

MSTA Funds for 5-years	\$ 7,500,000
Matching Funds for the 5-years	7,500,000
TOTAL Funds for the 5-years	\$15,000,000
(1989 through 1994)	

DATE 2/17/89

RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 2-17-89 1:55 PM

ROBERT L. MARKS, PRIMARY SPONSOR

Fiscal Note for HB683, as introducedHB 683

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

1 *HOUSE* BILL NO. *683*
2 INTRODUCED BY *Marks Bradley, Vincent*
3 *Ramirez* BY REQUEST OF THE GOVERNOR *Valley*
4 *Carlson* *Stanton* *James* *Ward*
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
6 AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
7 OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
8 PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
9 FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
10 AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
11 ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
12 PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
13 ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR
14 PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
15 TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
16 SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
17 AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
18 DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
19 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING
20 SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
21 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 3] requires the Montana board of science and

There is no change on HB 683 and will not
be reprinted. Please refer to introduced
(white) for complete text.

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

1 HOUSE BILL NO. 683
2 INTRODUCED BY Marks, Braden, Vincent
3 Kennedy BY REQUEST OF THE GOVERNOR Valkenburg
4 Carlson Stearns Stearns Stearns Stearns
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
6 AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
7 OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
8 PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
9 FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
10 AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
11 ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
12 PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
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14 PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
15 TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
16 SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
17 AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
18 DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
19 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING
20 SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
21 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section 3] requires the Montana board of science and

There is no change on HB 683 and will not be
reprinted. Please refer to introduced (white)
or second reading (yellow) for complete text.

1 HOUSE BILL NO. 683

2 INTRODUCED BY MARKS, BRADLEY, THAYER, VINCENT, RAMIREZ,
3 REGAN, VAN VALKENBURG, MERCER, PAVLOVICH, CRIPPEN, QUILICI,
4 HALLIGAN, HARRINGTON, IVERSON, D. BROWN, O'KEEFE, HARP,
5 SWIFT, ADDY, DRISCOLL, GIACOMETTO, BENGTSON, KADAS,
6 SPAETH, T. NELSON, WILLIAMS, MAZUREK, HARPER, MEYER,
7 BARDANOUE, PECK, BOYLAN, DEVLIN, JERGESON, DAILY,
8 BLAYLOCK, SIMON, REHBERG, FARRELL, NATHE
9 BY REQUEST OF THE GOVERNOR

10
11 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH A SCIENCE
12 AND TECHNOLOGY DEVELOPMENT PROJECT LOAN PROGRAM CONSISTING
13 OF SEED CAPITAL PROJECTS AND RESEARCH AND DEVELOPMENT
14 PROJECTS; TO PROVIDE FUNDING FOR SEED CAPITAL PROJECT LOANS
15 FROM THE IN-STATE INVESTMENT FUND; TO ESTABLISH PRIORITIES
16 AND GENERAL CRITERIA UNDERLYING THE LOAN PROGRAM; TO
17 ESTABLISH GOALS AND SPECIFIC CRITERIA FOR SEED CAPITAL
18 PROJECT LOANS AND RESEARCH AND DEVELOPMENT PROJECT LOANS; TO
19 ESTABLISH THE REQUIREMENTS AND PAYBACK PROVISIONS FOR
20 PROJECT LOAN AGREEMENTS; TO ESTABLISH THE SCIENCE AND
21 TECHNOLOGY DEVELOPMENT ACCOUNT; TO REESTABLISH A BOARD OF
22 SCIENCE AND TECHNOLOGY DEVELOPMENT; TO PROVIDE RULEMAKING
23 AUTHORITY FOR THE MONTANA BOARD OF SCIENCE AND TECHNOLOGY
24 DEVELOPMENT; AMENDING SECTIONS 2-18-103, 17-6-308, 17-7-502,
25 90-3-102, 90-3-203, 90-3-301, AND 90-3-304, MCA; REPEALING

1 SECTIONS 2-15-1810, 90-3-103, 90-3-302, AND 90-3-401 THROUGH
2 90-3-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

4 STATEMENT OF INTENT

5 A statement of intent is required for this bill because
6 [section 3] requires the Montana board of science and
7 technology development to adopt rules to implement the
8 Montana Science and Technology Financing Act created by this
9 bill.

