

HOUSE BILL NO. 616

INTRODUCED BY DRISCOLL, FORRESTER, R. JOHNSON, HARRINGTON,  
LYNCH, SIMON, MENAHAN, PAVLOVICH, QUILICI, DAILY, JACOBSON,  
BECK, WHALEN, MCCULLOCH, SCHYE, BLAYLOCK, RYE, HARP,  
CRIPPEN, HAGER, WINSLOW, BOHLINGER, STOVALL, MOLNAR,  
MILLS, FAGG, VOGEL

IN THE HOUSE

FEBRUARY 13, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
	ON MOTION, ADDITIONAL SPONSORS ADDED.
FEBRUARY 17, 1993	ON MOTION, ADDITIONAL SPONSORS ADDED.
MARCH 6, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 8, 1993	PRINTING REPORT.
MARCH 13, 1993	SECOND READING, DO PASS AS AMENDED.
MARCH 15, 1993	ENGROSSING REPORT.
MARCH 24, 1993	THIRD READING, PASSED. AYES, 82; NOES, 17.
MARCH 25, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 26, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 12, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 13, 1993	SECOND READING, CONCURRED IN.
	ON MOTION, SEGREGATED FROM COMMITTEE OF WHOLE REPORT AND RETURNED TO SECOND READING.
APRIL 14, 1993	SECOND READING, CONCURRED IN AS

AMENDED.

APRIL 15, 1993

THIRD READING, CONCURRED IN.  
AYES, 34; NOES, 16.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 16, 1993

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 19, 1993

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 612  
2 INTRODUCED BY Daniel Farnsworth  
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CLEAN COAL  
5 TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT  
6 CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH  
7 A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES  
8 AND CONSERVATION AND THE MHD DEVELOPMENT CORPORATION WILL BE  
9 ESTABLISHED; DETERMINING THAT THE BILLINGS MHD DEMONSTRATION  
10 PROJECT IS A NEEDED FACILITY UNDER THE REQUIREMENTS OF THE  
11 MONTANA MAJOR FACILITY SITING ACT; DETERMINING THAT  
12 ELECTRICAL POWER PRODUCED BY THE PROJECT IS NEEDED AND HAS A  
13 BENEFICIAL IMPACT ON THE ENVIRONMENT; AMENDING SECTIONS  
14 75-20-301 AND 75-20-503, MCA; AND PROVIDING AN IMMEDIATE  
15 EFFECTIVE DATE."  
16

17 WHEREAS, the 52nd Legislature established and provided  
18 funds for a clean coal technology demonstration fund within  
19 the coal severance tax trust fund; and

20 WHEREAS, the Billings MHD demonstration project was  
21 designated by the 52nd Legislature as a clean coal  
22 technology demonstration project eligible to receive a clean  
23 coal technology demonstration loan in the amount of \$25  
24 million; and

25 WHEREAS, the Department of Natural Resources and

1 Conservation has the authority to review clean coal  
2 technology demonstration loan applications and to make  
3 recommendations to the Legislature concerning the approval  
4 of loan requests; and

5 WHEREAS, the Department has reviewed the loan request  
6 from the MHD Development Corporation for the Billings MHD  
7 demonstration project and recommends that the loan be  
8 approved based on the terms and conditions provided in this  
9 bill.  
10

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

12 NEW SECTION. **Section 1. Definitions.** As used in  
13 [sections 1 through 4], the following definitions apply:

14 (1) "Billings MHD demonstration project" means the  
15 project to be developed by the MHD development corporation  
16 to commercially demonstrate the magnetohydrodynamics (MHD)  
17 technology and to produce electric power as described in the  
18 application for federal clean coal V funding submitted to  
19 the U.S. department of energy by the MHD development  
20 corporation.

21 (2) "Budget period" means a segment of time in which  
22 the Billings MHD demonstration project is expected to reach  
23 certain engineering, procurement, or construction milestones  
24 through the use of a designated amount of funds.

25 (3) "Department" means the department of natural

1 resources and conservation provided for in 2-15-3301.

2 (4) "Loan proceeds" means clean coal technology  
3 development project loan funds received by the MHD  
4 development corporation from the department as a result of  
5 passage and approval of [sections 1 through 4] and the  
6 execution of a loan agreement described in [sections 1  
7 through 4].

8 (5) "MHD development corporation" means the company  
9 that owns the MHD technology and that has applied to the  
10 U.S. department of energy for funding through the clean coal  
11 V funding program to commercially demonstrate the MHD  
12 technology through the development, engineering,  
13 construction, and operation of the Billings MHD  
14 demonstration project.

15 (6) "MHD technology" means the intellectual property  
16 used to construct the physical components, or processes that  
17 utilize those physical components, to produce electricity  
18 through the technology known as magnetohydrodynamics as  
19 described in the application for federal clean coal V  
20 funding.

21 (7) "Participating companies" means those corporate  
22 entities that have provided the technical expertise,  
23 component equipment, capital, or other assets or resources  
24 in the development of the MHD technology, that hold  
25 positions of equity ownership in the MHD development

1 corporation, and that have transferred any proprietary  
2 interest in the MHD technology that they may have at one  
3 time possessed to the MHD development corporation to enable  
4 the MHD development corporation to commercially demonstrate  
5 the MHD technology through the development, engineering,  
6 construction, and operation of the Billings MHD  
7 demonstration project and to enable the MHD development  
8 corporation to engage in subsequent commercial applications  
9 of the MHD technology.

10 (8) "Senior debt creditor" means a lender or consortium  
11 of lenders that has provided a larger share of debt  
12 financing to the Billings MHD demonstration project than any  
13 other lender or consortium of lenders and that has properly  
14 secured its loan against the assets of the Billings MHD  
15 demonstration project or the MHD development corporation.

16 NEW SECTION. **Section 2.** Approval of loan. A clean coal  
17 technology demonstration loan in the amount of \$25 million  
18 is approved for the MHD development corporation to pay a  
19 portion of the costs involved in development, engineering,  
20 procurement, and construction related to the Billings MHD  
21 demonstration project if the loan agreement described in  
22 [section 3] is entered into by the department and the MHD  
23 development corporation.

24 NEW SECTION. **Section 3.** Loan agreement. The department  
25 shall enter into a loan agreement with the MHD development

1 corporation that includes the following provisions:

2 (1) The amount of the loan is \$25 million.

3 (2) The loan agreement must be for a term of 25 years  
4 from the date it is signed by the parties or until all  
5 principal and interest have been retired, whichever occurs  
6 first.

7 (3) Loan proceeds may be applied to the costs of  
8 developing engineering specifications, procuring equipment,  
9 or constructing physical facilities or to other costs  
10 directly related to negotiating for the final commitment of  
11 the U.S. department of energy funding and for the  
12 development and construction of the Billings MHD  
13 demonstration project for the commercial demonstration of  
14 the MHD technology.

15 (4) Loan proceeds must be disbursed according to a  
16 series of scheduled budget periods. A disbursement may not  
17 be made prior to May 1, 1993. The total amount of the loan  
18 may not be released in less than five disbursements. A  
19 disbursement may not exceed \$10 million and may not be less  
20 than \$400,000.

21 (5) The following matching funds requirements apply to  
22 the disbursement of loan proceeds:

23 (a) Loan proceeds may not be disbursed unless the MHD  
24 development corporation has received a notice of award from  
25 the U.S. department of energy stating that it has been

1 selected to receive at least \$100 million through the  
2 federal clean coal V funding program.

3 (b) Loan proceeds may not be disbursed for expenditure  
4 in any budget period unless the department has received  
5 satisfactory evidence that federal or private funds will be  
6 expended in that budget period in an amount that is at least  
7 four times greater than the amount of loan proceeds to be  
8 expended in that budget period.

9 (c) No more than \$8 million in loan proceeds may be  
10 disbursed unless the U.S. department of energy has issued a  
11 final authorization to proceed after project definition  
12 activities, as described in the federal clean coal V program  
13 offering notice, have been concluded and the department of  
14 energy has committed to spend the entire federal clean coal  
15 V award amount allocated for the Billings MHD demonstration  
16 project.

17 (d) Before disbursing loan proceeds in any budget  
18 period, the department must be satisfied that the matching  
19 funds requirement for the previous budget periods has been  
20 met.

21 (6) (a) Subject to subsection (6)(b), interest must  
22 accrue at the same rate as the rate applicable to 20-year  
23 general obligation bonds issued by the state on the date  
24 nearest in time to the date that the loan agreement is  
25 signed by the parties.

(b) The total interest amount may not exceed \$20 million.

(7) (a) Subject to subsections (7)(b) and (7)(c), the following sources must be used to pay the principal and interest payments on the loan:

(i) up to 5% of gross fees or royalties derived from the sale, lease, or licensing of the MHD technology; and

(ii) up to 0.05% of all revenue derived from the sale of component equipment that embodies the MHD technology.

(b) Beginning in the 17th year after the loan agreement is signed by the parties or after repayment obligations to senior debt creditors have been satisfied, whichever occurs first, the MHD development corporation shall, when there is sufficient cash flow available after the appropriate allowance for the payment of taxes, make payments to the department using revenue derived from the sale of electric power. The payments must be made in amounts and according to a schedule to be agreed upon by the parties that is sufficient to ensure that the entire amount of principal and interest owed on the loan is fully retired by the 25th year after the loan agreement is signed.

