

HOUSE BILL 765

Introduced by Vincent, et al.

3/08	Introduced
3/09	Referred to Appropriations
3/10	Fiscal note Requested
3/16	Fiscal Note Received
3/17	Hearing
3/20	Committee Report--Bill Passed as Amended
3/22	2nd Reading Passed as Amended
3/23	3rd Reading Passed

Transmitted to Senate

3/27	Referred to Business & Industry
3/31	Fiscal Note Printed
4/07	Hearing
4/18	Committee Report--Bill Concurred as Amended
4/19	2nd Reading Concurred as Amended
4/19	Segregated From Committee of Whole Report
4/20	2nd Reading Concurred
4/20	3rd Reading Concurred
4/21	Reconsidered Previous Action
4/21	3rd Reading Failed

1 *House* BILL NO. *765*  
 2 INTRODUCED BY *Vincent Halloran - McCormick*  
 3 *James* *NATHAN T. FINE* *HARP* *Reynolds* *Bohner*  
 4 *Carl Smith* *Bob Brown* *Brade* *James*  
 5 *Paul* *Michael* *Clark* *Russell* *Spauld*  
 6 BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE  
 7 MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS  
 8 ADVISORY COUNCIL; PROVIDING A STATUTORY APPROPRIATION;  
 9 PROVIDING AN APPROPRIATION FROM THE IN-STATE INVESTMENT  
 10 FUND, REQUIRING A THREE-FOURTHS VOTE OF THE LEGISLATURE;  
 11 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE  
 12 DATE."

# STATEMENT OF INTENT

13 A statement of intent is required for this bill because  
 14 [sections 4 and 7] authorize the department of commerce to  
 15 make rules for the administration of the microbusiness  
 16 finance program and the nomination of candidates to the  
 17 microbusiness advisory council. In formulating the rules,  
 18 the department shall consider the provisions of all  
 19 applicable statutes and ensure that a certified  
 20 microbusiness development corporation receiving funds under  
 21 this program:

22 (1) is prepared and qualified:

23 (a) to provide or furnish access to management  
 24 training and technical assistance to loan applicants; and

25 (b) to conduct credit investigation and analysis and

1 revolving loan fund administration in a prudent and  
 2 professional manner; and

3 (2) has identified adequate sources of operating  
 4 income and has a sufficient market of prospective business  
 5 clients to provide for continuing operation of the  
 6 corporation and the use of its revolving loan fund capital.

7 The necessity to ensure management training capability  
 8 and prudent revolving loan fund administration must be  
 9 balanced against the requirement to achieve geographic and  
 10 rural-to-urban equity.

11 The intent of the Microbusiness Development Act is to  
 12 provide small loans, up to \$20,000, to borrowers with fewer  
 13 than 10 employees and less than \$500,000 gross income that  
 14 are engaged in separate projects. The security of  
 15 microbusiness loans made under this program is in part  
 16 dependent on diversification of the loan portfolios of  
 17 certified microbusiness development corporations. To provide  
 18 for prudent diversification of portfolios and prevent  
 19 overconcentration of lending to single businesses or  
 20 projects, a single loan or guarantee or the aggregate of all  
 21 loans and guarantees from a certified microbusiness  
 22 development corporation to a microbusiness borrower may not  
 23 exceed \$20,000. Similarly, single loans or guarantees or the  
 24 aggregate of all loans and guarantees to more than one  
 25 microbusiness engaged in a single project may not exceed

1 \$20,000. For example, several qualified microbusinesses  
 2 engaged in a single construction project or in common  
 3 production or marketing of a product or service may not  
 4 receive in the aggregate more than \$20,000 in loans and  
 5 guarantees from corporations that are recipients of  
 6 development loans under [sections 1 through 8].

7 In determining interest rates paid to the department by  
 8 certified microbusiness development corporations receiving  
 9 development loans, the department shall set rates that are  
 10 at least sufficient, when the development loan fund is fully  
 11 invested in development loans, to cover the department's  
 12 administrative costs of the microbusiness finance program.  
 13 Because the financial return to the state from this program  
 14 is in increased tax revenues from job generation and the  
 15 certified microbusiness development corporations bear the  
 16 costs for training, credit investigation, loan servicing,  
 17 and management oversight, rates generally must be kept at  
 18 the minimum necessary to provide for administrative costs  
 19 and provide the corporations with an interest earnings  
 20 spread to be used for their own operating expenses. However,  
 21 the department may charge higher rates to corporations with  
 22 clearly sufficient sources of operating income other than  
 23 net interest earnings on development loan funds.

24 To provide for the intended investment and reinvestment  
 25 of development loan funds, rather than short-term return of

1 principal to the development loan fund, development loans  
 2 generally must be interest-only loans, renewable at terms  
 3 not to exceed 8 years. When the department, at its  
 4 discretion, chooses not to renew an interest-only  
 5 development loan that has come to term and the corporation  
 6 receiving the loan has administered its funds according to  
 7 the program's criteria, the department shall attempt to  
 8 negotiate an amortization schedule for repaying the loan  
 9 that does not disrupt the operations or earnings of the  
 10 corporation. The department may consider the availability of  
 11 alternate sources of loan capital and operating income to a  
 12 certified microbusiness development corporation in  
 13 determining whether to renew interest-only term loans and  
 14 whether the intent of [sections 1 through 8] is best served  
 15 by originating a particular development loan as an  
 16 amortization or term loan, renewable or callable.

17 When the department establishes maximum interest rates  
 18 that certified microbusiness development corporations may  
 19 charge on microbusiness loans, it shall attempt to ensure  
 20 that microbusinesses are not charged rates in excess of  
 21 prevailing market rates for loans of similar nature, term,  
 22 and risk. Similarly, when the department establishes minimum  
 23 interest rates on microbusiness loans, it shall consider  
 24 prevailing market conditions in attempting to ensure that  
 25 certified microbusiness development corporations are earning

1 a sufficient return, on a portfolio basis, to provide for  
2 operating expenses and risk of loan losses.

3 To conform with the intent of [sections 1 through 8] to  
4 foster value added activities and diversification of  
5 Montana's economy, a loan under this program may not be made  
6 for basic agricultural production. Furthermore, a loan may  
7 not be made for the purpose of purchasing securities,  
8 stocks, bonds, or other property not intended for use in  
9 production by the borrower.

10 An enterprise primarily engaged in basic agricultural  
11 production or in finance, lending, or credit may receive a  
12 loan for the purpose of value added production or for other  
13 uses consistent with the purpose of [sections 1 through 8]  
14 if the enterprise is a qualified microbusiness.

15 To ensure that the membership of the microbusiness  
16 advisory council is representative of the widest range of  
17 interests in the state's business community, the legislature  
18 intends that the department solicit nominations from the  
19 district director of the United States small business  
20 administration and all concerned organizations, including  
21 but not limited to the Montana chamber of commerce, the  
22 Montana bankers' association, and the Montana economic  
23 development association. The legislature intends that the  
24 department strive to present a list of candidates for  
25 appointment that is balanced geographically and includes

1 both urban and rural communities of the state.

2

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

4 NEW SECTION. **Section 1.** Short title. [Sections 1  
5 through 8] may be cited as the "Microbusiness Development  
6 Act".

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

9 (a) it is the policy of the state to foster and  
10 encourage economic development within the state in order to  
11 promote the general welfare of the people;

12 (b) no program currently exists by which the state  
13 encourages and assists in the creation, development, and  
14 finance of businesses with fewer than 10 full-time  
15 equivalent employees and gross revenues of less than  
16 \$500,000 a year, which represent a significant component of  
17 and potential for growth in the state's economy; and

18 (c) the private sector does not satisfy the financial  
19 needs of these businesses because of the high cost and  
20 diseconomy of scale of making small loans.

21 (2) It is the purpose of [sections 1 through 8] to  
22 create a program to encourage and assist in the creation,  
23 development, and finance of businesses with fewer than 10  
24 full-time equivalent employees and gross revenues of less  
25 than \$500,000 a year.

1        **NEW SECTION. Section 3. Definitions.** As used in  
2 [sections 1 through 8], the following definitions apply:

3        (1) "Certified community lead organization" means an  
4 organization that has sponsored community certification  
5 under the certified communities program of the department.

6        (2) "Certified microbusiness development corporation"  
7 means a microbusiness development corporation certified  
8 pursuant to [section 6].

9        (3) "Council" means the microbusiness advisory council  
10 established in [section 7].

11        (4) "Department" means the department of commerce  
12 provided for in 2-15-1801.

13        (5) "Development loan" means funds loaned to a  
14 certified microbusiness development corporation by the  
15 department for the purpose of making microbusiness loans  
16 under the provisions of [sections 1 through 8].

17        (6) "Microbusiness development corporation" means a  
18 nonprofit corporation organized and existing under the laws  
19 of the state, the purpose or primary function of which is to  
20 provide training, technical assistance, and access to  
21 capital for the startup or expansion of qualified  
22 microbusinesses.

23        (7) "Microbusiness loan" means a loan made from or  
24 guaranteed by a revolving loan fund contributed to by the  
25 microbusiness finance program.

1        (8) "Program" means the microbusiness finance program  
2 established in [section 4].

3        (9) "Qualified microbusiness" means a business  
4 enterprise located in the state that produces goods or  
5 provides services and has fewer than 10 full-time equivalent  
6 employees and annual gross revenues of less than \$500,000.

7        (10) "Revolving loan fund" means a fund required to be  
8 established by a certified microbusiness development  
9 corporation that receives a development loan.

10        **NEW SECTION. Section 4. Microbusiness finance program**  
11 -- powers and duties of department. There is a microbusiness  
12 finance program administered by the department. The  
13 department shall adopt rules to implement the provisions of  
14 [sections 1 through 8], including but not limited to:

15        (1) establishing criteria and procedures for  
16 certifying microbusiness development corporations;

17        (2) establishing criteria and procedures to select  
18 from competing development loan applications and to award  
19 development loans to certified microbusiness development  
20 corporations;

21        (3) establishing criteria and procedures to be  
22 followed by certified microbusiness development corporations  
23 that administer revolving loan funds supported by the  
24 program;

25        (4) determining the amount and method of computation

1 and payment of interest rates charged to recipients of  
2 development loans and specifying amortization schedules and  
3 other terms and conditions for development loans as may be  
4 necessary. However, the rate of interest may not be less  
5 than 3% a year.

6 (5) establishing criteria for determining  
7 nonperformance and declaring default in the administration  
8 of development loans and requiring the refund of defaulted  
9 development loan funds to the microbusiness development loan  
10 account;

11 (6) establishing criteria for satisfactory performance  
12 in development loan administration to determine eligibility  
13 for renewal of development loans or additional development  
14 loans; and

15 (7) establishing maximum and minimum interest rates  
16 that may be charged by certified microbusiness development  
17 corporations on microbusiness loans.

18 NEW SECTION. Section 5. Microbusiness development  
19 loan account and finance program -- administrative account  
20 -- criteria -- limitations. (1) There is a microbusiness  
21 development loan account in the state special revenue fund.  
22 The funds appropriated pursuant to [section 10] must be  
23 deposited into the account. The department may make  
24 development loans from the account in amounts not to exceed  
25 \$200,000 a loan to a certified microbusiness development

1 corporation. However, a certified microbusiness development  
2 corporation that provides services on a statewide basis as  
3 provided in [section 6(2)] may receive a development loan  
4 not to exceed \$350,000.

5 (2) There is a microbusiness finance program  
6 administrative account in the state special revenue fund.  
7 All interest received on development loans, service charges  
8 or fees received from certified microbusiness development  
9 corporations, grants, donations, and any other private or  
10 public income must be deposited in the account. Money in the  
11 administrative account may be transferred to the development  
12 loan account or be used to pay the costs of the program,  
13 including personnel, travel, equipment, supplies, consulting  
14 costs, and other operating expenses of the program.

15 (3) A certified microbusiness development corporation  
16 that receives a development loan may apply for an additional  
17 loan, subject to subsection (1), after 1 year following  
18 approval of the previous loan if the applicant meets the  
19 performance criteria established by the department.