10 It is the intent of the legislature that the board
11 adopt rules:

12 (1) governing the conduct of board business;

13 (2) establishing application procedures that, at a
14 minimum, require the submittal of an executive summary for a
15 science and technology development project loan, a business
16 plan for a seed capital project loan, a research and
17 development project proposal for a research and development
18 project loan, and other documents necessary to meet the
19 criteria established in chapter 3 of Title 90;

20 (3) establishing the procedures to be followed by the
21 board in its review process prior to making a science and
22 technology development project loan; and

23 (4) establishing postdisbursement activities that
24 describe the ongoing involvement or follow-along management
25 of the board that may be required in a science and

1 technology development project loan agreement.

2 The rules should be promulgated so as to promote the
3 purposes and goals stated in the act. These include:

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

10 (2) using the in-state investment fund for the
11 purposes adopted by the voters of Montana in 1982 in
12 Initiative Measure No. 95, by providing financial programs
13 for new and expanding businesses to encourage the creation
14 of jobs and expansion of the tax base;

15 (3) assisting in the acceleration of development of
16 technology in the state through the making of technology
17 investments that have significant potential for
18 commercialization in Montana;

19 (4) working to forge a partnership among the private
20 sector, the university community, and government;

21 (5) creating a funding source for the board to use in
22 making seed capital development project loans;

23 (6) creating a mechanism for the board to use in
24 making seed capital project loans; and

25 (7) creating a mechanism for the board to use in

1 making research and development project loans.

2

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

4 NEW SECTION. **Section 1.** Short title. This chapter may
5 be cited as the "Montana Science and Technology Financing
6 Act".

7 NEW SECTION. **Section 2.** Findings and purpose. (1) The
8 legislature finds and declares that:

9 (a) it is the policy of the state of Montana to
10 promote the health, safety, and general welfare of all the
11 people of the state;

12 (b) this policy will be furthered through
13 strengthening and diversifying the state's economy by
14 facilitating a public sector-private sector partnership to
15 encourage scientific and technological development within
16 the state in order to keep pace with a changing economic
17 structure and to create new jobs and expand business
18 opportunities;

19 (c) this strengthening and diversification will be
20 fostered by assisting in the acceleration of development of
21 technology in the state through participation with the
22 private sector in the financing of science and technology
23 development projects that have significant potential for
24 commercialization in Montana;

25 (d) the in-state investment fund created through

1 adoption of Initiative Measure No. 95 by the voters of
 2 Montana in 1982 is the appropriate source for providing
 3 financing programs for the development of new and expanding
 4 businesses in Montana;

5 (e) the Science and Technology Development Board Seed
 6 Capital Bond Act contained provisions that were found to be
 7 unconstitutional by the Montana supreme court, and the 51st
 8 legislature of the state of Montana must remedy those
 9 defects through legislation; and

10 (f) the Montana science and technology development
 11 board has demonstrated success in forging a partnership
 12 among the private sector, the university community, and
 13 government, and this success should be continued through an
 14 ongoing legislative commitment to the board's programs.

15 (2) The purposes of this chapter are to provide:

16 (a) a funding source for the board to make seed
 17 capital project loans;

18 (b) a mechanism for the board to use in making seed
 19 capital project loans; and

20 (c) a mechanism for the board to use in making
 21 research and development project loans, the funding source
 22 of which will be provided by separate legislation.

23 NEW SECTION. Section 3. Rulemaking authority. The
 24 board shall adopt rules necessary to implement the
 25 provisions of this chapter, including but not limited to

1 rules:

2 (1) governing the conduct of board business;

3 (2) establishing application procedures that, at a
 4 minimum, require the submittal of:

5 (a) an executive summary for a science and technology
 6 development project loan;

7 (b) a business plan for a seed capital project loan;

8 (c) a research and development project proposal for a
 9 research and development project loan; and

10 (d) other documents necessary to meet the criteria
 11 established in this chapter;

12 (3) establishing the procedures to be followed by the
 13 board in its review process prior to making a science and
 14 technology development project loan; and

15 (4) establishing postdisbursement activities that
 16 describe the ongoing involvement or follow-along management
 17 of the board that may be required in a science and
 18 technology development project loan agreement.

19 NEW SECTION. Section 4. Science and technology
 20 development project -- priorities. (1) The board shall make
 21 a loan for a science and technology development project if
 22 it determines that the project has potential to stimulate
 23 economic development in this state and meets the loan
 24 criteria established in this chapter.

