

HOUSE BILL NO. 394

INTRODUCED BY BENEDICT, ECK, B. BROWN, LYNCH,  
FRITZ, WYATT, WISEMAN, HIBBARD, D. BROWN, KEATING

IN THE HOUSE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 19, 1993	THIRD READING, PASSED. AYES, 63; NOES, 35.
FEBRUARY 22, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 22, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & INDUSTRY.
	FIRST READING.
MARCH 26, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 27, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
MARCH 31, 1993	SECOND READING, CONCURRED IN.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 47; NOES, 1.
	RETURNED TO HOUSE.

IN THE HOUSE

APRIL 2, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 394  
 2 INTRODUCED BY Bernard Eck Bob Brown Frank  
 3 Felix Weyer William Hillman Dave Brown Testing  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SCIENCE AND  
 5 TECHNOLOGY ADVISORY COUNCIL; EXTENDING INVESTMENT AUTHORITY  
 6 FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING  
 7 THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING  
 8 SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505,  
 9 90-3-523, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN  
 10 EFFECTIVE DATE."

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

13 NEW SECTION. **Section 1.** Science and technology  
 14 advisory council. (1) There is a science and technology  
 15 advisory council.

16 (2) The council is composed of 11 members appointed by  
 17 the governor from the private sector and the  
 18 university-based research and development community.

19 (a) Ex officio members include the executive director  
 20 of the Montana board of science and technology development  
 21 and the commissioner of higher education or the  
 22 commissioner's designee.

23 (b) The members to be appointed by the governor include  
 24 nine members representing Montana's agricultural, forestry,  
 25 mining, energy, manufacturing, communications, and other

1 industries.

2 (3) Members shall serve 3-year terms.

3 (4) The council shall:

4 (a) produce and update the Montana science and  
 5 technology plan biennially;

6 (b) oversee the implementation of all elements of the  
 7 Montana science and technology plan; and

8 (c) provide advice and counsel to the governor, the  
 9 legislature, the Montana board of science and technology  
 10 development, and other state agencies involved in science  
 11 and technology development.

12 (5) The council is allocated to the department of  
 13 commerce for administrative purposes only as provided in  
 14 2-15-121.

15 **Section 2.** Section 17-6-201, MCA, is amended to read:

16 "17-6-201. Unified investment program -- general  
 17 provisions. (1) The unified investment program directed by  
 18 Article VIII, section 13, of the 1972 Montana constitution  
 19 to be provided for public funds shall must be administered  
 20 by the board of investments in accordance with the prudent  
 21 expert principle, which requires any investment manager to:

22 (a) discharge his duties with the care, skill,  
 23 prudence, and diligence, under the circumstances then  
 24 prevailing, that a prudent person acting in a like capacity  
 25 with the same resources and familiar with like matters

1 exercises in the conduct of an enterprise of a like  
2 character with like aims;

3 (b) diversify the holdings of each fund within the  
4 unified investment program to minimize the risk of loss and  
5 to maximize the rate of return, unless under the  
6 circumstances it is clearly prudent not to do so; and

7 (c) discharge his duties solely in the interest of and  
8 for the benefit of the funds forming the unified investment  
9 program.

10 (2) Retirement funds may be invested in common stocks  
11 of any corporation provided that no investment may not be  
12 made at any time which that would cause the book value of  
13 such the investments in any retirement fund to exceed 50% of  
14 the book value of such the fund or would cause the stock of  
15 one corporation to exceed 2% of the book value of such the  
16 retirement fund.

17 (3) (a) ~~Nothing-contained-in-this~~ This section prevents  
18 does not prevent the investment in any business activity in  
19 Montana, including activities that continue existing jobs or  
20 create new jobs in Montana.

21 (b) The board is urged under the prudent expert  
22 principle to invest up to 3% of retirement funds in venture  
23 capital companies. Whenever possible, preference should be  
24 given to investments in those venture capital companies  
25 which demonstrate an interest in making investments in

1 Montana.

2 (c) In discharging its duties, the board shall consider  
3 the preservation of purchasing power of capital during  
4 periods of high monetary inflation.

5 (4) The board has the sole primary authority to invest  
6 state funds. No Except as provided in this chapter, no other  
7 agency may invest such state funds. The board shall direct  
8 the investment of state funds in accordance with the laws  
9 and constitution of this state. The board has the power to  
10 veto any investments made under its general supervision.

11 (5) The board shall:

12 (a) assist agencies with public money to determine if,  
13 when, and how much surplus cash is available for investment;

14 (b) determine the amount of surplus treasury cash to be  
15 invested;

16 (c) determine the type of investment to be made;

17 (d) prepare the claim to pay for the investment; and

18 (e) keep an account of the total of each investment  
19 fund and of all the investments belonging to such the fund  
20 and a record of the participation of each treasury fund  
21 account therein in each fund.

22 (6) The board may:

23 (a) execute deeds of conveyance transferring all real  
24 property obtained through foreclosure of any investments  
25 purchased under the provisions of 17-6-211 when full payment

has been received therefor for the property;

(b) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to 17-6-101 and 17-6-105;

(c) direct the sale of any securities in the program at their full and true value when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

(7) The cost of administering and accounting for each investment fund ~~shall~~ must be deducted from the income ~~therefrom~~ from each fund.

(8) At the beginning of each fiscal year, the board shall, from the appropriate fund, reimburse the department of commerce for the costs of administering programs established under Title 90, chapter 3, that are not covered by payback funds available from the account established in 90-3-305.