(c) If the department and the U.S. department of energy both receive repayment from a source listed in subsection (7)(a)(i) or (7)(a)(ii), the department shall receive payment on a pro rata basis taking into account its

financial contribution to the Billings MHD demonstration project compared to the contribution of the department of energy contribution. The percentage limit contained in subsection (7)(a)(i) or (7)(a)(ii) may not be exceeded.

(8) If at any time the principal and prorated interest amounts owing on the loan are retired, the loan is considered retired and further payments are not required to be made. There may not be a penalty associated with early repayment.

(9) The payment of the principal and interest on the loan is governed by the following provisions:

(a) Payments made from the sources listed in subsection (7)(a)(i) or (7)(a)(ii) before the time provided for in subsection (7)(b) must be applied to the principal of the loan.

(b) Payments made after the beginning of the time period provided for in subsection (7)(b) must be first applied to interest accumulated on the principal amount of the loan and any payments greater than the accumulated interest must be applied to the principal.

(10) Notwithstanding the provisions of subsections (2), (6), and (8) and in addition to the requirement for the payment of principal and interest contained in this section, the MHD development corporation shall pay to the department from the sources described in subsections (7)(a)(i) and

1 (7)(a)(ii) one-half of the amount of the loan proceeds  
 2 disbursed as described in subsection (5)(c). This additional  
 3 payment requirement must begin immediately after all  
 4 principal and interest have been paid and continues until  
 5 the appropriate amount has been paid, even if the loan  
 6 agreement has expired.

7 (11) The MHD development corporation shall pay all  
 8 principal and interest owed to the state on the loan made to  
 9 the MHD-Corette project pursuant to Chapter 793, Laws of  
 10 1991. This repayment requirement is effective at the time  
 11 the MHD development corporation has secured the total amount  
 12 of financing necessary to initially capitalize the Billings  
 13 MHD development project. Notwithstanding section 1(3),  
 14 Chapter 793, Laws of 1991, \$50,000 of the amount repaid  
 15 under this subsection must be deposited in the state special  
 16 revenue account created by 90-2-1104 for use by the  
 17 department in administering the clean coal technology  
 18 demonstration program.

19 (12) The department may hold the following security  
 20 positions if the positions are subordinate to the security  
 21 positions of senior debt creditors to the Billings MHD  
 22 demonstration project:

23 (a) a security position associated with any of the  
 24 repayment sources listed in subsection (7); and

25 (b) a security position in the sale of the assets of

1 the Billings MHD demonstration project.

2 (13) (a) The department must be satisfied, before the  
 3 loan agreement is entered into, that:

4 (i) the MHD development corporation has acquired from  
 5 the participating companies and other relevant parties  
 6 ownership of all rights and other positions of ownership  
 7 related to the MHD technology that are sufficient to meet  
 8 its repayment obligations under the loan agreement; and

9 (ii) the projected level of initial capitalization,  
 10 operating income, expenses, and other factors affecting the  
 11 financial viability of the Billings MHD demonstration  
 12 project is sufficient for the MHD development corporation,  
 13 through its ownership and operation of the Billings MHD  
 14 demonstration project, to operate the project.

15 (b) The following protective positions must be  
 16 contained in the loan agreement:

17 (i) the provisions contained in subsection (13)(a) must  
 18 be included;

19 (ii) the requirements for repayment, reporting, and  
 20 other obligations of the MHD development corporation under  
 21 the loan agreement must be assigned to any party that may  
 22 purchase the assets or otherwise receive ownership of the  
 23 MHD technology or the Billings MHD demonstration project;  
 24 and

25 (iii) the obligations must remain in effect during the

1 term of the loan agreement.

2 (14) The following reports must be required by the loan  
3 agreement:

4 (a) During the time before the Billings MHD  
5 demonstration project begins operation, the MHD development  
6 corporation shall deliver to the department, within 30 days  
7 after the end of each disbursement period, a semiannual  
8 progress report briefly describing the status of the  
9 project, any significant events that occurred in the  
10 previous period, and a summary of the project's financial  
11 position.

12 (b) After the project begins operation, the MHD  
13 development corporation shall deliver to the department  
14 reports of activities, financial statements, and other  
15 reports according to the same requirements and schedule that  
16 are applicable to the senior debt creditor to the project.  
17 The reports must detail the amount of principal and interest  
18 owed to the department, any payments made to the department,  
19 any events that trigger a payment requirement related to the  
20 loan, and any other factor of significance related to the  
21 loan agreement.

22 (c) The MHD development corporation shall provide to  
23 the department an annual statement of any transaction  
24 related to the sale, lease, or licensing of the MHD  
25 technology and to the sale of component equipment

1 manufactured for use in the MHD technology and an annual  
2 statement of any amount owed to the department as a result  
3 of those activities.

4 (d) The department shall prepare and deliver a biennial  
5 report to the legislature describing the status of the loan  
6 agreement and the status of the project.

7 (15) The terms of a repayment agreement established in  
8 relation to funds provided to the MHD development  
9 corporation for the Billings MHD demonstration project by  
10 the U.S. department of energy through the federal clean coal  
11 V funding program may not include an interest rate, security  
12 provision, or other term that increases the likelihood of  
13 repayment that is greater than that afforded to the  
14 department under the loan agreement. If the department  
15 considers that the terms related to the U.S. department of  
16 energy are more favorable than those established in the loan  
17 agreement, the department and the MHD development  
18 corporation shall amend the loan agreement to strengthen its  
19 provisions accordingly.

20 (16) The terms and conditions described in subsections  
21 (1) through (15) may not be construed as inclusive of all  
22 terms and conditions that may constitute the loan agreement.  
23 The department and the MHD development corporation may  
24 include other terms and conditions they consider necessary  
25 if the other terms and conditions do not substantially alter



1 the provisions described in this section.

2 (17) The department shall report to the first scheduled  
3 meeting of the legislative finance committee if:

4 (a) the MHD development corporation chooses not to  
5 pursue the loan agreement;

6 (b) the department and the MHD development corporation,  
7 after reasonable efforts, fail to agree on final terms and  
8 conditions of the loan agreement; or

9 (c) other events reasonably preclude the ability of the  
10 parties to establish an agreement.

11 NEW SECTION. Section 4. Facility and power needed --  
12 beneficial under major facility siting act. The Billings MHD  
13 demonstration project is considered to meet the requirements  
14 imposed upon the board of natural resources and conservation  
15 to find that:

16 (1) as a one-time demonstration project for this  
17 particular technology, the Billings MHD demonstration  
18 project is a needed facility under 75-20-301; and

19 (2) energy produced by the Billings MHD demonstration  
20 project fulfills the criteria for need and for beneficial  
21 impact on the environment as required by 75-20-301 and  
22 75-20-503.

23 **Section 5.** Section 75-20-301, MCA, is amended to read:

24 "75-20-301. Decision of board -- findings necessary for  
25 certification. (1) Within Except as provided in [section 4],

1 within 60 days after submission of the recommended decision  
2 by the hearing examiner, the board shall make complete  
3 findings, issue an opinion, and render a decision upon the  
4 record, either granting or denying the application as filed  
5 or granting it upon such terms, conditions, or modifications  
6 of the construction, operation, or maintenance of the  
7 facility as the board considers appropriate.

8 (2) The board may not grant a certificate either as  
9 proposed by the applicant or as modified by the board unless  
10 it shall find and determine:

11 (a) the basis of the need for the facility;

12 (b) the nature of the probable environmental impact;

13 (c) that the facility minimizes adverse environmental  
14 impact, considering the state of available technology and  
15 the nature and economics of the various alternatives;

16 (d) each of the criteria listed in 75-20-503;

17 (e) in the case of an electric, gas, or liquid  
18 transmission line or aqueduct:

19 (i) what part, if any, of the line or aqueduct ~~shall~~  
20 will be located underground;

21 (ii) that the facility is consistent with regional plans  
22 for expansion of the appropriate grid of the utility systems  
23 serving the state and interconnected utility systems; and

24 (iii) that the facility will serve the interests of  
25 utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

(i) that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503.

(3) In determining that the facility will serve the public interest, convenience, and necessity under subsection (2)(g) ~~of this section~~, the board shall consider:

(a) the items listed in subsections (2)(a) and (2)(b) ~~of this section~~;

(b) the benefits to the applicant and the state

resulting from the proposed facility;

(c) the effects of the economic activity resulting from the proposed facility;

(d) the effects of the proposed facility on the public health, welfare, and safety;

(e) any other factors that it considers relevant.