25 (2) The board shall give priority to project proposals

that it determines incorporate innovative technologies and involve, but are not limited to, one or more of the following target technologies:

- (a) mineral technology;
- (b) agricultural technology;
- (c) forestry technology;
- (d) energy technology;
- (e) materials sciences;
- (f) information sciences;
- (g) biotechnology;
- (h) microelectronics and computer sciences; or
- (i) hazardous waste treatment and disposal.

NEW SECTION. Section 5. General criteria underlying science and technology development project loan program. The board may make a science and technology development project loan only upon a favorable determination that the proposed project:

- (1) is consistent with the findings and purposes of this chapter because it incorporates innovative technology;
- (2) has prospects for collaboration between the public and private sectors of the state's economy;
- (3) has prospects for achieving commercial success and for creating new jobs in the state;
- (4) has potential for commercial success related to the specific product or business development methodology

proposed;

(5) can provide matching funds to the project as required under 90-3-301; and

(6) has a management structure that allows ongoing postdisbursement involvement by the board.

NEW SECTION. Section 6. Seed capital project -- goals. (1) The board may make a seed capital project loan in a company upon a determination by the board that the project meets the loan criteria established in [sections 5 and 7] and that the project meets the goals established in subsection (2) and involves the development and commercialization of innovative products or processes.

(2) The goals in making a seed capital project loan are:

(a) to assist the development of innovative technology in the state by providing a source of capital to the technology-based entrepreneurial sector in the state's economy;

(b) to provide financing and follow-along management support for entrepreneurial companies in the state that are attempting to develop products or processes based on innovative technologies; and

(c) to provide a liaison between entrepreneurial companies in the state and other investors in an effort to enhance the pool of capital available to technology-based

1 companies in the state.

2 NEW SECTION. Section 7. Specific criteria for seed
3 capital project loans. The board may make a seed capital
4 project loan only if it determines that the proposed project
5 complies with the criteria and goals set forth in [sections
6 5 and 6] and the board further determines that:

7 (1) the project develops or employs innovative
8 technology to produce a product or process that promises a
9 significant competitive advantage;

10 (2) the project provides an opportunity to preserve
11 the principal of the loan amount and earn a monetary return;

12 (3) the project has potential to realize substantial
13 growth in sales and a sales revenue level that provides the
14 capacity to meet the board's payback requirements;

15 (4) the company is located or preparing to locate
16 within the state;

17 (5) the project demonstrates a capacity to diversify
18 or add value to the state's basic industries;

19 (6) the company's management team possesses sufficient
20 business experience to enable the company to reach its
21 commercial potential;

22 (7) the company has a strong potential for creating
23 and retaining jobs and stimulating tax revenue growth in the
24 state;

25 (8) the company's product or process is targeted for a

1 sizeable commercial market;

2 (9) the company's product or process is of sufficient
3 quality to significantly impact the target market; and

4 (10) the company's business plan is sufficiently
5 designed to complete financing, marketing, and production
6 objectives to accomplish the proposed commercialization.

7 NEW SECTION. Section 8. Research and development
8 project -- goals. (1) The board may make a research and
9 development project loan upon a determination by the board
10 that the proposed project meets the loan criteria
11 established in [sections 5 and 9] and that the project meets
12 one of the goals established in subsection (2).

13 (2) The goals of the research and development project
14 loan program are:

15 (a) to significantly upgrade existing research
16 capabilities within the state's research and development
17 institutions and organizations;

18 (b) to provide financial support to individual
19 research projects that have significant potential to:

20 (i) advance technology development in the state; or

21 (ii) be readily commercialized upon completion of the
22 research phase; or

23 (c) to facilitate the process of transferring research
24 from the laboratory to the commercial marketplace.

25 (3) These goals may be accomplished by:

1 (a) supporting the advanced technology centers of
2 excellence program that will institutionalize cooperative
3 arrangements between the public sector and the private
4 sector and significantly build on existing research and
5 development capabilities;

6 (b) providing financial support for individual
7 research and development projects that are at a preprototype
8 or early stage but that hold significant potential for
9 future commercial success;

10 (c) providing financial support for the development of
11 advanced research capabilities within the state's university
12 system through the acquisition of facilities, equipment, or
13 personnel;

14 (d) facilitating the flow of information to
15 technology-based entrepreneurial businesses in the state to
16 assist those businesses in reaching their full commercial
17 potential; or

18 (e) improving the information and resources available
19 to entrepreneurs in the state who are involved in
20 commercialization of innovative products and processes.