(9) (a) The director of the department of administration annually may prepare a statewide cost allocation plan to distribute program costs incurred by state agencies that are funded through the general fund to the programs served by the agencies. Except as provided in subsection ~~(8)(b)~~ (9)(b), the cost to an agency of providing services to a program funded through an account in the state special revenue fund as defined in 17-2-102 must be deducted by the board from the account's investment earnings

according to the statewide cost allocation plan. Amounts deducted by the board must be credited to the general fund.

(b) No A deduction for program costs, as provided in subsection ~~(8)(a)~~ (9)(a), may not be made if an account's cash on hand is pooled for investment in the treasury cash account defined in 17-6-202."

**Section 3.** Section 17-6-308, MCA, is amended to read:

"17-6-308. Authorized investments. (1) Except as provided in subsections (2) and (3) and subject to the provisions of 17-6-201, the Montana permanent coal tax trust fund must be invested as authorized by rules adopted by the board.

(2) The board may make loans from the permanent coal tax trust fund to the capital reserve account created pursuant to 17-5-1515 to establish balances or restore deficiencies in the account. The board may agree in connection with the issuance of bonds or notes secured by the account or fund to make the loans. Loans must be on terms and conditions as the board determines and must be repaid from revenues of the board realized from the exercise of its powers under 17-5-1501 through 17-5-1518 and 17-5-1521 through 17-5-1529, subject to the prior pledge of the revenues to the bonds and notes.

(3) The board shall allow the Montana board of science and technology development, provided for in 2-15-1818, to

administer ~~\$7.5~~ \$15.5 million of the permanent coal tax trust fund for seed capital project loans and \$5.1 million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, ~~1994~~ 1997, for seed capital project loans and beyond June 30, 1995, for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

**Section 4.** Section 90-3-102, MCA, is amended to read:

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

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

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

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

business in Montana.

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

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

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

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

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

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

1 board for use in the science and technology development  
2 project.

3 (10) "Medical facility research and development project"  
4 means a research and development project designed to advance  
5 the development and operation of facilities that concentrate  
6 on fields of medical research involving advanced technology  
7 applied to national medical concerns through the financing  
8 of personnel, equipment, and operating costs with the goal  
9 of establishing the facilities as enduring research  
10 organizations in Montana.

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

14 (12) "Private sector" means any entity or individual,  
15 not principally a part of or associated with a governmental  
16 unit, that is associated with or involved in commercial  
17 activity.

18 (13) "Research and development project" means a science  
19 and technology development project that falls into the  
20 category of research capability development, applied  
21 technology research, or technology transfer and assistance.

22 (14) "Research and development project loan" means a  
23 science and technology development project loan entered into  
24 between the board and a loan recipient for a research and  
25 development project.

1 (15) "Science and technology development project" means  
2 either a seed capital project or research and development  
3 project designed to discover, develop, transfer, utilize, or  
4 commercialize existing or new, innovative technology in  
5 order to strengthen and enhance economic development in  
6 Montana.

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

- 11 (a) creates a debt relationship between the parties;
- 12 (b) provides for a financial return to the board;
- 13 (c) provides economic development potential to the  
14 state; and
- 15 (d) contains the applicable provisions and terms  
16 required by this chapter.

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

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

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

25 (20) "State" means the state of Montana.

(21) "Technology transfer" means a two-way process by which ideas or inventions for processes or products developed in a research program, usually on a laboratory or pilot-plant scale, are converted to commercial use.

(22) "Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.

~~(22)~~(23) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

**Section 5.** Section 90-3-305, MCA, is amended to read:

"90-3-305. (Temporary) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

(b) all payback of principal and earnings to the board

from any agreements executed by the board between July 1, 1985, and March 31, 1989.

(3) Any time the balance of the science and technology development account exceeds \$50,000, the board shall transfer the amount of the balance in excess of \$50,000 to the general fund. (Terminates June 30, 1993--sec. 3, Ch. 9, Sp. L. January 1992.)

90-3-305. (Effective July 1, 1993) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

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

(3) The department may use all payback funds deposited in the account to cover administrative costs of programs authorized under this chapter. Payback funds must be used to cover administrative costs before the funds received from the board of investments under 17-6-201(8) are used."



**Section 6.** Section 90-3-505, MCA, is amended to read:

**"90-3-505. Research and development project -- goals.**

(1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in 90-3-502 and 90-3-506 and that the project meets one of the goals established in subsection (2).

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

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

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

(i) advance technology development in the state; or

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

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace; or

(d) to enhance the competitiveness of Montana's small and medium-sized firms in the national and international markets by stimulating the productivity and modernization of the firms.

(3) These goals may be accomplished by:

(a) supporting the advanced technology centers of

excellence program that will institutionalize cooperative arrangements between the public sector and the private sector and significantly build on existing research and development capabilities;

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

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel and for the development of a university-based technology transfer program;

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

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes; or

(f) fostering competitiveness, productivity, and modernization of Montana firms, farms, ranches, mills, and mines."

**Section 7.** Section 90-3-523, MCA, is amended to read:

**"90-3-523. Seed capital project loan agreement --**

specific requirements -- payback. (1) Except as provided in 90-3-519, in addition to the loan agreement provisions required in 90-3-522, a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

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

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

(c) a loan amount that may not exceed \$350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period unless the board determines that there is an overriding financial benefit to the board's portfolio. The total amount that may be loaned to any one company may not exceed ~~\$750,000~~ 10% of the seed capital funds managed by the board.