(4) Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

**Section 6.** Section 75-20-503, MCA, is amended to read:

"75-20-503. **Environmental factors evaluated.** ~~In~~ Except as provided in [section 4], in evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

(1) energy needs:

(a) growth in demand and projections of need;

(b) availability and desirability of alternative sources of energy;

(c) availability and desirability of alternative sources of energy in lieu of the proposed facility;

(d) promotional activities of the utility which may have given rise to the need for this facility;

1 (e) socially beneficial uses of the output of this  
 2 facility, including its uses to protect or enhance  
 3 environmental quality;  
 4 (f) conservation activities which could reduce the need  
 5 for more energy;  
 6 (g) research activities of the utility of new  
 7 technology available to it which might minimize  
 8 environmental impact;  
 9 (2) land use impacts:  
 10 (a) area of land required and ultimate use;  
 11 (b) consistency with areawide state and regional land  
 12 use plans;  
 13 (c) consistency with existing and projected nearby land  
 14 use;  
 15 (d) alternative uses of the site;  
 16 (e) impact on population already in the area,  
 17 population attracted by construction or operation of the  
 18 facility itself;  
 19 (f) impact of availability of energy from this facility  
 20 on growth patterns and population dispersal;  
 21 (g) geologic suitability of the site or route;  
 22 (h) seismologic characteristics;  
 23 (i) construction practices;  
 24 (j) extent of erosion, scouring, wasting of land, both  
 25 at site and as a result of fossil fuel demands of the

1 facility;  
 2 (k) corridor design and construction precautions for  
 3 transmission lines or aqueducts;  
 4 (l) scenic impacts;  
 5 (m) effects on natural systems, wildlife, plant life;  
 6 (n) impacts on important historic architectural,  
 7 archaeological, and cultural areas and features;  
 8 (o) extent of recreation opportunities and related  
 9 compatible uses;  
 10 (p) public recreation plan for the project;  
 11 (q) public facilities and accommodation;  
 12 (r) opportunities for joint use with energy-intensive  
 13 industries or other activities to utilize the waste heat  
 14 from facilities;  
 15 (s) opportunities for using public lands for location  
 16 of facilities whenever as economically practicable as the  
 17 use of private lands and compatible with the requirements of  
 18 this section;  
 19 (3) water resources impacts:  
 20 (a) hydrologic studies of adequacy of water supply and  
 21 impact of facility on streamflow, lakes, and reservoirs;  
 22 (b) hydrologic studies of impact of facilities on  
 23 ground water;  
 24 (c) cooling system evaluation, including consideration  
 25 of alternatives;

1 (d) inventory of effluents, including physical,  
 2 chemical, biological, and radiological characteristics;  
 3 (e) hydrologic studies of effects of effluents on  
 4 receiving waters, including mixing characteristics of  
 5 receiving waters, changed evaporation due to temperature  
 6 differentials, and effect of discharge on bottom sediments;  
 7 (f) relationship to water quality standards;  
 8 (g) effects of changes in quantity and quality on water  
 9 use by others, including both withdrawal and in situ uses;  
 10 (h) relationship to projected uses;  
 11 (i) relationship to water rights;  
 12 (j) effects on plant and animal life, including algae,  
 13 macroinvertebrates, and fish population;  
 14 (k) effects on unique or otherwise significant  
 15 ecosystems, e.g., wetlands;  
 16 (l) monitoring programs;  
 17 (4) air quality impacts:  
 18 (a) meteorology--wind direction and velocity, ambient  
 19 temperature ranges, precipitation values, inversion  
 20 occurrence, other effects on dispersion;  
 21 (b) topography--factors affecting dispersion;  
 22 (c) standards in effect and projected for emissions;  
 23 (d) design capability to meet standards;  
 24 (e) emissions and controls:  
 25 (i) stack design;

1 (ii) particulates;  
 2 (iii) sulfur oxides;  
 3 (iv) oxides of nitrogen; and  
 4 (v) heavy metals, trace elements, radioactive  
 5 materials, and other toxic substances;  
 6 (f) relationship to present and projected air quality  
 7 of the area;  
 8 (g) monitoring program;  
 9 (5) solid wastes impacts:  
 10 (a) solid waste inventory;  
 11 (b) disposal program;  
 12 (c) relationship of disposal practices to environmental  
 13 quality criteria;  
 14 (d) capacity of disposal sites to accept projected  
 15 waste loadings;  
 16 (6) radiation impacts:  
 17 (a) land use controls over development and population;  
 18 (b) wastes and associated disposal program for solid,  
 19 liquid, radioactive, and gaseous wastes;  
 20 (c) analyses and studies of the adequacy of engineering  
 21 safeguards and operating procedures;  
 22 (d) monitoring--adequacy of devices and sampling  
 23 techniques;  
 24 (7) noise impacts:  
 25 (a) construction period levels;

- 1       (b) operational levels;
- 2       (c) relationship of present and projected noise levels
- 3 to existing and potential stricter noise standards;
- 4       (d) monitoring--adequacy of devices and methods."
- 5       NEW SECTION. **Section 7.** **Effective date.** [This act] is
- 6 effective on passage and approval.

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0616, as introduced.

**DESCRIPTION OF PROPOSED LEGISLATION:** An act providing a clean coal technology demonstration loan to the MHD Development Corporation; establishing terms and conditions around which a loan agreement between the Department of Natural Resources and Conservation and the MHD Development Corporation will be established; determining that the Billings MHD demonstration project is a needed facility under the requirements of the Montana Major Facility Siting Act; determining that electrical power produced by the project is needed and has a beneficial impact on the environment.

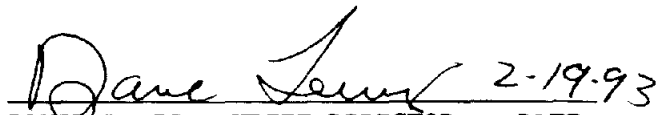
**ASSUMPTIONS:**

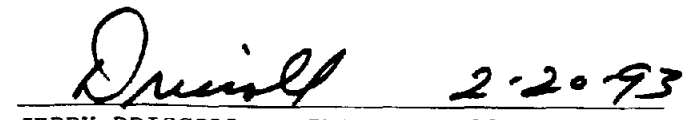
1. The clean coal technology demonstration loan will occur beginning in FY94. Quarterly draws totalling \$4.364 million are expected in FY94, with additional draws of \$3.636 million continuing into FY95 (\$8 million total). Interest earnings in both fiscal years of the biennium are impacted (general fund and foundation program).
2. Coal tax funds will be moved out of the coal tax trust clean coal technology demonstration fund.
3. The U.S. Department of Energy (DOE) will authorize a \$220,000,000 loan to match the state coal funds.
4. MHD Development Corporation will provide \$245,803,000 in matching funds.
5. The proposed funding of the \$25 million loan from the coal tax trust would have been invested long-term and earned 8.07% in FY94 and 8.39% in FY95.
6. Repayment of the \$25 million loan does not begin until 17 years after the loan agreement is signed.
7. Local government entities and the state will allow the project a tax exempt status providing \$28.4 million in tax credits.
8. The technology will be marketable.
9. Over \$300 million will be spent in Montana.
10. The interest rate on the \$25 million loan will be 7%.
11. There will be a \$20 million cap on interest costs for the loan.

**FISCAL IMPACT:****Revenue:**

	FY '94			FY '95		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Coal Trust Interest Earnings (Clean Coal Fund)						
General Fund	145,336	0	(145,336)	537,163	0	(537,163)
School Foundation Program	<u>25,647</u>	<u>0</u>	<u>(25,647)</u>	<u>94,793</u>	<u>0</u>	<u>(94,793)</u>
Total	170,983	0	(170,983)	631,956	0	(631,956)

(continued on next page)

  
 DAVID LEWIS, BUDGET DIRECTOR      DATE  
 Office of Budget and Program Planning

  
 JERRY DRISCOLL, PRIMARY SPONSOR      DATE

Fiscal Note for HB0616, as introduced

HB 616

Net Impact: The general fund and school foundation program would be impacted due to the loan fund disbursements. This impact would continue throughout the term of the loan. State and local tax revenues would be lower due to the tax credits. Investment in the state would be significant if the federal and private investment is secured. The project sponsor estimated approximately 200 jobs during construction and 30 to 50 long-term jobs at the project.

There may be some impact on state revenues and expenditures during this biennium if the state begins to process the application for the MHD facility under the Major Facility Siting Act (MFSA). All of these costs will be covered by fees assessed on the applicant as provided in 75-20-215, MCA.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: The loss of interest earnings to the general fund and school foundation program will continue throughout the 25 year loan term. Further, the \$20 million cap on interest costs will be reached by fiscal year 2007. This reduces the effective rate of interest on the loan. State and local tax revenue would be \$28.4 million lower due to the tax credits.

The investment of over \$300 million into the state economy will provide significant economic growth to the state. Once operating, 30 to 50 full-time positions will be created.

There are significant risks associated with the loan. During the planning stages the state would loan up to \$8 million prior to the U. S. Department of Energy's commitment of the full \$220 million. Federal and private investment will be at least four times that of the state's investment during this period. However, until the final designs are accepted by DOE, the federal government may stop its participation. If this were to happen there would be no repayment of the loan. The other risks are associated with the marketability of MHD technology. If it works and is shown to be cost effective, there will be markets. However, until the project is constructed and operating, the potential markets will remain unknown. Some of the risk is mitigated by the fact that conventional steam generation is part of the project. This "bottom cycle" is known technology and would produce power and, in turn, power revenues. But, the cost and market for this power is unknown at this time.

TECHNICAL NOTES: The bill requires the MHD facility to go through the MFSA process, but the findings of the process are made in section 4 of this bill. It is unclear what is accomplished in the MFSA process if the findings are already made.