20 (4) To establish the criteria for making development  
21 loans, the department shall consider:

22 (a) the plan for providing services to  
23 microbusinesses;

24 (b) the scope of services to be provided by the  
25 certified microbusiness development corporation;

1 (c) geographic representation of all regions of the  
2 state, including both urban and rural communities;  
3 (d) the ability of the corporation to provide business  
4 training and technical assistance to microbusiness clients;  
5 (e) the ability of the corporation, with its plan, to:  
6 (i) administer monitoring and financial oversight of  
7 recipients of microbusiness loans;  
8 (ii) administer a revolving loan fund; and  
9 (iii) investigate and qualify financing proposals and  
10 to service credit accounts; and  
11 (f) sources and sufficiency of operating funds for the  
12 certified microbusiness development corporation.  
13 (5) Development loan funds may be used by a certified  
14 microbusiness development corporation to:  
15 (a) satisfy matching fund requirements for other  
16 state, federal, or private grants;  
17 (b) establish a revolving loan fund from which the  
18 certified microbusiness development corporation may make  
19 loans to qualified microbusinesses, provided that a single  
20 loan does not exceed \$20,000 and the outstanding balance of  
21 all loans to a microbusiness or a project participated in by  
22 more than one microbusiness does not exceed \$20,000; or  
23 (c) establish a guarantee fund from which the  
24 certified microbusiness development corporation may  
25 guarantee loans made by financial institutions to qualified

1 microbusinesses. However, a single guarantee may not exceed  
2 \$20,000, and the aggregate of all guarantees to a  
3 microbusiness or a project participated in by more than one  
4 microbusiness may not exceed \$20,000.  
5 (6) Development loan funds may not:  
6 (a) be loaned for basic agricultural commodity  
7 production, relending, or investment in stocks, bonds, or  
8 other securities; or  
9 (b) be used to pay the operating costs of a certified  
10 microbusiness development corporation. However, interest  
11 income earned from the proceeds of a development loan may be  
12 used to pay operating expenses.  
13 (7) Certified microbusiness development corporations  
14 are required to match development loans from the program  
15 with contributions to their revolving loan fund from other  
16 sources on a ratio of at least \$1 from other sources for  
17 each \$3 from the program. Matching contributions may come  
18 from a public or private source other than the program and  
19 may be in the form of equity capital, loans, or grants.  
20 (8) Development loans must be made pursuant to a  
21 development loan agreement and may be amortization or term  
22 loans, bear interest at less than the market rate, be  
23 renewable or callable, and contain other terms and  
24 conditions considered appropriate by the department that are  
25 consistent with the purposes of [sections 1 through 8] and

1 rules promulgated to implement [sections 1 through 8].

2 (9) Each certified microbusiness development  
3 corporation that receives a development loan under [sections  
4 1 through 8] shall pay the cost of an audit of its  
5 operations to be conducted at least once every 2 years. The  
6 department shall designate an auditor to conduct the audit.

7 (10) A certified microbusiness development corporation  
8 that is in default for nonperformance under rules  
9 established by the department may be required to refund the  
10 outstanding balance of loans awarded prior to the default  
11 declaration. A development loan is secured by a first lien  
12 on the receivables of the corporation receiving the loan.

13 NEW SECTION. Section 6. Certification of  
14 microbusiness development corporations. The department may  
15 certify:

16 (1) a microbusiness development corporation when it  
17 determines that the corporation:

18 (a) has developed a viable plan for providing  
19 training, access to financing, and technical assistance for  
20 qualified microbusinesses;

21 (b) has broad-based community support as reflected by  
22 the membership of its board of directors; and

23 (c) has an adequate source of operating capital; or

24 (2) a statewide microbusiness development corporation  
25 when the department determines that:

1 (a) the corporation provides services to constituents  
2 throughout the state; and

3 (b) the corporation does not duplicate efforts of  
4 microbusiness development corporations within local  
5 communities.

6 NEW SECTION. Section 7. Microbusiness advisory  
7 council -- appointment of members -- organization. (1) There  
8 is a microbusiness advisory council in the department. The  
9 council is composed of 13 members appointed by the governor.  
10 The governor shall appoint the members from a list of  
11 candidates submitted by the director of the department after  
12 the department provides by rule for a process of requesting  
13 and receiving nominations from the public. No more than  
14 seven of the council members may live in the same  
15 congressional district. At least four members must be  
16 representatives of certified community lead organizations.  
17 At least two of the four representatives must reside in  
18 communities with a population of less than 15,000. At least  
19 four members must be owners of qualified microbusinesses as  
20 defined in [section 3].

21 (2) (a) At the first meeting of the council, lots must  
22 be drawn to determine six members whose terms expire June  
23 30, 1990, and seven members whose terms expire June 30,  
24 1991.

25 (b) Members serving terms beginning after the

1 expiration of the terms set in subsection (2)(a) shall serve  
2 2-year terms.

3 (c) A member appointed to fill an unexpired term shall  
4 serve until the term expires.

5 (3) The members of the council shall elect from among  
6 themselves a chairman and other officers as they determine  
7 necessary.

8 (4) The council shall meet at least once each quarter  
9 and more often as the chairman or a majority of the members  
10 determine necessary.

11 (5) Members of the council are not entitled to  
12 compensation for their services, except for reimbursement of  
13 expenses as provided in 2-18-501 through 2-18-503.

14 (6) The function of the council is to advise the  
15 department regarding the creation, operation, and  
16 maintenance of the program and the policies and operations  
17 affecting the certified microbusiness development  
18 corporations.

19 **NEW SECTION. Section 8. Authority to accept funds --**  
20 **statutory appropriation -- funding authorization.** (1) The  
21 department may accept grants, donations, and other private  
22 and public income, including payments of interest on loans  
23 made by the department under the provisions of [sections 1  
24 through 8] and fees charged by the department. The  
25 department shall deposit all money received under this

1 section in the microbusiness finance program administrative  
2 account established in [section 5].

3 (2) The money in the microbusiness finance program  
4 administrative account is statutorily appropriated to the  
5 department, as provided in 17-7-502, for the purposes stated  
6 in [sections 1 through 8].

7 **Section 9. Section 17-7-502, MCA, is amended to read:**

8 **"17-7-502. Statutory appropriations -- definition --**  
9 **requisites for validity.** (1) A statutory appropriation is an  
10 appropriation made by permanent law that authorizes spending  
11 by a state agency without the need for a biennial  
12 legislative appropriation or budget amendment.

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

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

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

21 (3) The following laws are the only laws containing  
22 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
23 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
24 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
25 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;

1 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;  
 2 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
 3 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
 4 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;  
 5 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;  
 6 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;  
 7 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;  
 8 [section 8]; section 13, House Bill No. 861, Laws of 1985;  
 9 and section 1, Chapter 454, Laws of 1987.

10 (4) There is a statutory appropriation to pay the  
 11 principal, interest, premiums, and costs of issuing, paying,  
 12 and securing all bonds, notes, or other obligations, as due,  
 13 that have been authorized and issued pursuant to the laws of  
 14 Montana. Agencies that have entered into agreements  
 15 authorized by the laws of Montana to pay the state  
 16 treasurer, for deposit in accordance with 17-2-101 through  
 17 17-2-107, as determined by the state treasurer, an amount  
 18 sufficient to pay the principal and interest as due on the  
 19 bonds or notes have statutory appropriation authority for  
 20 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
 21 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
 22 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
 23 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
 24 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
 25 1987, terminates July 1, 1988.)"

1 NEW SECTION. **Section 10.** Appropriation -- approval of  
 2 three-fourths of members required -- severability. (1)  
 3 Notwithstanding the provisions of 17-6-307 and 17-6-309 and  
 4 recognizing that the provisions of [sections 1 through 8]  
 5 are consistent with 17-6-304 and 17-6-305 and that [sections  
 6 1 through 8] will result in long-term benefits to the  
 7 economy of the state, there is appropriated to the  
 8 department of commerce from the in-state investment fund in  
 9 17-6-306 during the biennium beginning July 1, 1989,  
 10 \$2,200,000 for the microbusiness finance program established  
 11 in [section 4]. Funds appropriated from the in-state  
 12 investment fund must be deposited in the microbusiness  
 13 development loan account and are appropriated to the  
 14 department for the purpose of making development loans  
 15 pursuant to [sections 1 through 8].

16 (2) Because subsection (1) appropriates money from the  
 17 principal of the permanent coal tax trust fund, the  
 18 appropriation requires a vote of three-fourths of the  
 19 members of each house of the legislature.

20 (3) If [this act] is approved by a vote of less than  
 21 three-fourths of the members of each house, this section is  
 22 void and the remaining sections of [this act] are valid and  
 23 remain in effect in all valid applications upon enactment.

24 NEW SECTION. **Section 11.** Effective date. [This act]  
 25 is effective July 1, 1989.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

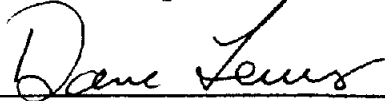
In compliance with a written request, there is hereby submitted a Fiscal Note for HB765, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

HB765 would create the Microbusiness Finance Program in the Department of Commerce, with an advisory council, a statutory appropriation for the state special revenue administrative account, and a \$2.2 million 1991 biennial appropriation from the in-state investment fund which would require a three-fourths vote of legislators.

ASSUMPTIONS:

1. This program will be operated by the Small Business Development Center (SBDC) of the Business Assistance Division in the Department of Commerce.
2. There will be a 1.00 FTE program officer and a 0.50 FTE secretary, plus operating expenses and equipment, with budget levels based on FY88 SBDC experience and the timeline assumed in No. 3 below.
3. The program timeline includes the following elements and assumptions: hire staff, organization of advisory council, adopt rules and policies, July - September 1989; issue first RFP, October 1989; three awards of \$200,000 each, December 1989; issue second RFP, February 1990; two awards of \$200,000 each, May 1990; issue third RFP, July 1990; three awards of \$200,000 each, October 1990; issue fourth RFP, December 1990; three awards of \$200,000 each, May 1991.
4. The FY90 awards total \$1,000,000 and the FY91 awards total \$1,200,000, based on numbers of local development organizations which already have expressed interest and are considered capable of demonstrating the required training and fiscal management capacity within the timeline.
5. The interest rate charged on development loan awards will be 4%, generating \$13,333 in FY90 and \$57,998 in FY91 for the statutorily appropriated administrative account.
6. Based on the award timeline and the current composite return of 8.15% on the in-state investment fund, the interest income loss will be approximately \$27,200 in FY90 and \$102,234 in FY91.
7. Based on nationwide statistical experience of revolving loan funds that combine management training with loans, it is projected there will be 1.00 FTE job for each \$5,000 in microbusiness loans, resulting in 200 jobs by the end of FY91 which would generate income tax revenue of \$56,520 in 1991. By 1992, the tax revenue is anticipated to be approximately \$150,720.
8. Based on nationwide statistics, the combined unemployment insurance and welfare caseload is projected to decrease by 36 in FY90 for a total savings of \$110,160 and by 60 in FY91 for a savings of \$183,600. These savings are not shown under fund impact below.
9. General fund will be appropriated for startup costs in the amount of \$65,030 in FY90 and \$18,675 in FY91. By FY92 the interest income of approximately \$88,000 per year from development loans will fully fund the program costs.
10. Coal trust fund interest collections will be \$42,251,000 in FY90 and \$44,130,000 in FY91 (REAC).
11. Income tax collections will be \$239,124,000 in FY90 and \$254,428,000 in FY91 (REAC), with 58.2% to the general fund, 31.8% to the foundation program and 10% to the sinking fund.

  
DAVE LEWIS, BUDGET DIRECTOR  
OFFICE OF BUDGET AND PROGRAM PLANNING

DATE 3/16/89

DATE 3/30/89  
JOHN VINCENT, PRIMARY SPONSOR

Fiscal Note for HB765, as introduced

**HB 765**

Fiscal Note Request HB765, as introduced

Form BD-15

Page 2

FISCAL IMPACT:Expenditures:

	Current	FY90		Current	FY91	
Dept. of Commerce	Law	Proposed	Difference	Law	Proposed	Difference
Personal Services	\$ -0-	\$ 38,536	\$ 38,536	\$ -0-	\$ 39,355	\$ 39,355
Operating Expenses	-0-	33,477	33,477	-0-	35,818	35,818
Equipment	-0-	6,350	6,350	-0-	1,500	1,500
Loans	-0-	1,000,000	1,000,000	-0-	1,200,000	1,200,000
Total	\$ -0-	\$ 1,078,363	\$1,078,363	\$ -0-	\$ 1,276,673	\$ 1,276,673

Funding:

General Fund	\$ -0	\$ 65,030	\$ 65,030	\$ -0-	\$ 18,675	\$ 18,675
SSR Admin. Fees	-0	13,333	13,333	-0-	57,998	57,998
Coal Tax	-0-	1,000,000	1,000,000	-0-	1,200,000	1,200,000
Total	\$ -0	\$ 1,078,360	\$1,078,360	\$ -0-	\$ 1,276,673	\$ 1,276,673

Fund Impact:

Coal Tax Perm. Trust	\$435,530,000	\$434,530,000	(\$1,000,000)	\$459,766,000	\$458,566,000	(\$1,200,000)
Coal Trust Interest	\$ 42,251,000	\$ 42,223,800	(\$ 27,200)	\$ 44,130,000	\$ 44,027,766	(\$ 102,234)

Income Tax:

To General Fund	\$139,170,000	\$139,170,000	\$ -0-	\$148,077,000	\$148,109,895	\$ 32,895
To Foundation Pgm.	\$ 76,042,000	\$ 76,042,000	\$ -0-	\$ 80,908,000	\$ 80,925,973	\$ 17,973
To Sinking Fund	\$ 23,912,000	\$ 23,912,000	\$ -0-	\$ 25,443,000	\$425,448,652	\$ 5,652

LONG-RANGE IMPACT OF PROPOSED LEGISLATION:

State income tax revenues, at an average of \$471 per job, will increase by approximately \$207,000 per year as a result of the first round of investment. Income taxes are projected to increase by about the same amount each time the fund is fully reinvested, which would occur approximately every three years.