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

(2) (a) In addition to the provisions in 90-3-522 and

subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

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

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

**Section 8.** Section 90-3-524, MCA, is amended to read:

"90-3-524. Research and development project loan agreement -- specific requirements -- payback. In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

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

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms of indirect benefits related to the goals and criteria of

the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. The payback on a research and development project loan for a technology transfer and assistance project made from the permanent coal tax trust fund may not be repaid in terms of indirect benefits."

**Section 9.** Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payback. (1) The payback of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use by the board department to cover the administrative costs of loans made pursuant to this chapter. The paybacks include all those received after January 1, 1989.

(3) All paybacks of earnings to the board from loan agreements using permanent coal tax trust funds must be deposited to the state special revenue fund to the credit of

the science and technology development account created in 90-3-305 to pay the department's administrative and accounting costs associated with the loans. The balance must be deposited to the permanent coal tax trust fund within 30 days."

**NEW SECTION. Section 10. Codification instruction.**

[Section 1] is intended to be codified as an integral part of Title 2, chapter 15, part 18, and the provisions of Title 2, chapter 15, part 18, apply to [section 1].

**NEW SECTION. Section 11. Severability.** If a part of

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

**NEW SECTION. Section 12. Effective date.** [This act] is

effective July 1, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE  
Form BD-15

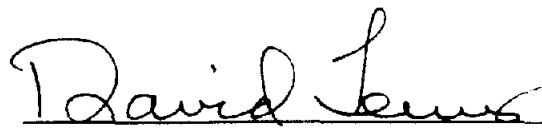
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0394, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: A bill to revise the Montana Science and Technology Development financing act, authorizing investment from the permanent coal tax trust fund and creating the Montana Science and Technology Advisory Council.

ASSUMPTIONS:

1. This bill authorizes MSTA to invest a portion of the permanent coal tax trust fund for economic development under its Science and Technology Development Seed Capital Project Loan program, but with monetary return-on-investment as a priority. Under this management requirement, MSTA will utilize approximately \$2 million per fiscal year for the years beginning in FY94 through FY97. For purposes of this note, it is assumed these funds will be loaned at the beginning of each fiscal year.
2. Dollar-for-dollar matching funds are required for all seed capital financing by MSTA.
3. MSTA will invest its portion of the permanent coal tax trust fund to receive a market rate of return. Rates are assumed to average 8.07% in FY94 and 8.39% in FY95 (HJR3).
4. Earnings on the permanent coal tax trust fund are divided, with 100 percent of the principal returned to the permanent coal trust fund, 15 percent of the interest earnings to the state equalization aid account, and 85 percent of the interest earnings to the general fund.
5. The proposed bill requires deposit of payback earnings from loan agreements utilizing permanent coal tax trust funds to be deposited in a state special revenue account to the credit of science and technology development to reimburse the agency for costs of administering the programs with Title 90, Chapter 3 to be paid first and the balance deposited to the permanent coal tax trust fund within 30 days. A payback of \$150,000 is expected in FY95.
6. Current law represents the Executive budget recommendation, which was funded with general fund revenues. Under the proposal, the program will be funded with coal trust investment income and development account revenues.
7. Coal trust interest earnings are estimated to total \$47.432 million in FY94 and \$48.698 million in FY95 (HJR3).
8. The balance of the permanent coal trust will be \$536.490 million at FYE94 and \$556.479 million at FYE95 (LFA Budget Analysis).

(continued on next page)

 2-4-93  
DAVID LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

2-9-93  
STEVE BENEDICT, PRIMARY SPONSOR      DATE  
Fiscal Note for HB0394, as introduced  
HB 394

FISCAL IMPACT:

Expenditures:

	FY94			FY95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	303,431	303,431	0	304,417	304,417	0
Operating Expenses	187,383	187,383	0	185,798	185,798	0
Equipment	<u>4,100</u>	<u>4,100</u>	<u>0</u>	<u>4,100</u>	<u>4,100</u>	<u>0</u>
Total Expenditures	494,914	494,914	0	494,315	494,315	0
Seed Capital Project Loans	0	2,000,000	2,000,000	0	2,000,000	2,000,000

Funding:

General Fund	494,914	0	(494,914)	494,315	0	(494,315)
Permanent Coal Tax Trust Fund	0	2,000,000	2,000,000	0	2,000,000	2,000,000
Coal Trust Interest Income	0	432,464	432,464	0	218,815	218,815
Science & Technology Development Act.	<u>0</u>	<u>62,450</u>	<u>62,450</u>	<u>0</u>	<u>275,500</u>	<u>275,500</u>
Total Funding	494,914	2,494,914	2,000,000	494,315	2,494,315	2,000,000

Revenues:

Permanent Coal Tax Trust Fund	536,490,000	534,490,000	(2,000,000)	556,479,000	552,479,000	(4,000,000)
Coal Trust Earnings	47,432,000	46,838,100	(593,900)	48,698,000	48,143,600	(554,400)

Allocation of Revenues:

General Fund	40,317,000	39,812,200	(504,800)	41,393,000	40,921,800	(471,200)
School Equalization Account	7,115,000	7,025,900	(89,100)	7,305,000	7,221,800	(83,200)

Net Impact:

General Fund			9,886			(23,115)
School Equalization Account			89,100			83,200

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Per the assumptions, \$4 million of additional loans are anticipated during the 1997 biennium; compounding the interest loss to the general fund and school equalization accounts. MSTTA expects paybacks from previous investments at levels sufficiently large to reduce the amount of coal trust interest needed for administration to approximately \$100,000.