APPROVED BY COMMITTEE  
ON TAXATION

## HOUSE BILL NO. 616

INTRODUCED BY DRISCOLL, FORRESTER, R. JOHNSON, HARRINGTON,  
LYNCH, SIMON, MENAHAN, PAVLOVICH, QUILICI, DAILY, JACOBSON,  
BECK, WHALEN, MCCULLOCH, SCHYE, BLAYLOCK, RYE, HARP,  
CRIPPEN, HAGER, WINSLOW, BOHLINGER, STOVALL, MOLNAR,  
MILLS, FAGG, VOGEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CLEAN COAL  
TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT  
CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH  
A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION AND THE MHD DEVELOPMENT CORPORATION WILL BE  
ESTABLISHED; ~~DETERMINING THAT THE BILLINGS MHD DEMONSTRATION  
PROJECT IS A NEEDED FACILITY UNDER THE REQUIREMENTS OF THE  
MONTANA MAJOR FACILITY SITING ACT; DETERMINING THAT  
ELECTRICAL POWER PRODUCED BY THE PROJECT IS NEEDED AND HAS A  
BENEFICIAL IMPACT ON THE ENVIRONMENT; AMENDING SECTIONS  
75-20-301 AND 75-20-503, MCA; AND PROVIDING AN IMMEDIATE  
EFFECTIVE DATE.~~"

WHEREAS, the 52nd Legislature established and provided  
funds for a clean coal technology demonstration fund within  
the coal severance tax trust fund; and

WHEREAS, the Billings MHD demonstration project was  
designated by the 52nd Legislature as a clean coal

technology demonstration project eligible to receive a clean  
coal technology demonstration loan in the amount of \$25  
million; and

WHEREAS, the Department of Natural Resources and  
Conservation has the authority to review clean coal  
technology demonstration loan applications and to make  
recommendations to the Legislature concerning the approval  
of loan requests; and

WHEREAS, the Department has reviewed the loan request  
from the MHD Development Corporation for the Billings MHD  
demonstration project and recommends that the loan be  
approved based on the terms and conditions provided in this  
bill.

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

NEW SECTION. Section 1. Definitions. As used in  
[sections 1 through 4], the following definitions apply:

(1) "Billings MHD demonstration project" means the  
project to be developed by the MHD development corporation  
to commercially demonstrate the magnetohydrodynamics (MHD)  
technology and to produce electric power as described in the  
application for federal clean coal V funding submitted to  
the U.S. department of energy by the MHD development  
corporation. THE METHODS DESCRIBED IN THE CLEAN COAL V  
APPLICATION FOR PRODUCTION OF ELECTRIC POWER PROVIDE FOR A



1 PROCESS THAT WILL OPERATE WITH OR WITHOUT THE SUCCESSFUL  
 2 DEMONSTRATION OF THE MHD TECHNOLOGY.

3 (2) "Budget period" means a segment of time in which  
 4 the Billings MHD demonstration project is expected to reach  
 5 certain engineering, procurement, or construction milestones  
 6 through the use of a designated amount of funds.

7 (3) "Department" means the department of natural  
 8 resources and conservation provided for in 2-15-3301.

9 (4) "Loan proceeds" means clean coal technology  
 10 development project loan funds received by the MHD  
 11 development corporation from the department as a result of  
 12 passage and approval of [sections 1 through 4] and the  
 13 execution of a loan agreement described in [sections 1  
 14 through 4].

15 (5) "MHD development corporation" means ~~the company~~  
 16 ~~that owns the MHD technology and~~ A CONSORTIUM OF PRIVATE  
 17 COMPANIES that has applied to the U.S. department of energy  
 18 for funding through the clean coal V funding program to  
 19 commercially demonstrate the MHD technology through the  
 20 development, engineering, construction, and operation of the  
 21 Billings MHD demonstration project.

22 (6) "MHD technology" means the intellectual property  
 23 used to construct the physical components, or processes that  
 24 utilize those physical components, to produce electricity  
 25 through the technology known as magnetohydrodynamics as

1 described in the application for federal clean coal V  
 2 funding.

3 (7) "Participating companies" means those corporate  
 4 entities that have provided the technical expertise,  
 5 component equipment, capital, or other assets or resources  
 6 in the development of the MHD technology, that hold  
 7 positions of equity ownership in the MHD development  
 8 corporation, and that have transferred any proprietary  
 9 interest INTERESTS in the MHD technology ~~that they may have~~  
 10 ~~at one time possessed~~ to the MHD development corporation to  
 11 enable the MHD development corporation to commercially  
 12 demonstrate the MHD technology through the development,  
 13 engineering, construction, and operation of the Billings MHD  
 14 demonstration project and to enable the MHD development  
 15 corporation to engage in subsequent commercial applications  
 16 of the MHD technology.

17 (8) "Senior debt creditor" means a lender or consortium  
 18 of lenders that has provided a larger share of debt  
 19 financing to the Billings MHD demonstration project than any  
 20 other lender or consortium of lenders and that has properly  
 21 secured its loan against the assets of the Billings MHD  
 22 demonstration project or the MHD development corporation.

23 NEW SECTION. Section 2. Approval of loan. A clean coal  
 24 technology demonstration loan in the amount of \$25 million  
 25 is approved for the MHD development corporation to pay a

portion of the costs involved in development, engineering, procurement, and construction related to the Billings MHD demonstration project if the loan agreement described in [section 3] is entered into by the department and the MHD development corporation.

NEW SECTION. **Section 3. Loan agreement.** The department shall enter into a loan agreement with the MHD development corporation that includes the following provisions:

(1) The amount of the loan is \$25 million.

(2) The loan agreement must be for a term of 25 years from the date it is signed by the parties or until all principal and interest have been retired, whichever occurs first.

(3) Loan proceeds may be applied to the costs of developing engineering specifications, procuring equipment, or constructing physical facilities or to other costs directly related to negotiating for the final commitment of the U.S. department of energy funding and for the development and construction of the Billings MHD demonstration project for the commercial demonstration of the MHD technology.

(4) Loan proceeds must be disbursed according to a series of scheduled budget periods. A disbursement may not be made prior to May 1, 1993. The total amount of the loan may not be released in less than five disbursements. A

disbursement may not exceed \$10 million and may not be less than \$400,000.

(5) The following matching funds requirements apply to the disbursement of loan proceeds:

(a) Loan proceeds may not be disbursed unless the MHD development corporation has received a notice of award SELECTION from the U.S. department of energy stating that it has been selected to receive ~~at least \$100 million~~ AN AWARD through the federal clean coal V funding program.

(b) Loan proceeds may not be disbursed for expenditure in any budget period unless the department has received satisfactory evidence that federal or private funds will be expended in that budget period in an amount that is at least four times greater than the amount of loan proceeds to be expended in that budget period.

(c) No more than \$8 million in loan proceeds may be disbursed unless the U.S. department of energy has issued a final authorization to proceed after project definition activities, as described in the federal clean coal V program offering notice, have been concluded and the department of energy has committed to spend the entire federal clean coal V award amount allocated for the Billings MHD demonstration project.

(d) Before disbursing loan proceeds in any budget period, the department must be satisfied that the matching

1 funds requirement for the previous budget periods has been  
2 met.

3 (6) (a) Subject to subsection (6)(b), interest must  
4 accrue AND BE CAPITALIZED at the same rate as the rate  
5 applicable to TAXABLE 20-year general obligation bonds  
6 issued by the state on the date nearest in time to the date  
7 that the loan agreement is signed by the parties.

8 (b) The total interest amount may not exceed \$20  
9 million.

10 (7) (a) Subject to subsections (7)(b) and (7)(c), the  
11 following sources must be used to pay the principal and  
12 interest payments on the loan:

13 (i) up to 5% of gross fees or royalties derived from  
14 the sale, lease, or licensing of the MHD technology; and

15 (ii) up to ~~0.05%~~ 0.5% of all revenue derived from the  
16 sale of component equipment that embodies the MHD  
17 technology.

18 ~~(b) Beginning in the 17th year after the loan agreement~~  
19 ~~is signed by the parties or after repayment obligations to~~  
20 ~~senior debt creditors have been satisfied, whichever occurs~~  
21 ~~first, the~~ (I) THE MHD development corporation shall, when  
22 ~~there is sufficient cash flow available after the~~  
23 ~~appropriate allowance for the payment of taxes,~~ make  
24 payments to the department using revenue derived from the  
25 sale of electric power UPON THE OCCURRENCE OF THE FIRST OF

1 THE FOLLOWING:

2 (A) THE BEGINNING OF THE 17TH YEAR AFTER THE LOAN  
3 AGREEMENT IS SIGNED BY THE PARTIES;

4 (B) REPAYMENT OBLIGATIONS TO SENIOR DEBT CREDITORS HAVE  
5 BEEN SATISFIED; OR

6 (C) CHANGES IN THE PRICE OF ELECTRICITY SOLD AS A  
7 RESULT OF PROJECT OPERATIONS, CHANGES IN EXPENSES PAID AS A  
8 RESULT OF PROJECT OPERATIONS, OR CHANGES IN OTHER FINANCIAL  
9 FACTORS CAUSE NET CASH FLOW TO BE GREATER THAN THAT  
10 PROJECTED TO BE AVAILABLE AFTER MAKING PERIODIC PAYMENTS TO  
11 SENIOR DEBT CREDITORS AND THE APPROPRIATE ALLOWANCE FOR  
12 TAXES.

13 (II) The payments must be made, WHEN THERE IS SUFFICIENT  
14 CASH FLOW AVAILABLE AFTER THE APPROPRIATE ALLOWANCE FOR THE  
15 PAYMENT OF TAXES, in amounts and according to a schedule to  
16 be agreed upon by the parties that is sufficient to ensure  
17 that the entire amount of principal and interest owed on the  
18 loan is fully retired by the 25th year after the loan  
19 agreement is signed.

20 (c) If the department and the U.S. department of energy  
21 both receive repayment from a source listed in subsection  
22 (7)(a)(i) or (7)(a)(ii), the department shall receive  
23 payment on a pro rata basis taking into account its  
24 financial contribution to the Billings MHD demonstration  
25 project compared to the contribution of the department of

energy contribution. The percentage limit contained in subsection (7)(a)(i) or (7)(a)(ii) may not be exceeded.

(8) IF EXCEPT AS PROVIDED IN SUBSECTION (10), IF at any time the principal and prorated interest amounts owing on the loan are retired, the loan is considered retired and further payments are not required to be made. There may not be a penalty associated with early repayment.