HB 765

APPROVED BY COMMITTEE  
ON APPROPRIATIONS

## HOUSE BILL NO. 765

INTRODUCED BY VINCENT, HALLIGAN, CONNELLY, PIPINICH,  
LYNCH, PAVLOVICH, NATHE, FARRELL, B. BROWN, BROOKE,  
HARP, RASMUSSEN, DAVIS, KOEHNKE, DAILY,  
KILPATRICK, STICKNEY, RUSSELL, SPAETH

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE  
MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS  
ADVISORY COUNCIL; PROVIDING A STATUTORY APPROPRIATION;  
PROVIDING AN APPROPRIATION FROM THE IN-STATE INVESTMENT  
FUND, REQUIRING A THREE-FOURTHS VOTE OF THE LEGISLATURE;  
AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE  
DATE."

## STATEMENT OF INTENT

A statement of intent is required for this bill because  
[sections 4 and 7] authorize the department of commerce to  
make rules for the administration of the microbusiness  
finance program and the nomination of candidates to the  
microbusiness advisory council. In formulating the rules,  
the department shall consider the provisions of all  
applicable statutes and ensure that a certified  
microbusiness development corporation receiving funds under  
this program:

(1) is prepared and qualified:

(a) to provide or furnish access to management  
training and technical assistance to loan applicants; and  
(b) to conduct credit investigation and analysis and  
revolving loan fund administration in a prudent and  
professional manner; and

(2) has identified adequate sources of operating  
income and has a sufficient market of prospective business  
clients to provide for continuing operation of the  
corporation and the use of its revolving loan fund capital.

The necessity to ensure management training capability  
and prudent revolving loan fund administration must be  
balanced against the requirement to achieve geographic and  
rural-to-urban equity.

The intent of the Microbusiness Development Act is to  
provide small loans, up to ~~\$20,000~~ \$25,000, to borrowers  
with fewer than 10 employees and less than \$500,000 gross  
income that are engaged in separate projects. The security  
of microbusiness loans made under this program is in part  
dependent on diversification of the loan portfolios of  
certified microbusiness development corporations. To provide  
for prudent diversification of portfolios and prevent  
overconcentration of lending to single businesses or  
projects, a single loan or guarantee or the aggregate of all  
loans and guarantees from a certified microbusiness  
development corporation to a microbusiness borrower may not

1 exceed ~~\$20,000~~ \$25,000. Similarly, single loans or  
 2 guarantees or the aggregate of all loans and guarantees to  
 3 more than one microbusiness engaged in a single project may  
 4 not exceed ~~\$20,000~~ \$25,000. For example, several qualified  
 5 microbusinesses engaged in a single construction project or  
 6 in common production or marketing of a product or service  
 7 may not receive in the aggregate more than ~~\$20,000~~ \$25,000  
 8 in loans and guarantees from corporations that are  
 9 recipients of development loans under [sections 1 through  
 10 8].

11 In determining interest rates paid to the department by  
 12 certified microbusiness development corporations receiving  
 13 development loans, the department shall set rates that are  
 14 at least sufficient, when the development loan fund is fully  
 15 invested in development loans, to cover the department's  
 16 administrative costs of the microbusiness finance program.  
 17 Because the financial return to the state from this program  
 18 is in increased tax revenues from job generation and the  
 19 certified microbusiness development corporations bear the  
 20 costs for training, credit investigation, loan servicing,  
 21 and management oversight, rates generally must be kept at  
 22 the minimum necessary to provide for administrative costs  
 23 and provide the corporations with an interest earnings  
 24 spread to be used for their own operating expenses. However,  
 25 the department may charge higher rates to corporations with

1 clearly sufficient sources of operating income other than  
 2 net interest earnings on development loan funds.

3 To provide for the intended investment and reinvestment  
 4 of development loan funds, rather than short-term return of  
 5 principal to the development loan fund, development loans  
 6 generally must be interest-only loans, renewable at terms  
 7 not to exceed 8 years. When the department, at its  
 8 discretion, chooses not to renew an interest-only  
 9 development loan that has come to term and the corporation  
 10 receiving the loan has administered its funds according to  
 11 the program's criteria, the department shall attempt to  
 12 negotiate an amortization schedule for repaying the loan  
 13 that does not disrupt the operations or earnings of the  
 14 corporation. The department may consider the availability of  
 15 alternate sources of loan capital and operating income to a  
 16 certified microbusiness development corporation in  
 17 determining whether to renew interest-only term loans and  
 18 whether the intent of [sections 1 through 8] is best served  
 19 by originating a particular development loan as an  
 20 amortization or term loan, renewable or callable.

21 When the department establishes maximum interest rates  
 22 that certified microbusiness development corporations may  
 23 charge on microbusiness loans, it shall attempt to ensure  
 24 that microbusinesses are not charged rates in excess of  
 25 prevailing market rates for loans of similar nature, term,

1 and risk. Similarly, when the department establishes minimum  
2 interest rates on microbusiness loans, it shall consider  
3 prevailing market conditions in attempting to ensure that  
4 certified microbusiness development corporations are earning  
5 a sufficient return, on a portfolio basis, to provide for  
6 operating expenses and risk of loan losses.

7 To conform with the intent of [sections 1 through 8] to  
8 foster value added activities and diversification of  
9 Montana's economy, a loan under this program may not be made  
10 for basic agricultural production. Furthermore, a loan may  
11 not be made for the purpose of purchasing securities,  
12 stocks, bonds, or other property not intended for use in  
13 production by the borrower.

14 An enterprise primarily engaged in basic agricultural  
15 production or in finance, lending, or credit may receive a  
16 loan for the purpose of value added production or for other  
17 uses consistent with the purpose of [sections 1 through 8]  
18 if the enterprise is a qualified microbusiness.

19 To ensure that the membership of the microbusiness  
20 advisory council is representative of the widest range of  
21 interests in the state's business community, the legislature  
22 intends that the department solicit nominations from the  
23 district director of the United States small business  
24 administration and all concerned organizations, including  
25 but not limited to the Montana chamber of commerce, the

1 Montana bankers' association, and the Montana economic  
2 development association. The legislature intends that the  
3 department strive to present a list of candidates for  
4 appointment that is balanced geographically and includes  
5 both urban and rural communities of the state.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 NEW SECTION. **Section 1.** Short title. [Sections 1  
9 through 8] may be cited as the "Microbusiness Development  
10 Act".

11 NEW SECTION. **Section 2.** Legislative findings and  
12 purpose. (1) The legislature finds and declares that:

13 (a) it is the policy of the state to foster and  
14 encourage economic development within the state in order to  
15 promote the general welfare of the people;

16 (b) no program currently exists by which the state  
17 encourages and assists in the creation, development, and  
18 finance of businesses with fewer than 10 full-time  
19 equivalent employees and gross revenues of less than  
20 \$500,000 a year, which represent a significant component of  
21 and potential for growth in the state's economy; and

22 (c) the private sector does not satisfy the financial  
23 needs of these businesses because of the high cost and  
24 diseconomy of scale of making small loans.

25 {2}--It-is-the-purpose-of-{sections--1--through--8}--to

~~create--a--program--to--encourage--and--assist--in--the--creation,  
development--and--finance--of--businesses--with--fewer--than--10  
full-time--equivalent--employees--and--gross--revenues--of--less  
than--\$500,000--a--year.~~

(2) IT IS THE PURPOSE OF [THIS ACT] TO TEST THE DESIGN  
AND FEASIBILITY OF A PROGRAM TO ENCOURAGE AND ASSIST IN THE  
CREATION, DEVELOPMENT, AND FINANCE OF BUSINESSES WITH FEWER  
THAN 10 FULL-TIME EQUIVALENT EMPLOYEES AND GROSS REVENUES OF  
LESS THAN \$500,000 A YEAR. THE MICROBUSINESS FINANCE PROGRAM  
CREATED IN [SECTION 4] IS INTENDED AS A PILOT PROJECT,  
RESTRICTED TO A MAXIMUM OF SIX PROJECT OPERATORS, FUNDED TO  
A MAXIMUM OF \$250,000 EACH, FOR A PERIOD OF 4 YEARS FROM  
[THE EFFECTIVE DATE OF THIS ACT], AFTER WHICH PERIOD  
REPAYMENT OF FUNDS MADE AVAILABLE UNDER THIS PROGRAM MUST  
COMMENCE.

(3) IT IS INTENDED THAT THE PROCESS OF CERTIFICATION  
OF MICROBUSINESS DEVELOPMENT CORPORATIONS AND SELECTION  
AMONG COMPETING PROPOSALS FOR DEVELOPMENT LOANS BE AN OPEN  
AND COMPETITIVE PROCESS, ALLOWING ACCESS TO THE COMPETITION  
TO ALL INTERESTED COMMUNITIES AND ORGANIZATIONS AND  
SELECTING FOR AWARD OF DEVELOPMENT LOANS THOSE PROJECTS THAT  
ARE BEST QUALIFIED ACCORDING TO THE CRITERIA ESTABLISHED  
UNDER [SECTIONS 4 THROUGH 6].

NEW SECTION. Section 3. Definitions. As used in  
[sections 1 through 8], the following definitions apply:

(1) "Certified community lead organization" means an  
organization that has sponsored community certification  
under the certified communities program of the department.

(2) "Certified microbusiness development corporation"  
means a microbusiness development corporation certified  
pursuant to [section 6].

(3) "Council" means the microbusiness advisory council  
established in [section 7].

(4) "Department" means the department of commerce  
provided for in 2-15-1801.

(5) "Development loan" means funds loaned to a  
certified microbusiness development corporation by the  
department for the purpose of making microbusiness loans  
under the provisions of [sections 1 through 8].

(6) "Microbusiness development corporation" means a  
nonprofit corporation organized and existing under the laws  
of the state, the purpose or primary function of which is to  
provide training, technical assistance, and access to  
capital for the startup or expansion of qualified  
microbusinesses.

(7) "Microbusiness loan" means a loan made from or  
guaranteed by a revolving loan fund contributed to by the  
microbusiness finance program.

(8) "Program" means the microbusiness finance program  
established in [section 4].

(9) "Qualified microbusiness" means a business enterprise located in the state that produces goods or provides services and has fewer than 10 full-time equivalent employees and annual gross revenues of less than \$500,000.

(10) "Revolving loan fund" means a fund required to be established by a certified microbusiness development corporation that receives a development loan.

**NEW SECTION. Section 4. Microbusiness finance program**

-- powers and duties of department. There is a microbusiness finance program administered by the department. The department shall adopt rules to implement the provisions of [sections 1 through 8], including but not limited to:

(1) establishing criteria and procedures for certifying microbusiness development corporations;

(2) establishing criteria and procedures to select from competing development loan applications and to award development loans to certified microbusiness development corporations;

(3) establishing criteria and procedures to be followed by certified microbusiness development corporations that administer revolving loan funds supported by the program;

(4) determining the amount and method of computation and payment of interest rates charged to recipients of development loans and specifying amortization schedules and

other terms and conditions for development loans as may be necessary. However, the rate of interest may not be less than 3% a year.

(5) establishing criteria for determining nonperformance and declaring default in the administration of development loans and requiring the refund of defaulted development loan funds to the microbusiness development loan account;

(6) establishing criteria for satisfactory performance in development loan administration to determine eligibility for renewal of development loans or additional development loans; and

(7) establishing maximum and minimum interest rates that may be charged by certified microbusiness development corporations on microbusiness loans.