21 NEW SECTION. Section 9. Specific criteria for
22 research and development project loans. The board may make a
23 research and development project loan upon its determination
24 that the proposed project complies with the criteria and
25 goals set forth in [sections 5 and 8] and if the board

1 determines that:

2 (1) the project has the potential to diversify or add
3 value to a basic industry of the state's economy;

4 (2) the project demonstrates a clear path to
5 commercial development of the research results within the
6 state;

7 (3) the project involves university system research
8 participation whenever practical;

9 (4) the project employs or otherwise takes advantage
10 of existing research and development strengths within the
11 state's university and private research establishments;

12 (5) the project involves a realistic and achievable
13 research project design;

14 (6) the project develops or employs an innovative
15 technology;

16 (7) the project activity is located within the state;
17 and

18 (8) the project's research team possesses sufficient
19 expertise in the appropriate technology area to complete the
20 research objectives of the project.

21 NEW SECTION. Section 10. Science and technology
22 development project loans -- board action. (1) If the board
23 determines that a science and technology development project
24 meets the criteria established in this chapter and has
25 complied with the applicable procedures and review processes

1 established by the board, the board may enter into a science
2 and technology development project loan agreement with the
3 loan recipient and authorize the disbursement of funds to
4 the loan recipient.

5 (2) All decisions of the board are final and not
6 subject to the contested case provisions of Title 2, chapter
7 4.

8 NEW SECTION. Section 11. Science and technology
9 development project loan agreement. (1) The board shall
10 enter into a science and technology development project loan
11 agreement with a loan recipient whose product or process
12 will be developed and commercialized as a result of a
13 science and technology development project loan.

14 (2) The loan agreement, at a minimum, must contain the
15 following provisions:

- 16 (a) the project budget;
- 17 (b) the financing, marketing, and production
- 18 milestones for the project that describe project tasks to be
- 19 achieved in each phase of the project at designated times;
- 20 (c) the reporting requirements, including but not
- 21 limited to:
 - 22 (i) quarterly financial statements;
 - 23 (ii) quarterly commercialization progress reports;
 - 24 (iii) annual reports; and
 - 25 (iv) reports on any significant project transactions;

1 (d) the disbursement schedule for the loan;

2 (e) the payback to the board;

3 (f) the causes for loan revocation, suspension, or
4 termination; and

5 (g) the intellectual property provisions.

6 NEW SECTION. Section 12. Seed capital project loan
7 agreement -- specific requirements -- payback. (1) In
8 addition to the loan agreement provisions required in
9 [section 11], a seed capital project loan must be structured
10 as contracted debt that includes but is not limited to the
11 following terms:

12 (a) an interest rate set at the level that provides a
13 return to the board, from paybacks by all of its portfolio
14 companies, in an amount at least equal to the principal
15 amount of the loans and that provides for a market rate of
16 return when considering the overall benefit to the state
17 derived from the projects;

18 (b) a provision in the note that may defer debt
19 service until maturity of the note, the term of which may
20 not exceed 8 years;

21 (c) a loan amount that may not exceed \$350,000 in any
22 one round of financing. Successive rounds of financing in
23 which the board participates for any one company may not
24 occur within a 9-month period. The total amount that may be
25 loaned to any one company may not exceed \$750,000.

(d) a provision that the note becomes due in full upon dissolution or liquidation of the company.

(2) (a) In addition to the provisions in [section 11] and subsection (1), a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

(iii) a warrant held by a third party for the benefit of the board.

(b) However, the board itself may not convert the convertible debenture, exercise the warrant, or hold stock acquired upon any conversion or exercise.

NEW SECTION. Section 13. Research and development project loan agreement -- specific requirements -- payback. In addition to the loan agreement provisions described in [section 11], a research and development project loan agreement must be structured as contracted debt with the following terms:

(1) The agreement must include provisions calling for a payback of two times the original loan amount paid as a percentage of the income stream derived from the sale or other commercialization of products or processes developed with the board's financing. This percentage rate may not exceed 5%.

(2) The payback on a research and development project

loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects.