(9) The payment of the principal and interest on the loan is governed by the following provisions:

(a) Payments made from the sources listed in subsection (7)(a)(i) or (7)(a)(ii) before the time provided for in subsection (7)(b) must be FIRST applied to the principal of the loan, THEN TO ANY INTEREST ACCUMULATED ON THE PRINCIPAL.

(b) Payments made after the beginning of the time period provided for in subsection (7)(b) must be first applied to interest accumulated on the principal amount of the loan and any payments greater than the accumulated interest must be applied to the principal.

(10) Notwithstanding the provisions of subsections (2), (6), and (8) and in addition to the requirement for the payment of principal and interest contained in this section, the MHD development corporation shall pay to the department from the sources described in subsections (7)(a)(i) and (7)(a)(ii) one-half of the amount of the loan proceeds disbursed as described in subsection (5)(c). This additional

payment requirement must begin immediately after all principal and interest have been paid and continues until the appropriate amount has been paid, even if the loan agreement has expired.

(11) The MHD development corporation shall pay all principal and interest owed to the state on the loan made to the MHD-Corette project pursuant to Chapter 793, Laws of 1991. This repayment requirement is effective at the time the MHD development corporation has secured the total amount of financing necessary to initially capitalize the Billings MHD development project. Notwithstanding section 1(3), Chapter 793, Laws of 1991, \$50,000 of the amount repaid under this subsection must be deposited in the state special revenue account created by 90-2-1104 for use by the department in administering the clean coal technology demonstration program.

(12) The department may hold the following security positions if the positions are subordinate to the security positions of senior debt creditors to the Billings MHD demonstration project:

(a) a security position associated with any of the repayment sources listed in subsection (7); and

(b) a security position in the sale of the assets of the Billings MHD demonstration project.

(13) (a) The department must be satisfied, before the

1 loan agreement is entered into, that:

2 (i) the MHD development corporation has acquired from  
3 the participating companies and other relevant parties  
4 ownership of all rights and other positions of ownership  
5 related to the MHD technology that are sufficient to meet  
6 its repayment obligations under the loan agreement; and

7 (ii) the projected level of initial capitalization,  
8 operating income, expenses, and other factors affecting the  
9 financial viability of the Billings MHD demonstration  
10 project is sufficient for the MHD development corporation,  
11 through its ownership and operation of the Billings MHD  
12 demonstration project, to operate the project AND TO MEET  
13 ITS REPAYMENT OBLIGATIONS TO CREDITORS.

14 (b) The following protective positions must be  
15 contained in the loan agreement:

16 (i) the provisions contained in subsection (13)(a) must  
17 be included;

18 (ii) the requirements for repayment, reporting, and  
19 other obligations of the MHD development corporation under  
20 the loan agreement must be assigned to any party that may  
21 purchase the assets or otherwise receive ownership of the  
22 MHD technology or the Billings MHD demonstration project;  
23 and

24 (iii) the obligations ~~must-remain-in-effect--during--the~~  
25 ~~term-of~~ EXTEND BEYOND the loan agreement.

1 (14) The following reports must be required by the loan  
2 agreement:

3 (a) During the time before the Billings MHD  
4 demonstration project begins operation, the MHD development  
5 corporation shall deliver to the department, within 30 days  
6 after the end of each ~~disbursement~~ SEMIANNUAL period, a  
7 ~~semiannual~~ progress report briefly describing the status of  
8 the project, any significant events that occurred in the  
9 previous period, and a summary of the project's financial  
10 position.

11 (b) After the project begins operation, the MHD  
12 development corporation shall deliver to the department  
13 reports of activities, financial statements, and other  
14 reports according to the ~~same requirements and schedule that~~  
15 ~~are--applicable--to~~ ESTABLISHED BY THE DEPARTMENT. THE  
16 REQUIREMENTS MAY NOT BE LESS THAN THOSE IMPOSED UPON the  
17 senior debt creditor to the project. The reports must detail  
18 the amount of principal and interest owed to the department,  
19 any payments made to the department, any events that trigger  
20 a payment requirement related to the loan, and any other  
21 factor of significance related to the loan agreement.

22 (c) The MHD development corporation shall provide to  
23 the department an annual statement of any transaction OR THE  
24 ABSENCE OF ANY TRANSACTION related to the sale, lease, or  
25 licensing of the MHD technology and to the sale of component

1 equipment manufactured for use in the MHD technology and an  
2 annual statement of any amount owed to the department as a  
3 result of those activities.

4 (d) The department shall prepare and deliver a biennial  
5 report to the legislature describing the status of the loan  
6 agreement and the status of the project.

7 (15) The terms of a repayment agreement established in  
8 relation to funds provided to the MHD development  
9 corporation for the Billings MHD demonstration project by  
10 the U.S. department of energy through the federal clean coal  
11 V funding program may not include an interest rate, security  
12 provision, or other term that increases the likelihood of  
13 repayment that is greater than that afforded to the  
14 department under the loan agreement. If the department  
15 considers that the terms related to the U.S. department of  
16 energy are more favorable than those established in the loan  
17 agreement, the department and the MHD development  
18 corporation shall amend the loan agreement to strengthen its  
19 provisions accordingly.

20 (16) The terms and conditions described in subsections  
21 (1) through (15) may not be construed as inclusive of all  
22 terms and conditions that may constitute the loan agreement.  
23 The department and the MHD development corporation may  
24 include other terms and conditions they consider IT  
25 CONSIDERS necessary if the other terms and conditions do not

1 substantially alter the provisions described in this  
2 section.

3 (17) The department shall report to the first scheduled  
4 meeting of the legislative finance committee if:

5 (a) the MHD development corporation chooses not to  
6 pursue the loan agreement;

7 (b) the department and the MHD development corporation,  
8 after reasonable efforts, fail to agree on final terms and  
9 conditions of the loan agreement; or

10 (c) other events reasonably preclude the ability of the  
11 parties to establish an agreement.

12 ~~NEW SECTION. Section 4. Facility and power needed-----~~  
13 ~~beneficial under major facility siting act. The Billings MHD~~  
14 ~~demonstration project is considered to meet the requirements~~  
15 ~~imposed upon the board of natural resources and conservation~~  
16 ~~to find that:~~

17 ~~{1} as a one-time demonstration project for this~~  
18 ~~particular technology, the Billings MHD demonstration~~  
19 ~~project is a needed facility under 75-20-301, and~~

20 ~~{2} energy produced by the Billings MHD demonstration~~  
21 ~~project fulfills the criteria for need and for beneficial~~  
22 ~~impact on the environment as required by 75-20-301 and~~  
23 ~~75-20-503.~~

24 ~~Section 5. Section 75-20-301, MCA, is amended to read:--~~

25 ~~"75-20-301. Decision of board----findings necessary for~~

1 certification--(1)--Within Except as provided in {section 4},  
 2 within 60 days after submission of the recommended decision  
 3 by the hearing examiner, the board shall make complete  
 4 findings, issue an opinion, and render a decision upon the  
 5 record, either granting or denying the application as filed  
 6 or granting it upon such terms, conditions, or modifications  
 7 of the construction, operation, or maintenance of the  
 8 facility as the board considers appropriate;  
 9 (2)--The board may not grant a certificate either as  
 10 proposed by the applicant or as modified by the board unless  
 11 it shall find and determine:  
 12 (a)--the basis of the need for the facility;  
 13 (b)--the nature of the probable environmental impact;  
 14 (c)--that the facility minimizes adverse environmental  
 15 impact, considering the state of available technology and  
 16 the nature and economics of the various alternatives;  
 17 (d)--each of the criteria listed in 75-20-503;  
 18 (e)--in the case of an electric, gas, or liquid  
 19 transmission line or aqueduct:  
 20 (i)--what part, if any, of the line or aqueduct shall  
 21 will be located underground;  
 22 (ii)--that the facility is consistent with regional plans  
 23 for expansion of the appropriate grid of the utility systems  
 24 serving the state and interconnected utility systems; and  
 25 (iii)--that the facility will serve the interests of

1 utility system economy and reliability;  
 2 (f)--that the location of the facility as proposed  
 3 conforms to applicable state and local laws and regulations  
 4 issued thereunder, except that the board may refuse to apply  
 5 any local law or regulation if it finds that, as applied to  
 6 the proposed facility, the law or regulation is unreasonably  
 7 restrictive in view of the existing technology, of factors  
 8 of cost or economics, or of the needs of consumers, whether  
 9 located inside or outside of the directly affected  
 10 government subdivisions;  
 11 (g)--that the facility will serve the public interest,  
 12 convenience, and necessity;  
 13 (h)--that the department of health or board of health  
 14 have issued a decision, opinion, order, certification, or  
 15 permit as required by 75-20-216(3); and  
 16 (i)--that the use of public lands for location of the  
 17 facility was evaluated and public lands were selected  
 18 whenever their use is as economically practicable as the use  
 19 of private lands and compatible with the environmental  
 20 criteria listed in 75-20-503;  
 21 (3)--In determining that the facility will serve the  
 22 public interest, convenience, and necessity under subsection  
 23 (2)(g) of this section, the board shall consider:  
 24 (a)--the items listed in subsections (2)(a) and (2)(b)  
 25 of this section;

1 (b)--the---benefits---to---the---applicant---and---the---state  
 2 resulting-from-the-proposed-facility;  
 3 (c)--the-effects-of-the-economic-activity-resulting-from  
 4 the-proposed-facility;  
 5 (d)--the-effects-of-the-proposed-facility-on-the--public  
 6 health, welfare, and safety;  
 7 (e)--any-other-factors-that-it-considers-relevant;  
 8 (4)--Considerations--of--need,--public--need,--or--public  
 9 convenience-and-necessity-and-demonstration-thereof--by--the  
 10 applicant-shall-apply-only-to-utility-facilities."