**NEW SECTION. Section 5. Microbusiness development loan account and finance program -- administrative account -- criteria -- limitations.** (1) There is a microbusiness development loan account in the state special revenue fund. The funds appropriated pursuant to [section 10] must be deposited into the account. The department may make development loans from the account in amounts not to exceed ~~\$200,000~~ \$250,000 a loan to a certified microbusiness development corporation. ~~However, a certified microbusiness development corporation that provides services on a~~

1 statewide--basis-as-provided-in-{section-6(2)}-may-receive-a  
2 development-loan-not-to-exceed-\$950,000:

3 (2) There is a microbusiness finance program  
4 administrative account in the state special revenue fund.  
5 All interest received on development loans, service charges  
6 or fees received from certified microbusiness development  
7 corporations, grants, donations, and any other private or  
8 public income must be deposited in the account. Money in the  
9 administrative account may be transferred to the development  
10 loan account or be used to pay the costs of the program,  
11 including personnel, travel, equipment, supplies, consulting  
12 costs, and other operating expenses of the program.

13 (3) A certified microbusiness development corporation  
14 that receives a development loan may apply for an additional  
15 loan, subject to subsection (1), after 1 year following  
16 approval of the previous loan if the applicant meets the  
17 performance criteria established by the department.

18 (4) To establish the criteria for making development  
19 loans, the department shall consider:

20 (a) the plan for providing services to  
21 microbusinesses;

22 (b) the scope of services to be provided by the  
23 certified microbusiness development corporation;

24 (c) geographic representation of all regions of the  
25 state, including both urban and rural communities;

1 (d) the ability of the corporation to provide business  
2 training and technical assistance to microbusiness clients;

3 (e) the ability of the corporation, with its plan, to:  
4 (i) administer monitoring and financial oversight of  
5 recipients of microbusiness loans;

6 (ii) administer a revolving loan fund; and

7 (iii) investigate and qualify financing proposals and  
8 to service credit accounts; and

9 (f) sources and sufficiency of operating funds for the  
10 certified microbusiness development corporation.

11 (5) Development loan funds may be used by a certified  
12 microbusiness development corporation to:

13 (a) satisfy matching fund requirements for other  
14 state, federal, or private grants;

15 (b) establish a revolving loan fund from which the  
16 certified microbusiness development corporation may make  
17 loans to qualified microbusinesses, provided that a single  
18 loan does not exceed ~~\$20,000~~ \$25,000 and the outstanding  
19 balance of all loans to a microbusiness or a project  
20 participated in by more than one microbusiness does not  
21 exceed ~~\$20,000~~ \$25,000; or

22 (c) establish a guarantee fund from which the  
23 certified microbusiness development corporation may  
24 guarantee loans made by financial institutions to qualified  
25 microbusinesses. However, a single guarantee may not exceed

1     \$20,000 \$25,000, and the aggregate of all guarantees to a  
 2     microbusiness or a project participated in by more than one  
 3     microbusiness may not exceed \$20,000 \$25,000.

4     (6) Development loan funds may not:

5     (a) be loaned for basic agricultural commodity  
 6     production, relending, or investment in stocks, bonds, or  
 7     other securities; or

8     (b) be used to pay the operating costs of a certified  
 9     microbusiness development corporation. However, interest  
 10    income earned from the proceeds of a development loan may be  
 11    used to pay operating expenses.

12    (7) Certified microbusiness development corporations  
 13    are required to match development loans from the program  
 14    with contributions to their revolving loan fund from other  
 15    sources on a ratio of at least \$1 from other sources for  
 16    each \$3 from the program. Matching contributions may come  
 17    from a public or private source other than the program and  
 18    may be in the form of equity capital, loans, or grants.

19    (8) Development loans must be made pursuant to a  
 20    development loan agreement and may be amortization or term  
 21    loans, bear interest at less than the market rate, be  
 22    renewable or callable, and contain other terms and  
 23    conditions considered appropriate by the department that are  
 24    consistent with the purposes of [sections 1 through 8] and  
 25    rules promulgated to implement [sections 1 through 8].

1     (9) Each certified microbusiness development  
 2     corporation that receives a development loan under [sections  
 3     1 through 8] shall pay the cost of an audit of its  
 4     operations to be conducted at least once every 2 years. The  
 5     department shall designate an auditor to conduct the audit.

6     (10) A certified microbusiness development corporation  
 7     that is in default for nonperformance under rules  
 8     established by the department may be required to refund the  
 9     outstanding balance of loans awarded prior to the default  
 10    declaration. A development loan is secured by a first lien  
 11    on the receivables of the corporation receiving the loan.

12    NEW SECTION. **Section 6. Certification** **of**  
 13    **microbusiness development corporations.** The department may  
 14    certify:

15    (1) a microbusiness development corporation when it  
 16    determines that the corporation:

17    (a) has developed a viable plan for providing  
 18    training, access to financing, and technical assistance for  
 19    qualified microbusinesses;

20    (b) has broad-based community support as reflected by  
 21    the membership of its board of directors; and

22    (c) has an adequate source of operating capital; or

23    (2) a statewide microbusiness development corporation  
 24    when the department determines that:

25    (a) the corporation provides services to constituents

1 throughout the state; and

2 (b) the corporation does not duplicate efforts of  
3 microbusiness development corporations within local  
4 communities.

5 NEW SECTION. Section 7. Microbusiness advisory  
6 council -- appointment of members -- organization. (1) There  
7 is a microbusiness advisory council in the department. The  
8 council is composed of 13 members appointed by the governor.  
9 The governor shall appoint the members from a list of  
10 candidates submitted by the director of the department after  
11 the department provides by rule for a process of requesting  
12 and receiving nominations from the public. No more than  
13 seven of the council members may live in the same  
14 congressional district. At least four members must be  
15 representatives of certified community lead organizations.  
16 At least two of the four representatives must reside in  
17 communities with a population of less than 15,000. At least  
18 four members must be owners of qualified microbusinesses as  
19 defined in [section 3].

20 (2) (a) At the first meeting of the council, lots must  
21 be drawn to determine six members whose terms expire June  
22 30, 1990, and seven members whose terms expire June 30,  
23 1991.

24 (b) Members serving terms beginning after the  
25 expiration of the terms set in subsection (2)(a) shall serve

1 2-year terms.

2 (c) A member appointed to fill an unexpired term shall  
3 serve until the term expires.

4 (3) The members of the council shall elect from among  
5 themselves a chairman and other officers as they determine  
6 necessary.

7 (4) The council shall meet at least once each quarter  
8 and more often as the chairman or a majority of the members  
9 determine necessary.

10 (5) Members of the council are not entitled to  
11 compensation for their services, except for reimbursement of  
12 expenses as provided in 2-18-501 through 2-18-503.

13 (6) The function of the council is to advise the  
14 department regarding the creation, operation, and  
15 maintenance of the program and the policies and operations  
16 affecting the certified microbusiness development  
17 corporations.

18 NEW SECTION. Section 8. Authority to accept funds --  
19 statutory appropriation -- funding authorization. (1) The  
20 department may accept grants, donations, and other private  
21 and public income, including payments of interest on loans  
22 made by the department under the provisions of [sections 1  
23 through 8] and fees charged by the department. The  
24 department shall deposit all money received under this  
25 section in the microbusiness finance program administrative

1 account established in [section 5].

2 (2) The money in the microbusiness finance program  
3 administrative account is statutorily appropriated to the  
4 department, as provided in 17-7-502, for the purposes stated  
5 in [sections 1 through 8].

6 **Section 9.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

20 (3) The following laws are the only laws containing  
21 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
22 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
23 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
24 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
25 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;

1 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
2 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
3 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;  
4 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;  
5 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;  
6 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;  
7 [section 8]; section 13, House Bill No. 861, Laws of 1985;  
8 and section 1, Chapter 454, Laws of 1987.

9 (4) There is a statutory appropriation to pay the  
10 principal, interest, premiums, and costs of issuing, paying,  
11 and securing all bonds, notes, or other obligations, as due,  
12 that have been authorized and issued pursuant to the laws of  
13 Montana. Agencies that have entered into agreements  
14 authorized by the laws of Montana to pay the state  
15 treasurer, for deposit in accordance with 17-2-101 through  
16 17-2-107, as determined by the state treasurer, an amount  
17 sufficient to pay the principal and interest as due on the  
18 bonds or notes have statutory appropriation authority for  
19 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
20 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
21 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
22 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
23 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
24 1987, terminates July 1, 1988.)"

25 NEW SECTION. **Section 10.** Appropriation -- approval of

1 three-fourths of members required -- severability. (1)  
 2 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 3 recognizing that the provisions of [sections 1 through 8]  
 4 are consistent with 17-6-304 and 17-6-305 and that [sections  
 5 1 through 8] will result in long-term benefits to the  
 6 economy of the state, there is appropriated to the  
 7 department of commerce from the in-state investment fund in  
 8 17-6-306 during the biennium beginning July 1, 1989,  
 9 ~~\$2,200,000~~ \$1,500,000 for the microbusiness finance program  
 10 established in [section 4]. Funds appropriated from the  
 11 in-state investment fund must be deposited in the  
 12 microbusiness development loan account and are appropriated  
 13 to the department for the purpose of making development  
 14 loans pursuant to [sections 1 through 8].

15 (2) Because subsection (1) appropriates money from the  
 16 principal of the permanent coal tax trust fund, the  
 17 appropriation requires a vote of three-fourths of the  
 18 members of each house of the legislature.

19 (3) If [this act] is approved by a vote of less than  
 20 three-fourths of the members of each house, this section is  
 21 void and the remaining sections of [this act] are valid and  
 22 remain in effect in all valid applications upon enactment.

23 NEW SECTION. SECTION 11. SUNSET PROVISION -- AUDIT  
 24 AND EVALUATION OF THE MICROBUSINESS FINANCE PROGRAM --  
 25 REPAYMENT OF DEVELOPMENT LOANS -- REVERSION OF PROGRAM FUNDS

1 TO GENERAL FUND. (1) AN AUDIT, AN ANALYSIS OF COSTS AND  
 2 BENEFITS, AND AN EVALUATION OF THE MICROBUSINESS FINANCE  
 3 PROGRAM MUST BE CONDUCTED BY THE OFFICE OF THE LEGISLATIVE  
 4 AUDITOR, BEGINNING OCTOBER 1, 1992, AND THE FINDINGS OF THIS  
 5 AUDIT, ANALYSIS, AND EVALUATION MUST BE REPORTED TO THE  
 6 LEGISLATURE NO LATER THAN JANUARY 15, 1993.

7 (2) NO DEVELOPMENT LOANS MAY BE MADE AFTER JUNE 30,  
 8 1992.

9 (3) ALL INTEREST-ONLY DEVELOPMENT LOANS MADE BY THE  
 10 DEPARTMENT MUST HAVE TERMS ENDING NO LATER THAN JUNE 30,  
 11 1993.

12 (4) AMORTIZATION SCHEDULES FOR REPAYMENT OF ALL  
 13 DEVELOPMENT LOAN FUNDS TO THE DEVELOPMENT LOAN ACCOUNT MUST  
 14 BE NEGOTIATED AND MUST BE IN EFFECT NO LATER THAN JUNE 30,  
 15 1993.

16 (5) ALL FUNDS IN THE DEVELOPMENT LOAN ACCOUNT ON JULY  
 17 1, 1993, AND ALL FUNDS DEPOSITED IN THAT ACCOUNT AFTER JULY  
 18 1, 1993, MUST REVERT TO THE GENERAL FUND.

19 (6) THE MICROBUSINESS FINANCE PROGRAM MUST CONTINUE IN  
 20 EXISTENCE UNTIL JUNE 30, 1996, FOR THE PURPOSE OF WINDING UP  
 21 ITS AFFAIRS AND COLLECTING REPAYMENTS OF DEVELOPMENT LOAN  
 22 FUNDS.

23 (7) ON JULY 1, 1996, OR WHEN ALL DEVELOPMENT LOAN  
 24 FUNDS HAVE BEEN COLLECTED OR RECOGNIZED AS LOAN LOSSES,  
 25 WHICHEVER DATE IS EARLIER, ALL FUNDS IN THE MICROBUSINESS

1 FINANCE PROGRAM ADMINISTRATIVE ACCOUNT MUST REVERT TO THE  
2 GENERAL FUND.

3 NEW SECTION. **Section 12.** Effective date. [This act]  
4 is effective July 1, 1989.

-End-

## 1 HOUSE BILL NO. 765

2 INTRODUCED BY VINCENT, HALLIGAN, CONNELLY, PIPINICH,  
3 LYNCH, PAVLOVICH, NATHE, FARRELL, B. BROWN, BROOKE,  
4 HARP, RASMUSSEN, DAVIS, KOEHNKE, DAILY,  
5 KILPATRICK, STICKNEY, RUSSELL, SPAETH

6  
7 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE  
8 MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS  
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11 FUND, REQUIRING A THREE-FOURTHS VOTE OF THE LEGISLATURE;  
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13 DATE."