NEW SECTION. Section 14. Deposit of payback -- seed capital and research and development project loans. (1) The payback of principal and earnings on a seed capital project loan executed under this chapter must be administered pursuant to section 17-6-306.

(2) The payback of principal and earnings on a research and development project loan must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15].

(3) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in [section 15] for use by the board. The paybacks include all those received after January 1, 1989.

NEW SECTION. Section 15. Science and technology development account. (1) There is a science and technology development account within the state special revenue fund

1 established in 17-2-102.

2 (2) There must be paid into the science and technology
3 development account:

4 (a) the payback of principal and earnings on a
5 research and development project loan executed under this
6 chapter; and

7 (b) all payback of principal and earnings to the board
8 from any agreements executed by the board between July 1,
9 1985, and March 31, 1989.

10 NEW SECTION. Section 16. Montana board of science and
11 technology development -- allocation -- composition --
12 quasi-judicial powers. (1) There is a Montana board of
13 science and technology development. The board is allocated
14 to the department of commerce. The department shall select,
15 prescribe the duties for, and supervise staff to administer
16 board activities.

17 (2) The board consists of nine members appointed by
18 the governor as prescribed in 2-15-124.

19 (3) In making appointments to the board, the governor
20 shall consider people with extensive interest and experience
21 in science and technology and the application of such
22 interest and experience to economic development in Montana.

23 (4) The membership of the board must include:

24 (a) at least two members with knowledge of early stage
25 financing of private businesses;

1 (b) at least one member with expertise in applied
2 technology development; and

3 (c) at least five members from the private sector.

4 (5) The board is designated a quasi-judicial board for
5 purposes of 2-15-124.

6 **Section 17.** Section 90-3-102, MCA, is amended to read:
7 "90-3-102. Definitions. As used in this chapter the
8 following definitions apply:

9 (1) "Act" means the Montana science and technology
10 financing act.

11 ~~(1)(2)~~ "Board" means the Montana board of science and
12 technology development board provided for in ~~2-15-1010~~
13 ~~[section 16]~~.

14 ~~(2) "Business-and-industry" means a privately-owned~~
15 ~~and--operated--agricultural--or--commercial--enterprise--or~~
16 ~~association--that--maintains--a--research--development,~~
17 ~~commercial--or--manufacturing--facility--in--Montana--The~~
18 ~~enterprise-or-association-need-not-have-its-headquarters~~
19 ~~within-the-state.~~

20 (3) "Company" means a firm, partnership, corporation,
21 association, or any other entity authorized to conduct
22 business in Montana.

23 (4) "Convertible debenture" means a debenture
24 convertible into stock under certain conditions by any
25 individual or company. The debenture may not be converted by

1 the board.

2 (5) "Debenture" or "note" means a writing or
3 certificate issued as evidence of debt.

4 (3)(6) "Department" means the department of commerce
5 created in 2-15-1801.

6 (7) "Expansion capital project" means a science and
7 technology development project undertaken to enable a
8 company to expand its manufacturing and marketing activities
9 in order to move its products or services into new markets
10 or to expand existing markets.

11 (8) "Innovative technology" means the involvement of a
12 product or process that embodies the use of implements,
13 machinery, equipment, chemical formulations, resources,
14 materials, methods, or other items in a manner that departs
15 from previous commercial developments, practices, or
16 applications.

17 (9) "Matching funds" means the funds received in cash
18 by the science and technology development project loan
19 recipient from nonstate-appropriated sources and committed
20 by the loan recipient to the project in an amount that is at
21 least equal to the funds loaned to the recipient by the
22 board for use in the science and technology development
23 project.

24 (10) "Portfolio company" means a startup or expansion
25 stage company that has received a seed capital project loan

1 from the board.

2 (4)(11) "Private sector" means any entity or
3 individual, not principally a part of or associated with a
4 governmental unit, that is associated with or involved in
5 commercial activity.

6 (12) "Research and development project" means a science
7 and technology development project that falls into the
8 category of research capability development, applied
9 technology research, or technology transfer and assistance.

10 (13) "Research and development project loan" means a
11 science and technology development project loan entered into
12 between the board and a loan recipient for a research and
13 development project.

14 (5)(14) "Technology Science and technology development
15 project" means an-activity either a seed capital project or
16 research and development project designed to discover,
17 develop, transfer, utilize, or commercialize existing or
18 new, innovative technology in order to strengthen and
19 enhance economic development in Montana.