HB 394

APPROVED BY COMM. ON BUSINESS  
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 394

INTRODUCED BY BENEDICT, ECK, B. BROWN, LYNCH,  
FRITZ, WYATT, WISEMAN, HIBBARD, D. BROWN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SCIENCE AND  
TECHNOLOGY ADVISORY COUNCIL; EXTENDING INVESTMENT AUTHORITY  
FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING  
THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING  
SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505,  
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university-based research and development community.

(a) Ex officio members include the executive director  
of the Montana board of science and technology development  
and the commissioner of higher education or the  
commissioner's designee.

(b) The members to be appointed by the governor include  
nine members representing Montana's agricultural, forestry,

mining, energy, manufacturing, communications, and other  
industries.

(3) Members shall serve 3-year terms.

(4) The council shall:

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technology plan biennially;

(b) oversee the implementation of all elements of the  
Montana science and technology plan; and

(c) provide advice and counsel to the governor, the  
legislature, the Montana board of science and technology  
development, and other state agencies involved in science  
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(5) The council is allocated to the department of  
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to be provided for public funds shall must be administered  
by the board of investments in accordance with the prudent  
expert principle, which requires any investment manager to:

(a) discharge his duties with the care, skill,  
prudence, and diligence, under the circumstances then  
prevailing, that a prudent person acting in a like capacity

with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims;

(b) diversify the holdings of each fund within the unified investment program to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so; and

(c) discharge his duties solely in the interest of and for the benefit of the funds forming the unified investment program.

(2) Retirement funds may be invested in common stocks of any corporation provided that no investment may not be made at any time which that would cause the book value of such the investments in any retirement fund to exceed 50% of the book value of such the fund or would cause the stock of one corporation to exceed 2% of the book value of such the retirement fund.

(3) (a) ~~Nothing-contained-in-this~~ This section prevents does not prevent the investment in any business activity in Montana, including activities that continue existing jobs or create new jobs in Montana.

(b) The board is urged under the prudent expert principle to invest up to 3% of retirement funds in venture capital companies. Whenever possible, preference should be given to investments in those venture capital companies

which demonstrate an interest in making investments in Montana.

(c) In discharging its duties, the board shall consider the preservation of purchasing power of capital during periods of high monetary inflation.

(4) The board has the sole primary authority to invest state funds. No Except as provided in this chapter, no other agency may invest such state funds. The board shall direct the investment of state funds in accordance with the laws and constitution of this state. The board has the power to veto any investments made under its general supervision.

(5) The board shall:

(a) assist agencies with public money to determine if, when, and how much surplus cash is available for investment;

(b) determine the amount of surplus treasury cash to be invested;

(c) determine the type of investment to be made;

(d) prepare the claim to pay for the investment; and

(e) keep an account of the total of each investment fund and of all the investments belonging to such the fund and a record of the participation of each treasury fund account therein in each fund.

(6) The board may:

(a) execute deeds of conveyance transferring all real property obtained through foreclosure of any investments

1 purchased under the provisions of 17-6-211 when full payment  
2 has been received therefor for the property;

3 (b) direct the withdrawal of any funds deposited by or  
4 for the state treasurer pursuant to 17-6-101 and 17-6-105;

5 (c) direct the sale of any securities in the program at  
6 their full and true value when found necessary to raise  
7 money for payments due from the treasury funds for which the  
8 securities have been purchased.

9 (7) The cost of administering and accounting for each  
10 investment fund shall must be deducted from the income  
11 therefrom from each fund.

12 (8) At the beginning of each fiscal year, the board  
13 shall, from the appropriate fund, reimburse the department  
14 of commerce for the costs of administering programs  
15 established under Title 90, chapter 3, that are not covered  
16 by payback funds available from the account established in  
17 90-3-305.

18 (9) (a) The director of the department of  
19 administration annually may prepare a statewide cost  
20 allocation plan to distribute program costs incurred by  
21 state agencies that are funded through the general fund to  
22 the programs served by the agencies. Except as provided in  
23 subsection ~~(8)(b)~~ (9)(b), the cost to an agency of providing  
24 services to a program funded through an account in the state  
25 special revenue fund as defined in 17-2-102 must be deducted

1 by the board from the account's investment earnings  
2 according to the statewide cost allocation plan. Amounts  
3 deducted by the board must be credited to the general fund.

4 (b) No A deduction for program costs, as provided in  
5 subsection ~~(8)(a)~~ (9)(a), may not be made if an account's  
6 cash on hand is pooled for investment in the treasury cash  
7 account defined in 17-6-202."

8 **Section 2.** Section 17-6-308, MCA, is amended to read:

9 "17-6-308. Authorized investments. (1) Except as  
10 provided in subsections (2) and (3) and subject to the  
11 provisions of 17-6-201, the Montana permanent coal tax trust  
12 fund must be invested as authorized by rules adopted by the  
13 board.

14 (2) The board may make loans from the permanent coal  
15 tax trust fund to the capital reserve account created  
16 pursuant to 17-5-1515 to establish balances or restore  
17 deficiencies in the account. The board may agree in  
18 connection with the issuance of bonds or notes secured by  
19 the account or fund to make the loans. Loans must be on  
20 terms and conditions as the board determines and must be  
21 repaid from revenues of the board realized from the exercise  
22 of its powers under 17-5-1501 through 17-5-1518 and  
23 17-5-1521 through 17-5-1529, subject to the prior pledge of  
24 the revenues to the bonds and notes.