14  
15 STATEMENT OF INTENT

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17 [sections 4 and 7] authorize the department of commerce to  
18 make rules for the administration of the microbusiness  
19 finance program and the nomination of candidates to the  
20 microbusiness advisory council. In formulating the rules,  
21 the department shall consider the provisions of all  
22 applicable statutes and ensure that a certified  
23 microbusiness development corporation receiving funds under  
24 this program:

25 (1) is prepared and qualified:

1 (a) to provide or furnish access to management  
2 training and technical assistance to loan applicants; and  
3 (b) to conduct credit investigation and analysis and  
4 revolving loan fund administration in a prudent and  
5 professional manner; and

6 (2) has identified adequate sources of operating  
7 income and has a sufficient market of prospective business  
8 clients to provide for continuing operation of the  
9 corporation and the use of its revolving loan fund capital.

10 The necessity to ensure management training capability  
11 and prudent revolving loan fund administration must be  
12 balanced against the requirement to achieve geographic and  
13 rural-to-urban equity.

14 The intent of the Microbusiness Development Act is to  
15 provide small loans, up to \$20,000 \$25,000, to borrowers  
16 with fewer than 10 employees and less than \$500,000 gross  
17 income that are engaged in separate projects. The security  
18 of microbusiness loans made under this program is in part  
19 dependent on diversification of the loan portfolios of  
20 certified microbusiness development corporations. To provide  
21 for prudent diversification of portfolios and prevent  
22 overconcentration of lending to single businesses or  
23 projects, a single loan or guarantee or the aggregate of all  
24 loans and guarantees from a certified microbusiness  
25 development corporation to a microbusiness borrower may not

1 exceed ~~\$20,000~~ \$25,000. Similarly, single loans or  
 2 guarantees or the aggregate of all loans and guarantees to  
 3 more than one microbusiness engaged in a single project may  
 4 not exceed ~~\$20,000~~ \$25,000. For example, several qualified  
 5 microbusinesses engaged in a single construction project or  
 6 in common production or marketing of a product or service  
 7 may not receive in the aggregate more than ~~\$20,000~~ \$25,000  
 8 in loans and guarantees from corporations that are  
 9 recipients of development loans under [sections 1 through  
 10 8].

11 In determining interest rates paid to the department by  
 12 certified microbusiness development corporations receiving  
 13 development loans, the department shall set rates that are  
 14 at least sufficient, when the development loan fund is fully  
 15 invested in development loans, to cover the department's  
 16 administrative costs of the microbusiness finance program.  
 17 Because the financial return to the state from this program  
 18 is in increased tax revenues from job generation and the  
 19 certified microbusiness development corporations bear the  
 20 costs for training, credit investigation, loan servicing,  
 21 and management oversight, rates generally must be kept at  
 22 the minimum necessary to provide for administrative costs  
 23 and provide the corporations with an interest earnings  
 24 spread to be used for their own operating expenses. However,  
 25 the department may charge higher rates to corporations with

1 clearly sufficient sources of operating income other than  
 2 net interest earnings on development loan funds.

3 To provide for the intended investment and reinvestment  
 4 of development loan funds, rather than short-term return of  
 5 principal to the development loan fund, development loans  
 6 generally must be interest-only loans, renewable at terms  
 7 not to exceed 8 years. When the department, at its  
 8 discretion, chooses not to renew an interest-only  
 9 development loan that has come to term and the corporation  
 10 receiving the loan has administered its funds according to  
 11 the program's criteria, the department shall attempt to  
 12 negotiate an amortization schedule for repaying the loan  
 13 that does not disrupt the operations or earnings of the  
 14 corporation. The department may consider the availability of  
 15 alternate sources of loan capital and operating income to a  
 16 certified microbusiness development corporation in  
 17 determining whether to renew interest-only term loans and  
 18 whether the intent of [sections 1 through 8] is best served  
 19 by originating a particular development loan as an  
 20 amortization or term loan, renewable or callable.

21 When the department establishes maximum interest rates  
 22 that certified microbusiness development corporations may  
 23 charge on microbusiness loans, it shall attempt to ensure  
 24 that microbusinesses are not charged rates in excess of  
 25 prevailing market rates for loans of similar nature, term,

and risk. Similarly, when the department establishes minimum interest rates on microbusiness loans, it shall consider prevailing market conditions in attempting to ensure that certified microbusiness development corporations are earning a sufficient return, on a portfolio basis, to provide for operating expenses and risk of loan losses.

To conform with the intent of [sections 1 through 8] to foster value added activities and diversification of Montana's economy, a loan under this program may not be made for basic agricultural production. Furthermore, a loan may not be made for the purpose of purchasing securities, stocks, bonds, or other property not intended for use in production by the borrower.

An enterprise primarily engaged in basic agricultural production or in finance, lending, or credit may receive a loan for the purpose of value added production or for other uses consistent with the purpose of [sections 1 through 8] if the enterprise is a qualified microbusiness.

To ensure that the membership of the microbusiness advisory council is representative of the widest range of interests in the state's business community, the legislature intends that the department solicit nominations from the district director of the United States small business administration and all concerned organizations, including but not limited to the Montana chamber of commerce, the

Montana bankers' association, and the Montana economic development association. The legislature intends that the department strive to present a list of candidates for appointment that is balanced geographically and includes both urban and rural communities of the state.

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

NEW SECTION. **Section 1.** Short title. [Sections 1 through 8] may be cited as the "Microbusiness Development Act".

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

(a) it is the policy of the state to foster and encourage economic development within the state in order to promote the general welfare of the people;

(b) no program currently exists by which the state encourages and assists in the creation, development, and finance of businesses with fewer than 10 full-time equivalent employees and gross revenues of less than \$500,000 a year, which represent a significant component of and potential for growth in the state's economy; and

(c) the private sector does not satisfy the financial needs of these businesses because of the high cost and diseconomy of scale of making small loans.

~~{2}--It is the purpose of {sections 1 through 8} to~~

1 ~~create--a--program--to--encourage--and--assist--in--the--creation,~~  
 2 ~~development--and--finance--of--businesses--with--fewer--than--10~~  
 3 ~~full-time--equivalent--employees--and--gross--revenues--of--less~~  
 4 ~~than--\$500,000--a--year.~~

5 (2) IT IS THE PURPOSE OF [THIS ACT] TO TEST THE DESIGN  
 6 AND FEASIBILITY OF A PROGRAM TO ENCOURAGE AND ASSIST IN THE  
 7 CREATION, DEVELOPMENT, AND FINANCE OF BUSINESSES WITH FEWER  
 8 THAN 10 FULL-TIME EQUIVALENT EMPLOYEES AND GROSS REVENUES OF  
 9 LESS THAN \$500,000 A YEAR. THE MICROBUSINESS FINANCE PROGRAM  
 10 CREATED IN [SECTION 4] IS INTENDED AS A PILOT PROJECT,  
 11 RESTRICTED TO A MAXIMUM OF SIX PROJECT OPERATORS, FUNDED TO  
 12 A MAXIMUM OF \$250,000 EACH, FOR A PERIOD OF 4 YEARS FROM  
 13 [THE EFFECTIVE DATE OF THIS ACT], AFTER WHICH PERIOD  
 14 REPAYMENT OF FUNDS MADE AVAILABLE UNDER THIS PROGRAM MUST  
 15 COMMENCE.

16 (3) IT IS INTENDED THAT THE PROCESS OF CERTIFICATION  
 17 OF MICROBUSINESS DEVELOPMENT CORPORATIONS AND SELECTION  
 18 AMONG COMPETING PROPOSALS FOR DEVELOPMENT LOANS BE AN OPEN  
 19 AND COMPETITIVE PROCESS, ALLOWING ACCESS TO THE COMPETITION  
 20 TO ALL INTERESTED COMMUNITIES AND ORGANIZATIONS AND  
 21 SELECTING FOR AWARD OF DEVELOPMENT LOANS THOSE PROJECTS THAT  
 22 ARE BEST QUALIFIED ACCORDING TO THE CRITERIA ESTABLISHED  
 23 UNDER [SECTIONS 4 THROUGH 6].

24 NEW SECTION. Section 3. Definitions. As used in  
 25 [sections 1 through 8], the following definitions apply:

1 (1) "Certified community lead organization" means an  
 2 organization that has sponsored community certification  
 3 under the certified communities program of the department.

4 (2) "Certified microbusiness development corporation"  
 5 means a microbusiness development corporation certified  
 6 pursuant to [section 6].

7 (3) "Council" means the microbusiness advisory council  
 8 established in [section 7].

9 (4) "Department" means the department of commerce  
 10 provided for in 2-15-1801.

11 (5) "Development loan" means funds loaned to a  
 12 certified microbusiness development corporation by the  
 13 department for the purpose of making microbusiness loans  
 14 under the provisions of [sections 1 through 8].

15 (6) "Microbusiness development corporation" means a  
 16 nonprofit corporation organized and existing under the laws  
 17 of the state, the purpose or primary function of which is to  
 18 provide training, technical assistance, and access to  
 19 capital for the startup or expansion of qualified  
 20 microbusinesses.

21 (7) "Microbusiness loan" means a loan made from or  
 22 guaranteed by a revolving loan fund contributed to by the  
 23 microbusiness finance program.

24 (8) "Program" means the microbusiness finance program  
 25 established in [section 4].

1 (9) "Qualified microbusiness" means a business  
2 enterprise located in the state that produces goods or  
3 provides services and has fewer than 10 full-time equivalent  
4 employees and annual gross revenues of less than \$500,000.

5 (10) "Revolving loan fund" means a fund required to be  
6 established by a certified microbusiness development  
7 corporation that receives a development loan.

8 NEW SECTION. Section 4. Microbusiness finance program  
9 -- powers and duties of department. There is a microbusiness  
10 finance program administered by the department. The  
11 department shall adopt rules to implement the provisions of  
12 [sections 1 through 8], including but not limited to:

13 (1) establishing criteria and procedures for  
14 certifying microbusiness development corporations;

15 (2) establishing criteria and procedures to select  
16 from competing development loan applications and to award  
17 development loans to certified microbusiness development  
18 corporations;

19 (3) establishing criteria and procedures to be  
20 followed by certified microbusiness development corporations  
21 that administer revolving loan funds supported by the  
22 program;

23 (4) determining the amount and method of computation  
24 and payment of interest rates charged to recipients of  
25 development loans and specifying amortization schedules and

1 other terms and conditions for development loans as may be  
2 necessary. However, the rate of interest may not be less  
3 than 3% a year.

4 (5) establishing criteria for determining  
5 nonperformance and declaring default in the administration  
6 of development loans and requiring the refund of defaulted  
7 development loan funds to the microbusiness development loan  
8 account;

9 (6) establishing criteria for satisfactory performance  
10 in development loan administration to determine eligibility  
11 for renewal of development loans or additional development  
12 loans; and

13 (7) establishing maximum and minimum interest rates  
14 that may be charged by certified microbusiness development  
15 corporations on microbusiness loans.

16 NEW SECTION. Section 5. Microbusiness development  
17 loan account and finance program -- administrative account  
18 -- criteria -- limitations. (1) There is a microbusiness  
19 development loan account in the state special revenue fund.  
20 The funds appropriated pursuant to [section 10] must be  
21 deposited into the account. The department may make  
22 development loans from the account in amounts not to exceed  
23 ~~\$200,000~~ \$250,000 a loan to a certified microbusiness  
24 development corporation. However, ~~a certified microbusiness~~  
25 ~~development corporation that provides services on~~

1 ~~statewide--basis-as-provided-in-{section-6(2)}--may-receive-a~~  
 2 ~~development-loan-not-to-exceed-\$350,000-~~

3 (2) There is a microbusiness finance program  
 4 administrative account in the state special revenue fund.  
 5 All interest received on development loans, service charges  
 6 or fees received from certified microbusiness development  
 7 corporations, grants, donations, and any other private or  
 8 public income must be deposited in the account. Money in the  
 9 administrative account may be transferred to the development  
 10 loan account or be used to pay the costs of the program,  
 11 including personnel, travel, equipment, supplies, consulting  
 12 costs, and other operating expenses of the program.

13 (3) A certified microbusiness development corporation  
 14 that receives a development loan may apply for an additional  
 15 loan, subject to subsection (1), after 1 year following  
 16 approval of the previous loan if the applicant meets the  
 17 performance criteria established by the department.