20 (6)--"Technology-investment"--means-an--award--of--funds
21 for--a--technology-development-project,--including-technology
22 transfer,--to-stimulate--Montana's--economy.--The--technology
23 investments--authorized--by--this-act-are-not-investments-of
24 public-funds-for-purposes-of-Article-VIII,--section--13,--of
25 the--Montana--constitution,--or--Title-17,--chapter-6,--relating

1 to--the--unified--investment--of--public--funds,---but---are
 2 investments---of--publie--resources--intended--to--encourage
 3 technologically--based---economic---development---that---may
 4 eventually---result---in---a---financial---return--on--those
 5 investments-

6 (15) "Science and technology development project loan
 7 agreement" or "loan" means an agreement entered into between
 8 the board and the loan recipient of a seed capital project
 9 loan or a research and development project loan that:

10 (a) creates a debt relationship between the parties;

11 (b) provides for a financial return to the board;

12 (c) provides economic development potential to the
 13 state; and

14 (d) contains the applicable provisions and terms
 15 required by this chapter.

16 (16) "Seed capital project" means a startup capital
 17 project or expansion capital project.

18 (17) "Seed capital project loan" means a science and
 19 technology development project loan entered into between the
 20 board and a loan recipient for a seed capital project.

21 (18) "Startup capital project" means a science and
 22 technology development project that assists a company in
 23 initiating commercial operations.

24 (19) "State" means the state of Montana.

25 (20) "Warrant" means an instrument issued by a

1 corporation that gives a holder other than the board the
 2 right to purchase stock of a corporation either for a
 3 limited time or perpetually."

4 **Section 18.** Section 90-3-203, MCA, is amended to read:

5 "90-3-203. Powers and duties of board. The board
 6 shall:

7 (1) establish policies and priorities that will expand
 8 and develop the use of science and technology for economic
 9 development in Montana;

10 (2) provide technical assistance for the transfer of
 11 technology to Montana businesses in order to encourage the
 12 use of new technology by Montana business and industry;

13 (3) (1) make technology investments loans in science
 14 and technology development projects pursuant to the
 15 provisions of this act in the following areas that have
 16 short- or long-term potential to stimulate economic
 17 development in Montana:

18 (a) research capability development;

19 (b) applied technological technology research;

20 (c) technology assistance and transfer and assistance;

21 and

22 (d) seed capital awards startup capital or expansion
 23 capital projects for development and commercialization of
 24 new innovative products and processes;

25 (4) (2) accept grants or receive devises of money or

1 property to be used in Montana for investments described in
2 loans made pursuant to this chapter; and

3 {5}{3} submit to the governor and the legislature a
4 report describing the board's programs and accomplishments
5 by November January 1 of each even-numbered odd-numbered
6 year or at the request of the governor;.

7 {6}--adopt--rules--necessary--to--implement--the--provisions
8 of--this--chapter,--including--but--not--limited--to--rules:

9 {a}--governing--the--conduct--of--board--business;

10 {b}--establishing--matching--fund--requirements--for
11 capability,--basic--research,--and--seed--capital--investment
12 programs;

13 {c}--establishing--criteria--for--determining--the
14 eligibility--of--projects--and--programs--for--technology
15 investments;

16 {d}--establishing--methods--of--committing--funds,--types
17 and--amounts--of--fees,--and--types--of--research--investments--to--be
18 made;--and

19 {7}--adopt--specific--goals--and--objectives--for--each
20 program--administered--by--the--board;."

21 **Section 19.** Section 90-3-301, MCA, is amended to read:

22 "90-3-301. Appropriation authority and funding --
23 matching funds. (1) The board has authority to accept and
24 expend all funds received by it as grants, donations, or
25 other private or public income. These funds are statutorily

1 appropriated as provided in 17-7-502. No award may be made
2 for activities for which matching funds or participation of
3 financial intermediaries is required until such funds have
4 been committed;

5 {2}--Dollar-for-dollar--matching--funds--are--required
6 prior--to--any--expenditure--of--state--funds--for--research
7 capability--development,--applied--technological--research,--or
8 seed--capital--awards--or--investments--provided--for--in--90-3-203;

9 {3}{2} The appropriations and investments loans made
10 to and by the board are in addition to and separate from
11 general fund appropriations to the university system and
12 other state agencies.