25 (3) The board shall allow the Montana board of science



and technology development, provided for in 2-15-1818, to administer ~~\$7.5~~ \$15.5 million of the permanent coal tax trust fund for seed capital project loans and ~~\$5.1~~ \$8.1 million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, ~~1994~~ 1997, for seed capital project loans and beyond June 30, 1995, for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

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

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

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

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation,

association, or any other entity authorized to conduct business in Montana.

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

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

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

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

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

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

1 least equal to the funds loaned to the recipient by the  
2 board for use in the science and technology development  
3 project.

4 (10) "Medical facility research and development project"  
5 means a research and development project designed to advance  
6 the development and operation of facilities that concentrate  
7 on fields of medical research involving advanced technology  
8 applied to national medical concerns through the financing  
9 of personnel, equipment, and operating costs with the goal  
10 of establishing the facilities as enduring research  
11 organizations in Montana.

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

15 (12) "Private sector" means any entity or individual,  
16 not principally a part of or associated with a governmental  
17 unit, that is associated with or involved in commercial  
18 activity.

19 (13) "Research and development project" means a science  
20 and technology development project that falls into the  
21 category of research capability development, applied  
22 technology research, or technology transfer and assistance.

23 (14) "Research and development project loan" means a  
24 science and technology development project loan entered into  
25 between the board and a loan recipient for a research and

1 development project.

2 (15) "Science and technology development project" means  
3 either a seed capital project or research and development  
4 project designed to discover, develop, transfer, utilize, or  
5 commercialize existing or new, innovative technology in  
6 order to strengthen and enhance economic development in  
7 Montana.

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

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

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

14 (c) provides economic development potential to the  
15 state; and

16 (d) contains the applicable provisions and terms  
17 required by this chapter.

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

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

23 (19) "Startup capital project" means a science and  
24 technology development project that assists a company in  
25 initiating commercial operations.

(20) "State" means the state of Montana.

(21) "Technology transfer" means a two-way process by which ideas or inventions for processes or products developed in a research program, usually on a laboratory or pilot-plant scale, are converted to commercial use.

(22) "Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.

~~(22)~~(23) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

**Section 4.** Section 90-3-305, MCA, is amended to read:

"90-3-305. (Temporary) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

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

(3) Any time the balance of the science and technology development account exceeds \$50,000, the board shall transfer the amount of the balance in excess of \$50,000 to the general fund. (Terminates June 30, 1993--sec. 3, Ch. 9, Sp. L. January 1992.)

90-3-305. (Effective July 1, 1993) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

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

(3) The department may use all payback funds deposited in the account to cover administrative costs of programs authorized under this chapter. Payback funds must be used to cover administrative costs before the funds received from

the board of investments under 17-6-201(8) are used."

**Section 5.** Section 90-3-505, MCA, is amended to read:

"90-3-505. Research and development project -- goals.

(1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in 90-3-502 and 90-3-506 and that the project meets one of the goals established in subsection (2).

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

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

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

(i) advance technology development in the state; or

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

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace; or

(d) to enhance the competitiveness of Montana's small and medium-sized firms in the national and international markets by stimulating the productivity and modernization of the firms.

(3) These goals may be accomplished by:

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

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

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel and for the development of a university-based technology transfer program;

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

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes; or

(f) fostering competitiveness, productivity, and modernization of Montana firms, farms, ranches, mills, and mines."

**Section 6.** Section 90-3-523, MCA, is amended to read:

1 "90-3-523. Seed capital project loan agreement --  
 2 specific requirements -- payback. (1) Except as provided in  
 3 90-3-519, in addition to the loan agreement provisions  
 4 required in 90-3-522, a seed capital project loan must be  
 5 structured as contracted debt that includes but is not  
 6 limited to the following terms:

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

13 (b) a provision in the note that may defer debt service  
 14 until maturity of the note, the term of which may not exceed  
 15 8 years;

16 (c) a loan amount that may not exceed \$350,000 in any  
 17 one round of financing. Successive rounds of financing in  
 18 which the board participates for any one company may not  
 19 occur within a 9-month period unless the board determines  
 20 that there is an overriding financial benefit to the board's  
 21 portfolio. The total amount that may be loaned to any one  
 22 company may not exceed ~~\$750,000~~ 10% of the seed capital  
 23 funds managed by the board.

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

1 (2) (a) In addition to the provisions in 90-3-522 and  
 2 subsection (1) of this section, a seed capital project loan  
 3 agreement may provide for any of the following:

4 (i) a convertible debenture;

5 (ii) a warrant held by the board; or

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

8 (b) The board itself may not convert the convertible  
 9 debenture, exercise the warrant, or hold stock acquired upon  
 10 any conversion or exercise."

11 **Section 7.** Section 90-3-524, MCA, is amended to read:

12 "90-3-524. Research and development project loan  
 13 agreement -- specific requirements -- payback. In addition  
 14 to the loan agreement provisions described in 90-3-522, a  
 15 research and development project loan agreement must be  
 16 structured as contracted debt with the following terms:

17 (1) The agreement must include provisions calling for a  
 18 payback of at least two times the original loan amount paid  
 19 as a percentage of the income stream derived from the sale  
 20 or other commercialization of products or processes  
 21 developed with the board's financing. ~~This--percentage--rate~~  
 22 ~~may-not-exceed-5%~~ as negotiated by the parties.