18 (4) To establish the criteria for making development  
 19 loans, the department shall consider:

20 (a) the plan for providing services to  
 21 microbusinesses;

22 (b) the scope of services to be provided by the  
 23 certified microbusiness development corporation;

24 (c) geographic representation of all regions of the  
 25 state, including both urban and rural communities;

1 (d) the ability of the corporation to provide business  
 2 training and technical assistance to microbusiness clients;

3 (e) the ability of the corporation, with its plan, to:

4 (i) administer monitoring and financial oversight of  
 5 recipients of microbusiness loans;

6 (ii) administer a revolving loan fund; and

7 (iii) investigate and qualify financing proposals and  
 8 to service credit accounts; and

9 (f) sources and sufficiency of operating funds for the  
 10 certified microbusiness development corporation.

11 (5) Development loan funds may be used by a certified  
 12 microbusiness development corporation to:

13 (a) satisfy matching fund requirements for other  
 14 state, federal, or private grants;

15 (b) establish a revolving loan fund from which the  
 16 certified microbusiness development corporation may make  
 17 loans to qualified microbusinesses, provided that a single  
 18 loan does not exceed \$20,000 \$25,000 and the outstanding  
 19 balance of all loans to a microbusiness or a project  
 20 participated in by more than one microbusiness does not  
 21 exceed \$20,000 \$25,000; or

22 (c) establish a guarantee fund from which the  
 23 certified microbusiness development corporation may  
 24 guarantee loans made by financial institutions to qualified  
 25 microbusinesses. However, a single guarantee may not exceed

1   \$20,000 \$25,000, and the aggregate of all guarantees to a  
2   microbusiness or a project participated in by more than one  
3   microbusiness may not exceed \$20,000 \$25,000.

4       (6) Development loan funds may not:

5       (a) be loaned for basic agricultural commodity  
6   production, relending, or investment in stocks, bonds, or  
7   other securities; or

8       (b) be used to pay the operating costs of a certified  
9   microbusiness development corporation. However, interest  
10   income earned from the proceeds of a development loan may be  
11   used to pay operating expenses.

12       (7) Certified microbusiness development corporations  
13   are required to match development loans from the program  
14   with contributions to their revolving loan fund from other  
15   sources on a ratio of at least \$1 from other sources for  
16   each \$3 from the program. Matching contributions may come  
17   from a public or private source other than the program and  
18   may be in the form of equity capital, loans, or grants.

19       (8) Development loans must be made pursuant to a  
20   development loan agreement and may be amortization or term  
21   loans, bear interest at less than the market rate, be  
22   renewable or callable, and contain other terms and  
23   conditions considered appropriate by the department that are  
24   consistent with the purposes of [sections 1 through 8] and  
25   rules promulgated to implement [sections 1 through 8].

1       (9) Each certified microbusiness development  
2   corporation that receives a development loan under [sections  
3   1 through 8] shall pay the cost of an audit of its  
4   operations to be conducted at least once every 2 years. The  
5   department shall designate an auditor to conduct the audit.

6       (10) A certified microbusiness development corporation  
7   that is in default for nonperformance under rules  
8   established by the department may be required to refund the  
9   outstanding balance of loans awarded prior to the default  
10   declaration. A development loan is secured by a first lien  
11   on the receivables of the corporation receiving the loan.

12       **NEW SECTION. Section 6.** Certification                   of  
13   microbusiness development corporations. The department may  
14   certify:

15       (1) a microbusiness development corporation when it  
16   determines that the corporation:

17       (a) has developed a viable plan for providing  
18   training, access to financing, and technical assistance for  
19   qualified microbusinesses;

20       (b) has broad-based community support as reflected by  
21   the membership of its board of directors; and

22       (c) has an adequate source of operating capital; or

23       (2) a statewide microbusiness development corporation  
24   when the department determines that:

25       (a) the corporation provides services to constituents

1 throughout the state; and

2 (b) the corporation does not duplicate efforts of  
3 microbusiness development corporations within local  
4 communities.

5 NEW SECTION. Section 7. Microbusiness advisory  
6 council -- appointment of members -- organization. (1) There  
7 is a microbusiness advisory council in the department. The  
8 council is composed of 13 members appointed by the governor.  
9 The governor shall appoint the members from a list of  
10 candidates submitted by the director of the department after  
11 the department provides by rule for a process of requesting  
12 and receiving nominations from the public. No more than  
13 seven of the council members may live in the same  
14 congressional district. At least four members must be  
15 representatives of certified community lead organizations.  
16 At least two of the four representatives must reside in  
17 communities with a population of less than 15,000. At least  
18 four members must be owners of qualified microbusinesses as  
19 defined in [section 3].

20 (2) (a) At the first meeting of the council, lots must  
21 be drawn to determine six members whose terms expire June  
22 30, 1990, and seven members whose terms expire June 30,  
23 1991.

24 (b) Members serving terms beginning after the  
25 expiration of the terms set in subsection (2)(a) shall serve

1 2-year terms.

2 (c) A member appointed to fill an unexpired term shall  
3 serve until the term expires.

4 (3) The members of the council shall elect from among  
5 themselves a chairman and other officers as they determine  
6 necessary.

7 (4) The council shall meet at least once each quarter  
8 and more often as the chairman or a majority of the members  
9 determine necessary.

10 (5) Members of the council are not entitled to  
11 compensation for their services, except for reimbursement of  
12 expenses as provided in 2-18-501 through 2-18-503.

13 (6) The function of the council is to advise the  
14 department regarding the creation, operation, and  
15 maintenance of the program and the policies and operations  
16 affecting the certified microbusiness development  
17 corporations.

18 NEW SECTION. Section 8. Authority to accept funds --  
19 statutory appropriation -- funding authorization. (1) The  
20 department may accept grants, donations, and other private  
21 and public income, including payments of interest on loans  
22 made by the department under the provisions of [sections 1  
23 through 8] and fees charged by the department. The  
24 department shall deposit all money received under this  
25 section in the microbusiness finance program administrative

1 account established in [section 5].

2 (2) The money in the microbusiness finance program  
3 administrative account is statutorily appropriated to the  
4 department, as provided in 17-7-502, for the purposes stated  
5 in [sections 1 through 8].

6 **Section 9.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

20 (3) The following laws are the only laws containing  
21 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
22 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
23 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
24 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
25 17-5-804; 19-8-504; 19-9-702; 19-9-1007; 19-10-205;

1 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
2 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
3 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;  
4 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;  
5 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;  
6 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;  
7 [section 8]; section 13, House Bill No. 861, Laws of 1985;  
8 and section 1, Chapter 454, Laws of 1987.

9 (4) There is a statutory appropriation to pay the  
10 principal, interest, premiums, and costs of issuing, paying,  
11 and securing all bonds, notes, or other obligations, as due,  
12 that have been authorized and issued pursuant to the laws of  
13 Montana. Agencies that have entered into agreements  
14 authorized by the laws of Montana to pay the state  
15 treasurer, for deposit in accordance with 17-2-101 through  
16 17-2-107, as determined by the state treasurer, an amount  
17 sufficient to pay the principal and interest as due on the  
18 bonds or notes have statutory appropriation authority for  
19 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
20 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
21 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
22 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
23 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
24 1987, terminates July 1, 1988.)"

25 NEW SECTION. **Section 10.** Appropriation -- approval of

1 three-fourths of members required -- severability. (1)  
 2 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 3 recognizing that the provisions of [sections 1 through 8]  
 4 are consistent with 17-6-304 and 17-6-305 and that [sections  
 5 1 through 8] will result in long-term benefits to the  
 6 economy of the state, there is appropriated to the  
 7 department of commerce from the in-state investment fund in  
 8 17-6-306 during the biennium beginning July 1, 1989,  
 9 ~~\$2,200,000~~ \$1,500,000 for the microbusiness finance program  
 10 established in [section 4]. Funds appropriated from the  
 11 in-state investment fund must be deposited in the  
 12 microbusiness development loan account and are appropriated  
 13 to the department for the purpose of making development  
 14 loans pursuant to [sections 1 through 8].

15 (2) Because subsection (1) appropriates money from the  
 16 principal of the permanent coal tax trust fund, the  
 17 appropriation requires a vote of three-fourths of the  
 18 members of each house of the legislature.

19 (3) If [this act] is approved by a vote of less than  
 20 three-fourths of the members of each house, this section is  
 21 void and the remaining sections of [this act] are valid and  
 22 remain in effect in all valid applications upon enactment.

23 NEW SECTION. SECTION 11. SUNSET PROVISION -- AUDIT  
 24 AND EVALUATION OF THE MICROBUSINESS FINANCE PROGRAM --  
 25 REPAYMENT OF DEVELOPMENT LOANS -- REVERSION OF PROGRAM FUNDS

1 TO GENERAL IN-STATE INVESTMENT FUND. (1) AN AUDIT, AN  
 2 ANALYSIS OF COSTS AND BENEFITS, AND AN EVALUATION OF THE  
 3 MICROBUSINESS FINANCE PROGRAM MUST BE CONDUCTED BY THE  
 4 OFFICE OF THE LEGISLATIVE AUDITOR, BEGINNING OCTOBER 1,  
 5 1992, AND THE FINDINGS OF THIS AUDIT, ANALYSIS, AND  
 6 EVALUATION MUST BE REPORTED TO THE LEGISLATURE NO LATER THAN  
 7 JANUARY 15, 1993.

8 (2) NO DEVELOPMENT LOANS MAY BE MADE AFTER JUNE 30,  
 9 1992.

10 (3) ALL INTEREST-ONLY DEVELOPMENT LOANS MADE BY THE  
 11 DEPARTMENT MUST HAVE TERMS ENDING NO LATER THAN JUNE 30,  
 12 1993.

13 (4) AMORTIZATION SCHEDULES FOR REPAYMENT OF ALL  
 14 DEVELOPMENT LOAN FUNDS TO THE DEVELOPMENT LOAN ACCOUNT MUST  
 15 BE NEGOTIATED AND MUST BE IN EFFECT NO LATER THAN JUNE 30,  
 16 1993.

17 (5) ALL FUNDS IN THE DEVELOPMENT LOAN ACCOUNT ON JULY  
 18 1, 1993, AND ALL FUNDS DEPOSITED IN THAT ACCOUNT AFTER JULY  
 19 1, 1993, MUST REVERT TO THE GENERAL IN-STATE INVESTMENT  
 20 FUND.

21 (6) THE MICROBUSINESS FINANCE PROGRAM MUST CONTINUE IN  
 22 EXISTENCE UNTIL JUNE 30, 1996, FOR THE PURPOSE OF WINDING UP  
 23 ITS AFFAIRS AND COLLECTING REPAYMENTS OF DEVELOPMENT LOAN  
 24 FUNDS.

25 (7) ON JULY 1, 1996, OR WHEN ALL DEVELOPMENT LOAN

HB 0765/03

1 FUNDS HAVE BEEN COLLECTED OR RECOGNIZED AS LOAN LOSSES,  
2 WHICHEVER DATE IS EARLIER, ALL FUNDS IN THE MICROBUSINESS  
3 FINANCE PROGRAM ADMINISTRATIVE ACCOUNT MUST REVERT TO THE  
4 GENERAL IN-STATE INVESTMENT FUND.

5 NEW SECTION. Section 12. Effective date. [This act]  
6 is effective July 1, 1989.

-End-

SENATE STANDING COMMITTEE REPORT

April 17, 1989

MR. PRESIDENT:

We, your committee on Business and Industry, having had under consideration HB 765 (third reading copy -- blue), respectfully report that HB 765 be amended and as so amended be concurred in:

Sponsor: Vincent (Meyer)

1. Page 7, line 11.

Strike: "SIX"

Insert: "three"

2. Page 19, line 9.

Strike: "\$1,500,000"

Insert: "\$750,000"

AND AS AMENDED BE CONCURRED IN

Signed: 

Gene Thayer, Chairman

SENATE  
HB 765

## 1 HOUSE BILL NO. 765

2 INTRODUCED BY VINCENT, HALLIGAN, CONNELLY, PIPINICH,  
3 LYNCH, PAVLOVICH, NATHE, FARRELL, B. BROWN, BROOKE,  
4 HARP, RASMUSSEN, DAVIS, KOEHNKE, DAILY,  
5 KILPATRICK, STICKNEY, RUSSELL, SPAETH  
6

7 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE  
8 MICROBUSINESS FINANCE PROGRAM; CREATING THE MICROBUSINESS  
9 ADVISORY COUNCIL; PROVIDING A STATUTORY APPROPRIATION;  
10 PROVIDING AN APPROPRIATION FROM THE IN-STATE INVESTMENT  
11 FUND, REQUIRING A THREE-FOURTHS VOTE OF THE LEGISLATURE;  
12 AMENDING SECTION 17-7-502, MCA; AND PROVIDING AN EFFECTIVE  
13 DATE."  
14

## 15 STATEMENT OF INTENT

16 A statement of intent is required for this bill because  
17 [sections 4 and 7] authorize the department of commerce to  
18 make rules for the administration of the microbusiness  
19 finance program and the nomination of candidates to the  
20 microbusiness advisory council. In formulating the rules,  
21 the department shall consider the provisions of all  
22 applicable statutes and ensure that a certified  
23 microbusiness development corporation receiving funds under  
24 this program:

25 (1) is prepared and qualified:

1 (a) to provide or furnish access to management  
2 training and technical assistance to loan applicants; and  
3 (b) to conduct credit investigation and analysis and  
4 revolving loan fund administration in a prudent and  
5 professional manner; and

6 (2) has identified adequate sources of operating  
7 income and has a sufficient market of prospective business  
8 clients to provide for continuing operation of the  
9 corporation and the use of its revolving loan fund capital.