13 {3} A loan may not be made for a project for which
14 matching funds have not been received. Matching funds are
15 required prior to any expenditure of board funds for
16 research and development projects or seed capital projects.
17 The board may accept as matching funds those received by the
18 loan recipient within 1 year prior to the execution of the
19 loan agreement. The board may require additional matching
20 funds, depending on the capital need and the degree of risk
21 encountered in the science and technology development
22 project."

23 **Section 20.** Section 90-3-304, MCA, is amended to read:

24 "90-3-304. Accountability -- audits. {1}--The board
25 shall develop independent review and audit procedures to

~~ensure-that-investments-made-by-it-are-used-for-the-purposes
identified-in-its-investment-agreements-~~

~~{2}--The--board's-technology-investment-agreements-must
contain-provisions-considered--necessary--by--the--board--to
ensure--the--proper--inspection--and-review-of-projects,-the
attainment-of-project-goals,-and-the-maintenance-of-adequate
financial-records-by-recipients-of-board-funds-~~

{3} The board's books and records must be audited by
or at the direction of the legislative auditor. The
legislative auditor must shall conduct a performance audit
of the board's goals, objectives, and statutory duties prior
to the 51st 52nd legislative session and at such times as
determined necessary by the legislative audit committee. The
actual costs of audits must be paid from the board's funds."

Section 21. Section 2-18-103, MCA, is amended to read:

"2-18-103. Officers and employees excepted. Parts 1
and 2 do not apply to the following positions in state
government:

- (1) elected officials;
- (2) county assessors and their chief deputy;
- (3) officers and employees of the legislative branch;
- (4) judges and employees of the judicial branch;
- (5) members of boards and commissions appointed by the
governor, appointed by the legislature, or appointed by
other elected state officials;

(6) officers or members of the militia;

(7) agency heads appointed by the governor;

(8) academic and professional administrative personnel
with individual contracts under the authority of the board
of regents of higher education;

(9) academic and professional administrative personnel
and live-in houseparents who have entered into individual
contracts with the state school for the deaf and blind under
the authority of the state board of public education;

(10) teachers under the authority of the department of
institutions;

(11) investment officer, assistant investment officer,
executive director, and three professional staff positions
of the board of investments;

(12) four professional staff positions under the board
of oil and gas conservation; and

(13) assistant director for security of the Montana
state lottery; and

(14) executive director and senior investment officer
of the Montana board of science and technology development."

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

"17-6-308. Authorized investments. (1) The Except as
provided in subsection (4), the Montana in-state investment
fund must be invested as authorized by rules adopted by the
board. For purposes of this section, "investment" includes

1 the guaranty of loans or bonds in consideration for a fee,
2 in lieu of the actual acquisition of such loans or bonds.

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

19 (3) The board may make loans from the in-state
20 investment fund to the capital reserve account created
21 pursuant to 17-5-1515 and the guaranty fund created pursuant
22 to 17-5-1520 to establish balances or restore deficiencies
23 therein. The board may agree in connection with the issuance
24 of bonds or notes secured by such account or fund to make
25 such loans. Loans must be on such terms and conditions as

1 the board determines and must be repaid from revenues of the
2 board realized from the exercise of its powers under
3 17-5-1501 through 17-5-1529, subject to the prior pledge of
4 the revenues to the bonds and notes.

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

15 **Section 23.** 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).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424; 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111; 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501; 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101; 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136; 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103; section 13, House Bill No. 861, Laws of 1985; and section 1, Chapter 454, Laws of 1987.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount

sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for such payments. (In subsection (3): pursuant to sec. 15, Ch. 607, L. 1987, the inclusion of 15-65-121 terminates June 30, 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion of 39-71-2504 terminates June 30, 1991; and pursuant to sec. 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L. 1987, terminates July 1, 1988.)"

NEW SECTION. Section 24. Repealer. Sections 2-15-1810, 90-3-103, 90-3-302, and 90-3-401 through 90-3-420, MCA, are repealed.

NEW SECTION. Section 25. Codification instruction. (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 90, chapter 3, and the provisions of Title 90, chapter 3, apply to the provisions of [sections 1 through 15].

(2) [Section 16] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 16].

NEW SECTION. Section 26. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are

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1 severable from the invalid applications.

2 NEW SECTION. **Section 27.** Effective date. [This act]

3 is effective on passage and approval.

-End-