11 **Section 6.** Section 75-20-503, MCA, is amended to read:--  
 12 "75-20-503. Environmental factors evaluated. In Except  
 13 as provided in (section 4), in evaluating long-range--plans,  
 14 conducting--5-year-site-reviews, and evaluating applications  
 15 for--certificates, the--board--and--department--shall--give  
 16 consideration--to--the--following--list---of---environmental  
 17 factors,--where--applicable,--and--may--by--rule--add-to-the  
 18 categories-of-this-section:  
 19 (1)--energy-needs;  
 20 (a)--growth-in-demand-and-projections-of-need;  
 21 (b)--availability--and---desirability---of---alternative  
 22 sources-of-energy;  
 23 (c)--availability---and---desirability---of--alternative  
 24 sources-of-energy-in-lieu-of-the-proposed-facility;  
 25 (d)--promotional-activities-of--the--utility--which--may

1 have-given-rise-to-the-need-for-this-facility;  
 2 (e)--socially--beneficial--uses--of--the--output-of-this  
 3 facility,--including--its--uses--to---protect---or---enhance  
 4 environmental-quality;  
 5 (f)--conservation-activities-which-could-reduce-the-need  
 6 for-more-energy;  
 7 (g)--research---activities---of---the---utility--of--new  
 8 technology---available---to---it---which---might---minimize  
 9 environmental-impact;  
 10 (2)--land-use-impacts:  
 11 (a)--area-of-land-required-and-ultimate-use;  
 12 (b)--consistency--with--areawide-state-and-regional-land  
 13 use-plans;  
 14 (c)--consistency-with-existing-and-projected-nearby-land  
 15 use;  
 16 (d)--alternative-uses-of-the-site;  
 17 (e)--impact--on--population---already---in---the---area,  
 18 population--attracted--by--construction--or--operation-of-the  
 19 facility-itself;  
 20 (f)--impact-of-availability-of-energy-from-this-facility  
 21 on-growth-patterns-and-population-dispersal;  
 22 (g)--geologic-suitability-of-the-site-or-route;  
 23 (h)--seismologic-characteristics;  
 24 (i)--construction-practices;  
 25 (j)--extent-of-erosion, scouring, wasting-of-land,--both



1 at--site--and--as--a--result--of--fossil-fuel-demands-of-the  
 2 facility;  
 3 {k}--corridor-design-and--construction--precautions--for  
 4 transmission-lines-or-aqueducts;  
 5 {l}--scenic-impacts;  
 6 {m}--effects-on-natural-systems,wildlife,plant-life;  
 7 {n}--impacts---on---important---historic---architectural;  
 8 archaeological-and-cultural-areas-and-features;  
 9 {o}--extent--of--recreation--opportunities--and--related  
 10 compatible-uses;  
 11 {p}--public-recreation-plan-for-the-project;  
 12 {q}--public-facilities-and-accommodation;  
 13 {r}--opportunities-for-joint-use--with--energy-intensive  
 14 industries--or--other--activities--to-utilize-the-waste-heat  
 15 from-facilities;  
 16 {s}--opportunities-for-using-public-lands--for--location  
 17 of--facilities--whenever--as-economically-practicable-as-the  
 18 use-of-private-lands-and-compatible-with-the-requirements-of  
 19 this-section;  
 20 {t}--water-resources-impacts;  
 21 {a}--hydrologic-studies-of-adequacy-of-water-supply--and  
 22 impact-of-facility-on-streamflow,lakes,and-reservoirs;  
 23 {b}--hydrologic--studies--of--impact--of--facilities--on  
 24 ground-water;  
 25 {c}--cooling--system-evaluation,including-consideration

1 of-alternatives;  
 2 {d}--inventory---of---effluents,---including---physical,  
 3 chemical,biological,and-radiological-characteristics;  
 4 {e}--hydrologic--studies--of--effects--of--effluents--on  
 5 receiving--waters,--including--mixing---characteristics---of  
 6 receiving--waters,--changed--evaporation--due-to-temperature  
 7 differentials,and-effect-of-discharge-on-bottom-sediments;  
 8 {f}--relationship-to-water-quality-standards;  
 9 {g}--effects-of-changes-in-quantity-and-quality-on-water  
 10 use-by-others,including-both-withdrawal-and-in-situ-uses;  
 11 {h}--relationship-to-projected-uses;  
 12 {i}--relationship-to-water-rights;  
 13 {j}--effects-on-plant-and-animal-life,including--algae,  
 14 macroinvertebrates,and-fish-population;  
 15 {k}--effects---on---unique---or---otherwise---significant  
 16 ecosystems,erg,wetlands;  
 17 {l}--monitoring-programs;  
 18 {4}--air-quality-impacts;  
 19 {a}--meteorology--wind-direction-and-velocity,--ambient  
 20 temperature---ranges,--precipitation---values,--inversion  
 21 occurrence,other-effects-on-dispersion;  
 22 {b}--topography--factors-affecting-dispersion;  
 23 {c}--standards-in-effect-and-projected-for-emissions;  
 24 {d}--design-capability-to-meet-standards;  
 25 {e}--emissions-and-controls;

1 {i}--stack-design;  
 2 {ii}--particulates;  
 3 {iii}--sulfur-oxides;  
 4 {iv}--oxides-of-nitrogen;-and  
 5 {v}--heavy---metals;---trace---elements;---radioactive  
 6 materials;-and-other-toxic-substances;  
 7 {f}--relationship--to--present-and-projected-air-quality  
 8 of-the-area;  
 9 {g}--monitoring-program;  
 10 {5}--solid-wastes-impacts;  
 11 {a}--solid-waste-inventory;  
 12 {b}--disposal-program;  
 13 {c}--relationship-of-disposal-practices-to-environmental  
 14 quality-criteria;  
 15 {d}--capacity-of--disposal--sites--to--accept--projected  
 16 waste-loadings;  
 17 {6}--radiation-impacts;  
 18 {a}--land-use-controls-over-development-and-population;  
 19 {b}--wastes--and--associated-disposal-program-for-solid;  
 20 liquid;-radioactive;-and-gaseous-wastes;  
 21 {c}--analyses-and-studies-of-the-adequacy-of-engineering  
 22 safeguards-and-operating-procedures;  
 23 {d}--monitoring--adequacy--of---devices---and---sampling  
 24 techniques;  
 25 {7}--noise-impacts;

1 {a}--construction-period-levels;  
 2 {b}--operational-levels;  
 3 {c}--relationship--of-present-and-projected-noise-levels  
 4 to-existing-and-potential-stricter-noise-standards;  
 5 {d}--monitoring--adequacy-of-devices-and-methods;"  
 6 NEW SECTION. Section 4. Effective date. [This act] is  
 7 effective on passage and approval.

-End-

## HOUSE BILL NO. 616

INTRODUCED BY DRISCOLL, FORRESTER, R. JOHNSON, HARRINGTON,  
LYNCH, SIMON, MENAHAN, PAVLOVICH, QUILICI, DAILY, JACOBSON,  
BECK, WHALEN, MCCULLOCH, SCHYE, BLAYLOCK, RYE, HARP,  
CRIPPEN, HAGER, WINSLOW, BOHLINGER, STOVALL, MOLNAR,  
MILLS, FAGG, VOGEL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CLEAN COAL  
TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT  
CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH  
A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES  
AND CONSERVATION AND THE MHD DEVELOPMENT CORPORATION WILL BE  
ESTABLISHED; DETERMINING THAT THE BILLINGS MHD DEMONSTRATION  
PROJECT IS A NEEDED FACILITY UNDER THE REQUIREMENTS OF THE  
MONTANA MAJOR FACILITY SITING ACT; DETERMINING THAT  
ELECTRIC POWER PRODUCED BY THE PROJECT IS NEEDED AND HAS A  
BENEFICIAL IMPACT ON THE ENVIRONMENT; AMENDING SECTIONS  
75-20-301 AND 75-20-503, MCA; CONTINUING THE APPROPRIATION  
FOR THE CLEAN FUELS INFORMATION DEPOSITORY, DISTRIBUTION,  
AND MARKET DEVELOPMENT CENTER; AMENDING SECTION 1, CHAPTER  
793, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE."

WHEREAS, the 52nd Legislature established and provided  
funds for a clean coal technology demonstration fund within

the coal severance tax trust fund; and

WHEREAS, the Billings MHD demonstration project was  
designated by the 52nd Legislature as a clean coal  
technology demonstration project eligible to receive a clean  
coal technology demonstration loan in the amount of \$25  
million; and

WHEREAS, the Department of Natural Resources and  
Conservation has the authority to review clean coal  
technology demonstration loan applications and to make  
recommendations to the legislature concerning the approval  
of loan requests; and

WHEREAS, the Department has reviewed the loan request  
from the MHD Development Corporation for the Billings MHD  
demonstration project and recommends that the loan be  
approved based on the terms and conditions provided in this  
bill.