10 The necessity to ensure management training capability  
11 and prudent revolving loan fund administration must be  
12 balanced against the requirement to achieve geographic and  
13 rural-to-urban equity.

14 The intent of the Microbusiness Development Act is to  
15 provide small loans, up to ~~\$20,000~~ \$25,000, to borrowers  
16 with fewer than 10 employees and less than \$500,000 gross  
17 income that are engaged in separate projects. The security  
18 of microbusiness loans made under this program is in part  
19 dependent on diversification of the loan portfolios of  
20 certified microbusiness development corporations. To provide  
21 for prudent diversification of portfolios and prevent  
22 overconcentration of lending to single businesses or  
23 projects, a single loan or guarantee or the aggregate of all  
24 loans and guarantees from a certified microbusiness  
25 development corporation to a microbusiness borrower may not

1 exceed ~~\$20,000~~ \$25,000. Similarly, single loans or  
 2 guarantees or the aggregate of all loans and guarantees to  
 3 more than one microbusiness engaged in a single project may  
 4 not exceed ~~\$20,000~~ \$25,000. For example, several qualified  
 5 microbusinesses engaged in a single construction project or  
 6 in common production or marketing of a product or service  
 7 may not receive in the aggregate more than ~~\$20,000~~ \$25,000  
 8 in loans and guarantees from corporations that are  
 9 recipients of development loans under [sections 1 through  
 10 8].

11 In determining interest rates paid to the department by  
 12 certified microbusiness development corporations receiving  
 13 development loans, the department shall set rates that are  
 14 at least sufficient, when the development loan fund is fully  
 15 invested in development loans, to cover the department's  
 16 administrative costs of the microbusiness finance program.  
 17 Because the financial return to the state from this program  
 18 is in increased tax revenues from job generation and the  
 19 certified microbusiness development corporations bear the  
 20 costs for training, credit investigation, loan servicing,  
 21 and management oversight, rates generally must be kept at  
 22 the minimum necessary to provide for administrative costs  
 23 and provide the corporations with an interest earnings  
 24 spread to be used for their own operating expenses. However,  
 25 the department may charge higher rates to corporations with

1 clearly sufficient sources of operating income other than  
 2 net interest earnings on development loan funds.

3 To provide for the intended investment and reinvestment  
 4 of development loan funds, rather than short-term return of  
 5 principal to the development loan fund, development loans  
 6 generally must be interest-only loans, renewable at terms  
 7 not to exceed 8 years. When the department, at its  
 8 discretion, chooses not to renew an interest-only  
 9 development loan that has come to term and the corporation  
 10 receiving the loan has administered its funds according to  
 11 the program's criteria, the department shall attempt to  
 12 negotiate an amortization schedule for repaying the loan  
 13 that does not disrupt the operations or earnings of the  
 14 corporation. The department may consider the availability of  
 15 alternate sources of loan capital and operating income to a  
 16 certified microbusiness development corporation in  
 17 determining whether to renew interest-only term loans and  
 18 whether the intent of [sections 1 through 8] is best served  
 19 by originating a particular development loan as an  
 20 amortization or term loan, renewable or callable.

21 When the department establishes maximum interest rates  
 22 that certified microbusiness development corporations may  
 23 charge on microbusiness loans, it shall attempt to ensure  
 24 that microbusinesses are not charged rates in excess of  
 25 prevailing market rates for loans of similar nature, term,

1 and risk. Similarly, when the department establishes minimum  
2 interest rates on microbusiness loans, it shall consider  
3 prevailing market conditions in attempting to ensure that  
4 certified microbusiness development corporations are earning  
5 a sufficient return, on a portfolio basis, to provide for  
6 operating expenses and risk of loan losses.

7 To conform with the intent of [sections 1 through 8] to  
8 foster value added activities and diversification of  
9 Montana's economy, a loan under this program may not be made  
10 for basic agricultural production. Furthermore, a loan may  
11 not be made for the purpose of purchasing securities,  
12 stocks, bonds, or other property not intended for use in  
13 production by the borrower.

14 An enterprise primarily engaged in basic agricultural  
15 production or in finance, lending, or credit may receive a  
16 loan for the purpose of value added production or for other  
17 uses consistent with the purpose of [sections 1 through 8]  
18 if the enterprise is a qualified microbusiness.

19 To ensure that the membership of the microbusiness  
20 advisory council is representative of the widest range of  
21 interests in the state's business community, the legislature  
22 intends that the department solicit nominations from the  
23 district director of the United States small business  
24 administration and all concerned organizations, including  
25 but not limited to the Montana chamber of commerce, the

1 Montana bankers' association, and the Montana economic  
2 development association. The legislature intends that the  
3 department strive to present a list of candidates for  
4 appointment that is balanced geographically and includes  
5 both urban and rural communities of the state.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 NEW SECTION. **Section 1.** Short title. [Sections 1  
9 through 8] may be cited as the "Microbusiness Development  
10 Act".

11 NEW SECTION. **Section 2.** Legislative findings and  
12 purpose. (1) The legislature finds and declares that:

13 (a) it is the policy of the state to foster and  
14 encourage economic development within the state in order to  
15 promote the general welfare of the people;

16 (b) no program currently exists by which the state  
17 encourages and assists in the creation, development, and  
18 finance of businesses with fewer than 10 full-time  
19 equivalent employees and gross revenues of less than  
20 \$500,000 a year, which represent a significant component of  
21 and potential for growth in the state's economy; and

22 (c) the private sector does not satisfy the financial  
23 needs of these businesses because of the high cost and  
24 diseconomy of scale of making small loans.

25 {2}--It-is-the-purpose-of-[sections--1--through--8]--to

1 create--a--program--to-encourage-and-assist-in-the-creation,  
2 development,--and-finance-of-businesses-with--fewer--than--10  
3 full-time--equivalent--employees--and-gross-revenues-of-less  
4 than-\$500,000-a-year.

5 (2) IT IS THE PURPOSE OF [THIS ACT] TO TEST THE DESIGN  
6 AND FEASIBILITY OF A PROGRAM TO ENCOURAGE AND ASSIST IN THE  
7 CREATION, DEVELOPMENT, AND FINANCE OF BUSINESSES WITH FEWER  
8 THAN 10 FULL-TIME EQUIVALENT EMPLOYEES AND GROSS REVENUES OF  
9 LESS THAN \$500,000 A YEAR. THE MICROBUSINESS FINANCE PROGRAM  
10 CREATED IN [SECTION 4] IS INTENDED AS A PILOT PROJECT,  
11 RESTRICTED TO A MAXIMUM OF SIX THREE PROJECT OPERATORS,  
12 FUNDED TO A MAXIMUM OF \$250,000 EACH, FOR A PERIOD OF 4  
13 YEARS FROM [THE EFFECTIVE DATE OF THIS ACT], AFTER WHICH  
14 PERIOD REPAYMENT OF FUNDS MADE AVAILABLE UNDER THIS PROGRAM  
15 MUST COMMENCE.

16 (3) IT IS INTENDED THAT THE PROCESS OF CERTIFICATION  
17 OF MICROBUSINESS DEVELOPMENT CORPORATIONS AND SELECTION  
18 AMONG COMPETING PROPOSALS FOR DEVELOPMENT LOANS BE AN OPEN  
19 AND COMPETITIVE PROCESS, ALLOWING ACCESS TO THE COMPETITION  
20 TO ALL INTERESTED COMMUNITIES AND ORGANIZATIONS AND  
21 SELECTING FOR AWARD OF DEVELOPMENT LOANS THOSE PROJECTS THAT  
22 ARE BEST QUALIFIED ACCORDING TO THE CRITERIA ESTABLISHED  
23 UNDER [SECTIONS 4 THROUGH 6].

24 NEW SECTION. Section 3. Definitions. As used in  
25 [sections 1 through 8], the following definitions apply:

1 (1) "Certified community lead organization" means an  
2 organization that has sponsored community certification  
3 under the certified communities program of the department.  
4 (2) "Certified microbusiness development corporation"  
5 means a microbusiness development corporation certified  
6 pursuant to [section 6].

7 (3) "Council" means the microbusiness advisory council  
8 established in [section 7].

9 (4) "Department" means the department of commerce  
10 provided for in 2-15-1801.

11 (5) "Development loan" means funds loaned to a  
12 certified microbusiness development corporation by the  
13 department for the purpose of making microbusiness loans  
14 under the provisions of [sections 1 through 8].

15 (6) "Microbusiness development corporation" means a  
16 nonprofit corporation organized and existing under the laws  
17 of the state, the purpose or primary function of which is to  
18 provide training, technical assistance, and access to  
19 capital for the startup or expansion of qualified  
20 microbusinesses.

21 (7) "Microbusiness loan" means a loan made from or  
22 guaranteed by a revolving loan fund contributed to by the  
23 microbusiness finance program.

24 (8) "Program" means the microbusiness finance program  
25 established in [section 4].

1 (9) "Qualified microbusiness" means a business  
2 enterprise located in the state that produces goods or  
3 provides services and has fewer than 10 full-time equivalent  
4 employees and annual gross revenues of less than \$500,000.

5 (10) "Revolving loan fund" means a fund required to be  
6 established by a certified microbusiness development  
7 corporation that receives a development loan.

8 **NEW SECTION. Section 4. Microbusiness finance program**  
9 -- powers and duties of department. There is a microbusiness  
10 finance program administered by the department. The  
11 department shall adopt rules to implement the provisions of  
12 [sections 1 through 8], including but not limited to:

13 (1) establishing criteria and procedures for  
14 certifying microbusiness development corporations;

15 (2) establishing criteria and procedures to select  
16 from competing development loan applications and to award  
17 development loans to certified microbusiness development  
18 corporations;

19 (3) establishing criteria and procedures to be  
20 followed by certified microbusiness development corporations  
21 that administer revolving loan funds supported by the  
22 program;

23 (4) determining the amount and method of computation  
24 and payment of interest rates charged to recipients of  
25 development loans and specifying amortization schedules and

1 other terms and conditions for development loans as may be  
2 necessary. However, the rate of interest may not be less  
3 than 3% a year.

4 (5) establishing criteria for determining  
5 nonperformance and declaring default in the administration  
6 of development loans and requiring the refund of defaulted  
7 development loan funds to the microbusiness development loan  
8 account;

9 (6) establishing criteria for satisfactory performance  
10 in development loan administration to determine eligibility  
11 for renewal of development loans or additional development  
12 loans; and

13 (7) establishing maximum and minimum interest rates  
14 that may be charged by certified microbusiness development  
15 corporations on microbusiness loans.

16 **NEW SECTION. Section 5. Microbusiness development**  
17 **loan account and finance program -- administrative account**  
18 **-- criteria -- limitations. (1) There is a microbusiness**  
19 **development loan account in the state special revenue fund.**  
20 **The funds appropriated pursuant to [section 10] must be**  
21 **deposited into the account. The department may make**  
22 **development loans from the account in amounts not to exceed**  
23 **~~\$200,000~~ \$250,000 a loan to a certified microbusiness**  
24 **development corporation. However, a certified microbusiness**  
25 **development--corporation--that--provides---services---on---a**

1 ~~statewide--basis-as-provided-in-{section-6(2)}--may-receive-a~~  
2 ~~development-loan-not-to-exceed-\$350,000.~~

3 (2) There is a microbusiness finance program  
4 administrative account in the state special revenue fund.  
5 All interest received on development loans, service charges  
6 or fees received from certified microbusiness development  
7 corporations, grants, donations, and any other private or  
8 public income must be deposited in the account. Money in the  
9 administrative account may be transferred to the development  
10 loan account or be used to pay the costs of the program,  
11 including personnel, travel, equipment, supplies, consulting  
12 costs, and other operating expenses of the program.