23 (2) The payback on a research and development project  
 24 loan for a technology transfer and assistance project may be  
 25 made pursuant to subsection (1) or may be realized in terms

of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. The payoff on a research and development project loan for a technology transfer and assistance project made from the permanent coal tax trust fund may not be repaid in terms of indirect benefits.

(3) THE AGREEMENT BETWEEN THE BOARD AND THE COMMISSIONER OF HIGHER EDUCATION ON THE PAYBACK OF A RESEARCH AND DEVELOPMENT PROJECT LOAN MUST GUARANTEE A MINIMUM ANNUAL PAYBACK OF \$250,000, COMMENCING ON JUNE 30, 1994."

**Section 8.** Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payoff. (1) The payoff of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use

by the board department to cover the administrative costs of loans made pursuant to this chapter. The paybacks include all those received after January 1, 1989.

(3) All paybacks of earnings to the board from loan agreements using permanent coal tax trust funds must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 to pay the department's administrative and accounting costs associated with the loans. The balance must be deposited to the permanent coal tax trust fund within 30 days."

~~NEW SECTION. Section 10. Codification. instruction. (Section 1) is intended to be codified as an integral part of Title 27, chapter 15, part 18, and the provisions of Title 27, chapter 15, part 18, apply to (section 1).~~

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

NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 1993.

-End-

## HOUSE BILL NO. 394

INTRODUCED BY BENEDICT, ECK, B. BROWN, LYNCH,  
FRITZ, WYATT, WISEMAN, HIBBARD, D. BROWN, KEATING

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SCIENCE AND TECHNOLOGY ADVISORY COUNCIL; EXTENDING INVESTMENT AUTHORITY FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505, 90-3-523, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION: Section 1. Science and technology

advisory council. (1) There is a science and technology advisory council.

(2) The council is composed of 11 members appointed by the governor from the private sector and the university-based research and development community.

(a) Ex officio members include the executive director of the Montana board of science and technology development and the commissioner of higher education or the commissioner's designee.

(b) The members to be appointed by the governor include nine members representing Montana's agricultural, forestry,

mining, energy, manufacturing, communications, and other industries.

(3) Members shall serve 3-year terms.

(4) The council shall:

(a) produce and update the Montana science and technology plan biennially;

(b) oversee the implementation of all elements of the Montana science and technology plan; and

(c) provide advice and counsel to the governor, the legislature, the Montana board of science and technology development, and other state agencies involved in science and technology development.

(5) The council is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

Section 1. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program -- general provisions. (1) The unified investment program directed by

THERE ARE NO CHANGES IN THIS BILL  
AND WILL NOT BE REPRINTED. PLEASE  
REFER TO YELLOW COPY FOR COMPLETE TEXT.

## HOUSE BILL NO. 394

INTRODUCED BY BENEDICT, ECK, B. BROWN, LYNCH,  
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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A SCIENCE AND TECHNOLOGY ADVISORY COUNCIL; EXTENDING INVESTMENT AUTHORITY FROM THE PERMANENT COAL TAX TRUST FUND; GENERALLY REVISING THE MONTANA SCIENCE AND TECHNOLOGY FINANCING ACT; AMENDING SECTIONS 17-6-201, 17-6-308, 90-3-102, 90-3-305, 90-3-505, 90-3-523, 90-3-524, AND 90-3-525, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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(2) The council is composed of 11 members appointed by the governor from the private sector and the university-based research and development community.

(a) Ex officio members include the executive director of the Montana board of science and technology development and the commissioner of higher education or the commissioner's designee.

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(c) provide advice and counsel to the governor, the legislature, the Montana board of science and technology development, and other state agencies involved in science and technology development.

(5) The council is allocated to the department of commerce for administrative purposes only as provided in 2-15-121.

Section 1. Section 17-6-201, MCA, is amended to read:

"17-6-201. Unified investment program -- general provisions. (1) The unified investment program directed by Article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall must be administered by the board of investments in accordance with the prudent expert principle, which requires any investment manager to:

(a) discharge his duties with the care, skill, prudence, and diligence, under the circumstances then prevailing, that a prudent person acting in a like capacity



1 with the same resources and familiar with like matters  
2 exercises in the conduct of an enterprise of a like  
3 character with like aims;

4 (b) diversify the holdings of each fund within the  
5 unified investment program to minimize the risk of loss and  
6 to maximize the rate of return, unless under the  
7 circumstances it is clearly prudent not to do so; and

8 (c) discharge his duties solely in the interest of and  
9 for the benefit of the funds forming the unified investment  
10 program.

11 (2) Retirement funds may be invested in common stocks  
12 of any corporation provided that no investment may not be  
13 made at any time which that would cause the book value of  
14 such the investments in any retirement fund to exceed 50% of  
15 the book value of such the fund or would cause the stock of  
16 one corporation to exceed 2% of the book value of such the  
17 retirement fund.

18 (3) (a) ~~Nothing-contained-in-this~~ This section prevents  
19 does not prevent the investment in any business activity in  
20 Montana, including activities that continue existing jobs or  
21 create new jobs in Montana.