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

NEW SECTION. Section 1. Definitions. As used in  
[sections 1 through 4 ], the following definitions apply:

(1) "Billings MHD demonstration project" means the  
project to be developed by the MHD development corporation  
to commercially demonstrate the magnetohydrodynamics (MHD)  
technology and to produce electric power as described in the  
application for federal clean coal V funding submitted to

the U.S. department of energy by the MHD development corporation. THE METHODS DESCRIBED IN THE CLEAN COAL V APPLICATION FOR PRODUCTION OF ELECTRIC POWER PROVIDE FOR A PROCESS THAT WILL OPERATE WITH OR WITHOUT THE SUCCESSFUL DEMONSTRATION OF THE MHD TECHNOLOGY.

(2) "Budget period" means a segment of time in which the Billings MHD demonstration project is expected to reach certain engineering, procurement, or construction milestones through the use of a designated amount of funds.

(3) "Department" means the department of natural resources and conservation provided for in 2-15-3301.

(4) "Loan proceeds" means clean coal technology development project loan funds received by the MHD development corporation from the department as a result of passage and approval of [sections 1 through 4 3] and the execution of a loan agreement described in [sections 1 through 4 3].

(5) "MHD development corporation" means the--company that--owns--the--MHD--technology--and A CONSORTIUM OF PRIVATE COMPANIES that has applied to the U.S. department of energy for funding through the clean coal V funding program to commercially demonstrate the MHD technology through the development, engineering, construction, and operation of the Billings MHD demonstration project.

(6) "MHD technology" means the intellectual property

used to construct the physical components, or processes that utilize those physical components, to produce electricity through the technology known as magnetohydrodynamics as described in the application for federal clean coal V funding.

(7) "Participating companies" means those corporate entities that have provided the technical expertise, component equipment, capital, or other assets or resources in the development of the MHD technology, that hold positions of equity ownership in the MHD development corporation, and that have transferred any proprietary interest INTERESTS in the MHD technology that--they--may--have at-one-time--possessed to the MHD development corporation to enable the MHD development corporation to commercially demonstrate the MHD technology through the development, engineering, construction, and operation of the Billings MHD demonstration project and to enable the MHD development corporation to engage in subsequent commercial applications of the MHD technology.

(8) "Senior debt creditor" means a lender or consortium of lenders that has provided a larger share of debt financing to the Billings MHD demonstration project than any other lender or consortium of lenders and that has properly secured its loan against the assets of the Billings MHD demonstration project or the MHD development corporation.

1 THE STATE OF MONTANA IS A SENIOR DEBT CREDITOR.

2 NEW SECTION. Section 2. Approval of loan. A clean coal  
3 technology demonstration loan in the amount of \$25 million  
4 is approved for the MHD development corporation to pay a  
5 portion of the costs involved in development, engineering,  
6 procurement, and construction related to the Billings MHD  
7 demonstration project if the loan agreement described in  
8 [section 3] is entered into by the department and the MHD  
9 development corporation.

10 NEW SECTION. Section 3. Loan agreement. The department  
11 shall enter into a loan agreement with the MHD development  
12 corporation that includes the following provisions:

13 (1) The amount of the loan is \$25 million.

14 (2) The loan agreement must be for a term of 25 years  
15 from the date it is signed by the parties or until all  
16 principal and interest have been retired, whichever occurs  
17 first.

18 (3) Loan proceeds may be applied to the costs of  
19 developing engineering specifications, procuring equipment,  
20 or constructing physical facilities or to other costs  
21 directly related to negotiating for the final commitment of  
22 the U.S. department of energy funding and for the  
23 development and construction of the Billings MHD  
24 demonstration project for the commercial demonstration of  
25 the MHD technology.

1 (4) Loan proceeds must be disbursed according to a  
2 series of scheduled budget periods. A disbursement may not  
3 be made prior to May 1, 1993. The total amount of the loan  
4 may not be released in less than five disbursements. A  
5 disbursement may not exceed \$10 million and may not be less  
6 than \$400,000.

7 (5) The following matching funds requirements apply to  
8 the disbursement of loan proceeds:

9 (a) Loan proceeds may not be disbursed unless the MHD  
10 development corporation has received a notice of award  
11 SELECTION from the U.S. department of energy stating that it  
12 has been selected to receive ~~at least \$100 million~~ AN AWARD  
13 through the federal clean coal V funding program.

14 (b) Loan proceeds may not be disbursed for expenditure  
15 in any budget period unless the department has received  
16 satisfactory evidence that federal or private funds will be  
17 expended in that budget period in an amount that is at least  
18 four times greater than the amount of loan proceeds to be  
19 expended in that budget period.

20 (c) No more than \$8 million in loan proceeds may be  
21 disbursed unless the U.S. department of energy has issued a  
22 final authorization to proceed after project definition  
23 activities, as described in the federal clean coal V program  
24 offering notice, have been concluded and the department of  
25 energy has committed to spend the entire federal clean coal

V award amount allocated for the Billings MHD demonstration project.

(d) Before disbursing loan proceeds in any budget period, the department must be satisfied that the matching funds requirement for the previous budget periods has been met.

(6) ~~{a}~~ Subject to subsection ~~{6}~~~~{b}~~, interest INTEREST must accrue AND BE CAPITALIZED at the same rate as GREATER OF the rate applicable to TAXABLE 20-year general obligation bonds issued by the state on the date nearest in time to the date that the loan agreement is signed by the parties OR THE RATE PAYABLE TO OTHER SENIOR DEBT CREDITORS.

~~{b}~~ The total interest amount may not exceed \$20 million.

(7) (a) Subject to subsections (7)(b) and (7)(c), the following sources must be used to pay the principal and interest payments on the loan:

(i) up to 5% of gross fees or royalties derived from the sale, lease, or licensing of the MHD technology; and

(ii) up to ~~0.05%~~ 0.5% of all revenue derived from the sale of component equipment that embodies the MHD technology.

(b) ~~Beginning in the 17th year after the loan agreement is signed by the parties or after repayment obligations to senior debt creditors have been satisfied, whichever occurs~~

first, the (I) THE MHD development corporation shall, when there is sufficient cash flow available after the appropriate allowance for the payment of taxes, make payments to the department using revenue derived from the sale of electric power UPON THE OCCURRENCE OF THE FIRST OF THE FOLLOWING:

{A} THE BEGINNING OF THE 17TH YEAR AFTER THE LOAN AGREEMENT IS SIGNED BY THE PARTIES;

{B} AS PART OF THE REPAYMENT OBLIGATIONS TO SENIOR DEBT CREDITORS HAVE BEEN SATISFIED; OR

{C} CHANGES IN THE PRICE OF ELECTRICITY SOLD AS A RESULT OF PROJECT OPERATIONS, CHANGES IN EXPENSES PAID AS A RESULT OF PROJECT OPERATIONS, OR CHANGES IN OTHER FINANCIAL FACTORS CAUSE NET CASH FLOW TO BE GREATER THAN THAT PROJECTED TO BE AVAILABLE AFTER MAKING PERIODIC PAYMENTS TO SENIOR DEBT CREDITORS AND THE APPROPRIATE ALLOWANCE FOR TAXES.

(II) The payments must be made, WHEN THERE IS SUFFICIENT CASH FLOW AVAILABLE AFTER THE APPROPRIATE ALLOWANCE FOR THE PAYMENT OF TAXES, in amounts and according to a schedule to be agreed upon by the parties that is sufficient to ensure that the entire amount of principal and interest owed on the loan is fully retired by the 25th year after the loan agreement is signed.

(c) If the department and the U.S. department of energy

both receive repayment from a source listed in subsection (7)(a)(i) or (7)(a)(ii), the department shall receive payment on a pro rata basis taking into account its financial contribution to the Billings MHD demonstration project compared to the contribution of the department of energy contribution. The percentage limit contained in subsection (7)(a)(i) or (7)(a)(ii) may not be exceeded.

(8) IF EXCEPT AS PROVIDED IN SUBSECTION (10), IF at any time the principal and prorated interest amounts owing on the loan are retired, the loan is considered retired and further payments are not required to be made. There may not be a penalty associated with early repayment.

(9) The payment of the principal and interest on the loan is governed by the following provisions:

(a) Payments made from the sources listed in subsection (7)(a)(i) or (7)(a)(ii) before the time provided for in subsection (7)(b) must be FIRST applied to the principal of the loan, THEN TO ANY INTEREST ACCUMULATED ON THE PRINCIPAL.

(b) Payments made after the beginning of the time period provided for in subsection (7)(b) must be first applied to interest accumulated on the principal amount of the loan and any payments greater than the accumulated interest must be applied to the principal.

(10) Notwithstanding the provisions of subsections (2), (6), and (8) and in addition to the requirement for the

payment of principal and interest contained in this section, the MHD development corporation shall pay to the department from the sources described in subsections (7)(a)(i) and (7)(a)(ii) one-half of the amount of the loan proceeds disbursed as described in subsection (5)(c). This additional payment requirement must begin immediately after all principal and interest have been paid and continues until the appropriate amount has been paid, even if the loan agreement has expired.