13 (3) A certified microbusiness development corporation  
14 that receives a development loan may apply for an additional  
15 loan, subject to subsection (1), after 1 year following  
16 approval of the previous loan if the applicant meets the  
17 performance criteria established by the department.

18 (4) To establish the criteria for making development  
19 loans, the department shall consider:

20 (a) the plan for providing services to  
21 microbusinesses;

22 (b) the scope of services to be provided by the  
23 certified microbusiness development corporation;

24 (c) geographic representation of all regions of the  
25 state, including both urban and rural communities;

1 (d) the ability of the corporation to provide business  
2 training and technical assistance to microbusiness clients;

3 (e) the ability of the corporation, with its plan, to:

4 (i) administer monitoring and financial oversight of  
5 recipients of microbusiness loans;

6 (ii) administer a revolving loan fund; and

7 (iii) investigate and qualify financing proposals and  
8 to service credit accounts; and

9 (f) sources and sufficiency of operating funds for the  
10 certified microbusiness development corporation.

11 (5) Development loan funds may be used by a certified  
12 microbusiness development corporation to:

13 (a) satisfy matching fund requirements for other  
14 state, federal, or private grants;

15 (b) establish a revolving loan fund from which the  
16 certified microbusiness development corporation may make  
17 loans to qualified microbusinesses, provided that a single  
18 loan does not exceed \$20,000 \$25,000 and the outstanding  
19 balance of all loans to a microbusiness or a project  
20 participated in by more than one microbusiness does not  
21 exceed \$20,000 \$25,000; or

22 (c) establish a guarantee fund from which the  
23 certified microbusiness development corporation may  
24 guarantee loans made by financial institutions to qualified  
25 microbusinesses. However, a single guarantee may not exceed

1 ~~\$20,000~~ \$25,000, and the aggregate of all guarantees to a  
2 microbusiness or a project participated in by more than one  
3 microbusiness may not exceed ~~\$20,000~~ \$25,000.

4 (6) Development loan funds may not:

5 (a) be loaned for basic agricultural commodity  
6 production, relending, or investment in stocks, bonds, or  
7 other securities; or

8 (b) be used to pay the operating costs of a certified  
9 microbusiness development corporation. However, interest  
10 income earned from the proceeds of a development loan may be  
11 used to pay operating expenses.

12 (7) Certified microbusiness development corporations  
13 are required to match development loans from the program  
14 with contributions to their revolving loan fund from other  
15 sources on a ratio of at least \$1 from other sources for  
16 each \$3 from the program. Matching contributions may come  
17 from a public or private source other than the program and  
18 may be in the form of equity capital, loans, or grants.

19 (8) Development loans must be made pursuant to a  
20 development loan agreement and may be amortization or term  
21 loans, bear interest at less than the market rate, be  
22 renewable or callable, and contain other terms and  
23 conditions considered appropriate by the department that are  
24 consistent with the purposes of [sections 1 through 8] and  
25 rules promulgated to implement [sections 1 through 8].

1 (9) Each certified microbusiness development  
2 corporation that receives a development loan under [sections  
3 1 through 8] shall pay the cost of an audit of its  
4 operations to be conducted at least once every 2 years. The  
5 department shall designate an auditor to conduct the audit.

6 (10) A certified microbusiness development corporation  
7 that is in default for nonperformance under rules  
8 established by the department may be required to refund the  
9 outstanding balance of loans awarded prior to the default  
10 declaration. A development loan is secured by a first lien  
11 on the receivables of the corporation receiving the loan.

12 NEW SECTION. **Section 6.** Certification of  
13 microbusiness development corporations. The department may  
14 certify:

15 (1) a microbusiness development corporation when it  
16 determines that the corporation:

17 (a) has developed a viable plan for providing  
18 training, access to financing, and technical assistance for  
19 qualified microbusinesses;

20 (b) has broad-based community support as reflected by  
21 the membership of its board of directors; and

22 (c) has an adequate source of operating capital; or

23 (2) a statewide microbusiness development corporation  
24 when the department determines that:

25 (a) the corporation provides services to constituents

1 throughout the state; and

2 (b) the corporation does not duplicate efforts of  
3 microbusiness development corporations within local  
4 communities.

5 NEW SECTION. Section 7. Microbusiness advisory  
6 council -- appointment of members -- organization. (1) There  
7 is a microbusiness advisory council in the department. The  
8 council is composed of 13 members appointed by the governor.  
9 The governor shall appoint the members from a list of  
10 candidates submitted by the director of the department after  
11 the department provides by rule for a process of requesting  
12 and receiving nominations from the public. No more than  
13 seven of the council members may live in the same  
14 congressional district. At least four members must be  
15 representatives of certified community lead organizations.  
16 At least two of the four representatives must reside in  
17 communities with a population of less than 15,000. At least  
18 four members must be owners of qualified microbusinesses as  
19 defined in [section 3].

20 (2) (a) At the first meeting of the council, lots must  
21 be drawn to determine six members whose terms expire June  
22 30, 1990, and seven members whose terms expire June 30,  
23 1991.

24 (b) Members serving terms beginning after the  
25 expiration of the terms set in subsection (2)(a) shall serve

1 2-year terms.

2 (c) A member appointed to fill an unexpired term shall  
3 serve until the term expires.

4 (3) The members of the council shall elect from among  
5 themselves a chairman and other officers as they determine  
6 necessary.

7 (4) The council shall meet at least once each quarter  
8 and more often as the chairman or a majority of the members  
9 determine necessary.

10 (5) Members of the council are not entitled to  
11 compensation for their services, except for reimbursement of  
12 expenses as provided in 2-18-501 through 2-18-503.

13 (6) The function of the council is to advise the  
14 department regarding the creation, operation, and  
15 maintenance of the program and the policies and operations  
16 affecting the certified microbusiness development  
17 corporations.

18 NEW SECTION. Section 8. Authority to accept funds --  
19 statutory appropriation -- funding authorization. (1) The  
20 department may accept grants, donations, and other private  
21 and public income, including payments of interest on loans  
22 made by the department under the provisions of [sections 1  
23 through 8] and fees charged by the department. The  
24 department shall deposit all money received under this  
25 section in the microbusiness finance program administrative

1 account established in [section 5].

2 (2) The money in the microbusiness finance program  
3 administrative account is statutorily appropriated to the  
4 department, as provided in 17-7-502, for the purposes stated  
5 in [sections 1 through 8].

6 **Section 9.** Section 17-7-502, MCA, is amended to read:

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

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

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

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

20 (3) The following laws are the only laws containing  
21 statutory appropriations: 2-9-202; 2-17-105; 2-18-812;  
22 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304;  
23 15-25-123; 15-31-702; 15-36-112; 15-65-121; 15-70-101;  
24 16-1-404; 16-1-410; 16-1-411; 17-3-212; 17-5-404; 17-5-424;  
25 17-5-804; 19-8-504; 19-9-702; 19-9-100; 19-10-205;

1 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606;  
2 19-12-301; 19-13-604; 20-4-109; 20-6-406; 20-8-111;  
3 23-5-610; 23-5-1027; 33-31-212; 33-31-401; 37-51-501;  
4 39-71-2504; 53-6-150; 53-24-206; 67-3-205; 75-1-1101;  
5 75-7-305; 76-12-123; 80-2-103; 80-2-228; 82-11-136;  
6 90-3-301; 90-3-302; 90-3-412; 90-4-215; 90-9-306; 90-15-103;  
7 [section 8]; section 13, House Bill No. 861, Laws of 1985;  
8 and section 1, Chapter 454, Laws of 1987.

9 (4) There is a statutory appropriation to pay the  
10 principal, interest, premiums, and costs of issuing, paying,  
11 and securing all bonds, notes, or other obligations, as due,  
12 that have been authorized and issued pursuant to the laws of  
13 Montana. Agencies that have entered into agreements  
14 authorized by the laws of Montana to pay the state  
15 treasurer, for deposit in accordance with 17-2-101 through  
16 17-2-107, as determined by the state treasurer, an amount  
17 sufficient to pay the principal and interest as due on the  
18 bonds or notes have statutory appropriation authority for  
19 such payments. (In subsection (3): pursuant to sec. 15, Ch.  
20 607, L. 1987, the inclusion of 15-65-121 terminates June 30,  
21 1989; pursuant to sec. 10, Ch. 664, L. 1987, the inclusion  
22 of 39-71-2504 terminates June 30, 1991; and pursuant to sec.  
23 6, Ch. 454, L. 1987, the inclusion of sec. 1, Ch. 454, L.  
24 1987, terminates July 1, 1988.)"

25 NEW SECTION. **Section 10.** Appropriation -- approval of

1 three-fourths of members required -- severability. (1)  
 2 Notwithstanding the provisions of 17-6-308 and 17-6-309 and  
 3 recognizing that the provisions of [sections 1 through 8]  
 4 are consistent with 17-6-304 and 17-6-305 and that [sections  
 5 1 through 8] will result in long-term benefits to the  
 6 economy of the state, there is appropriated to the  
 7 department of commerce from the in-state investment fund in  
 8 17-6-306 during the biennium beginning July 1, 1989,  
 9 ~~\$2,200,000~~ ~~\$1,500,000~~ \$750,000 for the microbusiness finance  
 10 program established in [section 4]. Funds appropriated from  
 11 the in-state investment fund must be deposited in the  
 12 microbusiness development loan account and are appropriated  
 13 to the department for the purpose of making development  
 14 loans pursuant to [sections 1 through 8].

15 (2) Because subsection (1) appropriates money from the  
 16 principal of the permanent coal tax trust fund, the  
 17 appropriation requires a vote of three-fourths of the  
 18 members of each house of the legislature.

19 (3) If [this act] is approved by a vote of less than  
 20 three-fourths of the members of each house, this section is  
 21 void and the remaining sections of [this act] are valid and  
 22 remain in effect in all valid applications upon enactment.

23 NEW SECTION. SECTION 11. SUNSET PROVISION -- AUDIT  
 24 AND EVALUATION OF THE MICROBUSINESS FINANCE PROGRAM --  
 25 REPAYMENT OF DEVELOPMENT LOANS -- REVERSION OF PROGRAM FUNDS

1 TO GENERAL IN-STATE INVESTMENT FUND. (1) AN AUDIT, AN  
 2 ANALYSIS OF COSTS AND BENEFITS, AND AN EVALUATION OF THE  
 3 MICROBUSINESS FINANCE PROGRAM MUST BE CONDUCTED BY THE  
 4 OFFICE OF THE LEGISLATIVE AUDITOR, BEGINNING OCTOBER 1,  
 5 1992, AND THE FINDINGS OF THIS AUDIT, ANALYSIS, AND  
 6 EVALUATION MUST BE REPORTED TO THE LEGISLATURE NO LATER THAN  
 7 JANUARY 15, 1993.

8 (2) NO DEVELOPMENT LOANS MAY BE MADE AFTER JUNE 30,  
 9 1992.

10 (3) ALL INTEREST-ONLY DEVELOPMENT LOANS MADE BY THE  
 11 DEPARTMENT MUST HAVE TERMS ENDING NO LATER THAN JUNE 30,  
 12 1993.

13 (4) AMORTIZATION SCHEDULES FOR REPAYMENT OF ALL  
 14 DEVELOPMENT LOAN FUNDS TO THE DEVELOPMENT LOAN ACCOUNT MUST  
 15 BE NEGOTIATED AND MUST BE IN EFFECT NO LATER THAN JUNE 30,  
 16 1993.

17 (5) ALL FUNDS IN THE DEVELOPMENT LOAN ACCOUNT ON JULY  
 18 1, 1993, AND ALL FUNDS DEPOSITED IN THAT ACCOUNT AFTER JULY  
 19 1, 1993, MUST REVERT TO THE GENERAL IN-STATE INVESTMENT  
 20 FUND.

21 (6) THE MICROBUSINESS FINANCE PROGRAM MUST CONTINUE IN  
 22 EXISTENCE UNTIL JUNE 30, 1996, FOR THE PURPOSE OF WINDING UP  
 23 ITS AFFAIRS AND COLLECTING REPAYMENTS OF DEVELOPMENT LOAN  
 24 FUNDS.

25 (7) ON JULY 1, 1996, OR WHEN ALL DEVELOPMENT LOAN

1 FUNDS HAVE BEEN COLLECTED OR RECOGNIZED AS LOAN LOSSES,  
2 WHICHEVER DATE IS EARLIER, ALL FUNDS IN THE MICROBUSINESS  
3 FINANCE PROGRAM ADMINISTRATIVE ACCOUNT MUST REVERT TO THE  
4 GENERAL IN-STATE INVESTMENT FUND.  
5 NEW SECTION. Section 12. Effective date. [This act]  
6 is effective July 1, 1989.

-End-