22 (b) The board is urged under the prudent expert  
23 principle to invest up to 3% of retirement funds in venture  
24 capital companies. Whenever possible, preference should be  
25 given to investments in those venture capital companies

1 which demonstrate an interest in making investments in  
2 Montana.

3 (c) In discharging its duties, the board shall consider  
4 the preservation of purchasing power of capital during  
5 periods of high monetary inflation.

6 (4) The board has the sole primary authority to invest  
7 state funds. No Except as provided in this chapter, no other  
8 agency may invest such state funds. The board shall direct  
9 the investment of state funds in accordance with the laws  
10 and constitution of this state. The board has the power to  
11 veto any investments made under its general supervision.

12 (5) The board shall:

13 (a) assist agencies with public money to determine if,  
14 when, and how much surplus cash is available for investment;

15 (b) determine the amount of surplus treasury cash to be  
16 invested;

17 (c) determine the type of investment to be made;

18 (d) prepare the claim to pay for the investment; and

19 (e) keep an account of the total of each investment  
20 fund and of all the investments belonging to such the fund  
21 and a record of the participation of each treasury fund  
22 account therein in each fund.

23 (6) The board may:

24 (a) execute deeds of conveyance transferring all real  
25 property obtained through foreclosure of any investments

1 purchased under the provisions of 17-6-211 when full payment  
2 has been received therefor for the property;

3 (b) direct the withdrawal of any funds deposited by or  
4 for the state treasurer pursuant to 17-6-101 and 17-6-105;

5 (c) direct the sale of any securities in the program at  
6 their full and true value when found necessary to raise  
7 money for payments due from the treasury funds for which the  
8 securities have been purchased.

9 (7) The cost of administering and accounting for each  
10 investment fund ~~shall~~ must be deducted from the income  
11 therefrom from each fund.

12 (8) At the beginning of each fiscal year, the board  
13 shall, from the appropriate fund, reimburse the department  
14 of commerce for the costs of administering programs  
15 established under Title 90, chapter 3, that are not covered  
16 by payback funds available from the account established in  
17 90-3-305.

18 (9) (a) The director of the department of  
19 administration annually may prepare a statewide cost  
20 allocation plan to distribute program costs incurred by  
21 state agencies that are funded through the general fund to  
22 the programs served by the agencies. Except as provided in  
23 subsection ~~(8)(b)~~ (9)(b), the cost to an agency of providing  
24 services to a program funded through an account in the state  
25 special revenue fund as defined in 17-2-102 must be deducted

1 by the board from the account's investment earnings  
2 according to the statewide cost allocation plan. Amounts  
3 deducted by the board must be credited to the general fund.

4 (b) No A deduction for program costs, as provided in  
5 subsection ~~(8)(a)~~ (9)(a), may not be made if an account's  
6 cash on hand is pooled for investment in the treasury cash  
7 account defined in 17-6-202."

8 **Section 2.** Section 17-6-308, MCA, is amended to read:

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12 fund must be invested as authorized by rules adopted by the  
13 board.

14 (2) The board may make loans from the permanent coal  
15 tax trust fund to the capital reserve account created  
16 pursuant to 17-5-1515 to establish balances or restore  
17 deficiencies in the account. The board may agree in  
18 connection with the issuance of bonds or notes secured by  
19 the account or fund to make the loans. Loans must be on  
20 terms and conditions as the board determines and must be  
21 repaid from revenues of the board realized from the exercise  
22 of its powers under 17-5-1501 through 17-5-1518 and  
23 17-5-1521 through 17-5-1529, subject to the prior pledge of  
24 the revenues to the bonds and notes.

25 (3) The board shall allow the Montana board of science

and technology development, provided for in 2-15-1818, to administer \$7.5 \$15.5 million of the permanent coal tax trust fund for seed capital project loans and ~~\$5.1~~ \$8.1 million of the permanent coal tax trust fund for research and development project loans pursuant only to the provisions of Title 90, chapter 3. This authority does not extend beyond June 30, 1994 1997, for seed capital project loans and beyond June 30, 1995, for research and development project loans. Until the Montana board of science and technology development makes a loan pursuant to the provisions of Title 90, chapter 3, the funds under its administration must be invested by the board of investments pursuant to the provisions of 17-6-201.

(4) The board shall adopt rules to allow a nonprofit corporation to apply for economic assistance. The rules must recognize that different criteria may be needed for nonprofit corporations than for for-profit corporations."

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

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

(2) "Board" means the Montana board of science and technology development provided for in 2-15-1818.

(3) "Company" means a firm, partnership, corporation,

association, or any other entity authorized to conduct business in Montana.

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15 (12) "Private sector" means any entity or individual,  
16 not principally a part of or associated with a governmental  
17 unit, that is associated with or involved in commercial  
18 activity.

19 (13) "Research and development project" means a science  
20 and technology development project that falls into the  
21 category of research capability development, applied  
22 technology research, or technology transfer and assistance.

23 (14) "Research and development project loan" means a  
24 science and technology development project loan entered into  
25 between the board and a loan recipient for a research and

1 development project.

2 (15) "Science and technology development project" means  
3 either a seed capital project or research and development  
4 project designed to discover, develop, transfer, utilize, or  
5 commercialize existing or new, innovative technology in  
6 order to strengthen and enhance economic development in  
7 Montana.

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

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

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

14 (c) provides economic development potential to the  
15 state; and

16 (d) contains the applicable provisions and terms  
17 required by this chapter.

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

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

23 (19) "Startup capital project" means a science and  
24 technology development project that assists a company in  
25 initiating commercial operations.

(20) "State" means the state of Montana.

(21) "Technology transfer" means a two-way process by which ideas or inventions for processes or products developed in a research program, usually on a laboratory or pilot-plant scale, are converted to commercial use.

(22) "Venture capital company" means a partnership, corporation, or other business entity engaged in raising funds from investors and earning a financial return for those investors by making equity or quasi-equity investments in new or expanding business.

~~(22)~~(23) "Warrant" means an instrument issued by a corporation that gives a holder other than the board the right to purchase stock of a corporation either for a limited time or perpetually."

**Section 4.** Section 90-3-305, MCA, is amended to read:

"90-3-305. (Temporary) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

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

(3) Any time the balance of the science and technology development account exceeds \$50,000, the board shall transfer the amount of the balance in excess of \$50,000 to the general fund. (Terminates June 30, 1993--sec. 3, Ch. 9, Sp. L. January 1992.)

90-3-305. (Effective July 1, 1993) Science and technology development account. (1) There is a science and technology development account within the state special revenue fund established in 17-2-102.

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

(a) the payback of principal and earnings on a research and development project loan, made from a source other than the Montana permanent coal tax trust fund, executed under this chapter; and

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

(3) The department may use all payback funds deposited in the account to cover administrative costs of programs authorized under this chapter. Payback funds must be used to cover administrative costs before the funds received from

the board of investments under 17-6-201(8) are used."

**Section 5.** Section 90-3-505, MCA, is amended to read:

"90-3-505. Research and development project -- goals.

(1) The board may make a research and development project loan upon a determination by the board that the proposed project meets the loan criteria established in 90-3-502 and 90-3-506 and that the project meets one of the goals established in subsection (2).

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

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

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

(i) advance technology development in the state; or

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

(c) to facilitate the process of transferring research from the laboratory to the commercial marketplace; or

(d) to enhance the competitiveness of Montana's small and medium-sized firms in the national and international markets by stimulating the productivity and modernization of the firms.

(3) These goals may be accomplished by:

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

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

(c) providing financial support for the development of advanced research capabilities within the state's university system through the acquisition of facilities, equipment, or personnel and for the development of a university-based technology transfer program;

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

(e) improving the information and resources available to entrepreneurs in the state who are involved in commercialization of innovative products and processes; or

(f) fostering competitiveness, productivity, and modernization of Montana firms, farms, ranches, mills, and mines."

**Section 6.** Section 90-3-523, MCA, is amended to read:

"90-3-523. Seed capital project loan agreement -- specific requirements -- payback. (1) Except as provided in 90-3-519, in addition to the loan agreement provisions required in 90-3-522, a seed capital project loan must be structured as contracted debt that includes but is not limited to the following terms:

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

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

(c) a loan amount that may not exceed \$350,000 in any one round of financing. Successive rounds of financing in which the board participates for any one company may not occur within a 9-month period unless the board determines that there is an overriding financial benefit to the board's portfolio. The total amount that may be loaned to any one company may not exceed \$750,000 10% of the seed capital funds managed by the board.

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

(2) (a) In addition to the provisions in 90-3-522 and subsection (1) of this section, a seed capital project loan agreement may provide for any of the following:

(i) a convertible debenture;

(ii) a warrant held by the board; or

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

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

**Section 7.** Section 90-3-524, MCA, is amended to read:

"90-3-524. Research and development project loan agreement -- specific requirements -- payback. In addition to the loan agreement provisions described in 90-3-522, a research and development project loan agreement must be structured as contracted debt with the following terms:

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

(2) The payback on a research and development project loan for a technology transfer and assistance project may be made pursuant to subsection (1) or may be realized in terms

of indirect benefits related to the goals and criteria of the program. No more than 10% of the board's annual allocation of research and development funds may be used for technology transfer and assistance projects. The payback on a research and development project loan for a technology transfer and assistance project made from the permanent coal tax trust fund may not be repaid in terms of indirect benefits.

(3) THE AGREEMENT BETWEEN THE BOARD AND THE COMMISSIONER OF HIGHER EDUCATION ON THE PAYBACK OF A RESEARCH AND DEVELOPMENT PROJECT LOAN MUST GUARANTEE A MINIMUM ANNUAL PAYBACK OF \$250,000, COMMENCING ON JUNE 30, 1994."

**Section 8.** Section 90-3-525, MCA, is amended to read:

"90-3-525. Deposit of payback. (1) The payback of principal and earnings on a research and development project loan from a source other than the Montana permanent coal tax trust fund must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305.

(2) All paybacks of principal and earnings to the board from any agreements executed by the board between July 1, 1985, and March 31, 1989, must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 for use

by the board department to cover the administrative costs of loans made pursuant to this chapter. The paybacks include all those received after January 1, 1989.

(3) All paybacks of earnings to the board from loan agreements using permanent coal tax trust funds must be deposited to the state special revenue fund to the credit of the science and technology development account created in 90-3-305 to pay the department's administrative and accounting costs associated with the loans. The balance must be deposited to the permanent coal tax trust fund within 30 days."

~~NEW SECTION. Section 10. Codification instruction.~~

~~{Section-1}-is-intended-to-be-codified-as-an-integral-part of-Title-27-chapter-15-part-10-and-the-provisions-of-Title 27-chapter-15-part-10-apply-to-{section-1}-~~

**NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION. Section 10. Effective date.** [This act] is effective July 1, 1993.

-End-