(11) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (3), (6), (7), AND (9), THE MHD DEVELOPMENT CORPORATION SHALL MAKE A PAYMENT TO THE DEPARTMENT NO LATER THAN JUNE 30, 1994, AND A SECOND PAYMENT NO LATER THAN JUNE 30, 1995, FROM LOAN PROCEEDS IN AN AMOUNT EQUAL TO THE INTEREST THAT WOULD HAVE BEEN EARNED FOR THE GENERAL FUND FROM THE INVESTMENT OF THE AMOUNT OF THE CLEAN COAL TECHNOLOGY DEMONSTRATION FUNDS DISBURSED TO THE MHD DEVELOPMENT CORPORATION. THE PAYMENTS MUST BE DEPOSITED IN THE GENERAL FUND. THE PAYMENT PERIODS BEGIN ON THE DATE OF THE FIRST DISBURSEMENT UNDER THE LOAN AGREEMENT, THE FIRST PERIOD ENDS JUNE 30, 1994, AND THE SECOND PERIOD ENDS ON THE DATE THE U.S. DEPARTMENT OF ENERGY ISSUES A FINAL AUTHORIZATION TO PROCEED AS DESCRIBED IN SUBSECTION (5)(C) OR ON JUNE 30, 1995, WHICHEVER OCCURS FIRST. THE AMOUNT MUST BE CALCULATED BY THE DEPARTMENT WITH THE ASSISTANCE OF THE OFFICE OF BUDGET AND PROGRAM PLANNING,

1 BASED ON:

2 (A) THE INTEREST RATE APPLICABLE TO THE INVESTMENT OF  
 3 THE COAL SEVERANCE TAX PERMANENT FUND FOR THE DATES ON WHICH  
 4 THE LOAN PROCEEDS WERE DISBURSED;

5 (B) THE AMOUNT OF DISBURSEMENT; AND

6 (C) THE ACTUAL IMPACT ON THE GENERAL FUND.

7 ~~(11)~~(12) The MHD development corporation shall pay all  
 8 principal and interest owed to the state on the loan made to  
 9 the MHD-Corette project pursuant to Chapter 793, Laws of  
 10 1991. This repayment requirement is effective at the time  
 11 the MHD development corporation has secured the total amount  
 12 of financing necessary to initially capitalize the Billings  
 13 MHD development project. Notwithstanding section 1(3),  
 14 Chapter 793, Laws of 1991, \$50,000 of the amount repaid  
 15 under this subsection must be deposited in the state special  
 16 revenue account created by 90-2-1104 for use by the  
 17 department in administering the clean coal technology  
 18 demonstration program.

19 ~~(12)~~(13) The department may hold the following security  
 20 positions if the positions are NOT subordinate to the  
 21 security positions of senior debt creditors to the Billings  
 22 MHD demonstration project:

23 (a) a security position associated with any of the  
 24 repayment sources listed in subsection (7); and

25 (b) a security position in the sale of the assets of

1 the Billings MHD demonstration project.

2 ~~(13)~~(14) (a) The department must be satisfied, before  
 3 the loan agreement is entered into, that:

4 (i) the MHD development corporation has acquired from  
 5 the participating companies and other relevant parties  
 6 ownership of ~~all~~ rights and other positions of ownership  
 7 related to the MHD technology that are sufficient to meet  
 8 its repayment obligations under the loan agreement; and

9 (ii) the projected level of initial capitalization,  
 10 operating income, expenses, and other factors affecting the  
 11 financial viability of the Billings MHD demonstration  
 12 project is sufficient for the MHD development corporation,  
 13 through its ownership and operation of the Billings MHD  
 14 demonstration project, to operate the project AND TO MEET  
 15 ITS REPAYMENT OBLIGATIONS TO CREDITORS.

16 (b) The following protective positions must be  
 17 contained in the loan agreement:

18 (i) the provisions contained in subsection ~~(13)~~(a)  
 19 (14)(A) must be included;

20 (ii) the requirements for repayment, reporting, and  
 21 other obligations of the MHD development corporation under  
 22 the loan agreement must be assigned to any party that may  
 23 purchase the assets or otherwise receive ownership of the  
 24 MHD technology or the Billings MHD demonstration project;  
 25 and



(iii) the obligations ~~must remain in effect during the~~ term of EXTEND BEYOND the loan agreement.

~~(14)~~ (15) The following reports must be required by the loan agreement:

(a) During the time before the Billings MHD demonstration project begins operation, the MHD development corporation shall deliver to the department, within 30 days after the end of each disbursement SEMIANNUAL period, a ~~semiannual~~ progress report briefly describing the status of the project, any significant events that occurred in the previous period, and a summary of the project's financial position.

(b) After the project begins operation, the MHD development corporation shall deliver to the department reports of activities, financial statements, and other reports according to ~~the same requirements and schedule that are applicable to~~ ESTABLISHED BY THE DEPARTMENT. THE REQUIREMENTS MAY NOT BE LESS THAN THOSE IMPOSED UPON the ANY OTHER senior debt creditor to the project. The reports must detail the amount of principal and interest owed to the department, any payments made to the department, any events that trigger a payment requirement related to the loan, and any other factor of significance related to the loan agreement.

(c) The MHD development corporation shall provide to

the department an annual statement of any transaction OR THE ABSENCE OF ANY TRANSACTION related to the sale, lease, or licensing of the MHD technology and to the sale of component equipment manufactured for use in the MHD technology and an annual statement of any amount owed to the department as a result of those activities.

(d) The department shall prepare and deliver a biennial report to the legislature describing the status of the loan agreement and the status of the project.

~~(15)~~ (16) The terms of a repayment agreement established in relation to funds provided to the MHD development corporation for the Billings MHD demonstration project by the U.S. department of energy through the federal clean coal V funding program may not include an interest rate, security provision, or other term that increases the likelihood of repayment that is greater than that afforded to the department under the loan agreement. If the department considers that the terms related to the U.S. department of energy are more favorable than those established in the loan agreement, the department and the MHD development corporation shall amend the loan agreement to strengthen its provisions accordingly.

~~(16)~~ (17) The terms and conditions described in subsections (1) through ~~(15)~~ (16) may not be construed as inclusive of all terms and conditions that may constitute

1 the loan agreement. The department and the MHD development  
2 corporation may include other terms and conditions they  
3 consider IT CONSIDERS necessary if the other terms and  
4 conditions do not substantially alter the provisions  
5 described in this section.

6 (17)(18) The department shall report to the first  
7 scheduled meeting of the legislative finance committee if:

8 (a) the MHD development corporation chooses not to  
9 pursue the loan agreement;

10 (b) the department and the MHD development corporation,  
11 after reasonable efforts, fail to agree on final terms and  
12 conditions of the loan agreement; or

13 (c) other events reasonably preclude the ability of the  
14 parties to establish an agreement.

15 ~~NEW SECTION. Section 4. Facility and power needed~~  
16 ~~beneficial under major facility siting act. The Billings MHD~~  
17 ~~demonstration project is considered to meet the requirements~~  
18 ~~imposed upon the board of natural resources and conservation~~  
19 ~~to find that:~~

20 (1) ~~as a one-time demonstration project for this~~  
21 ~~particular technology, the Billings MHD demonstration~~  
22 ~~project is a needed facility under 75-20-301; and~~

23 (2) ~~energy produced by the Billings MHD demonstration~~  
24 ~~project fulfills the criteria for need and for beneficial~~  
25 ~~impact on the environment as required by 75-20-301 and~~

1 75-20-503.

2 **Section 5.** ~~Section 75-20-301, MCA, is amended to read:~~

3 "75-20-301. ~~Decision of board. Findings necessary for~~  
4 ~~certification. (1) Within~~ Except as provided in (section 4),  
5 within 60 days after submission of the recommended decision  
6 by the hearing examiner, the board shall make complete  
7 findings, issue an opinion, and render a decision upon the  
8 record, either granting or denying the application as filed  
9 or granting it upon such terms, conditions, or modifications  
10 of the construction, operation, or maintenance of the  
11 facility as the board considers appropriate.

12 (2) ~~The board may not grant a certificate either as~~  
13 ~~proposed by the applicant or as modified by the board unless~~  
14 ~~it shall find and determine:~~

15 (a) ~~the basis of the need for the facility;~~

16 (b) ~~the nature of the probable environmental impact;~~

17 (c) ~~that the facility minimizes adverse environmental~~  
18 ~~impact, considering the state of available technology and~~  
19 ~~the nature and economics of the various alternatives;~~

20 (d) ~~each of the criteria listed in 75-20-503;~~

21 (e) ~~in the case of an electric, gas, or liquid~~  
22 ~~transmission line or aqueduct;~~

23 (i) ~~what part, if any, of the line or aqueduct shall~~  
24 will be located underground;

25 (ii) ~~that the facility is consistent with regional plans~~

for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

{iii} that the facility will serve the interests of utility system economy and reliability;

{f} that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers; whether located inside or outside of the directly affected government subdivisions;

{g} that the facility will serve the public interest, convenience, and necessity;

{h} that the department of health or board of health have issued a decision, opinion, order, certification, or permit as required by 75-20-216(3); and

{i} that the use of public lands for location of the facility was evaluated and public lands were selected whenever their use is as economically practicable as the use of private lands and compatible with the environmental criteria listed in 75-20-503;

{3} In determining that the facility will serve the public interest, convenience, and necessity under subsection

{2}(g) of this section, the board shall consider:

{a} the items listed in subsections {2}(a) and {2}(b) of this section;

{b} the benefits to the applicant and the state resulting from the proposed facility;

{c} the effects of the economic activity resulting from the proposed facility;

{d} the effects of the proposed facility on the public health, welfare, and safety;

{e} any other factors that it considers relevant;

{4} Considerations of need, public need, or public convenience and necessity and demonstration thereof by the applicant shall apply only to utility facilities."

**Section 6.** Section 75-20-503, MCA, is amended to read:

"75-20-503. Environmental factors evaluated. In Except as provided in {section 4}, in evaluating long-range plans, conducting 5-year site reviews, and evaluating applications for certificates, the board and department shall give consideration to the following list of environmental factors, where applicable, and may by rule add to the categories of this section:

{1} energy needs:

{a} growth in demand and projections of need;

{b} availability and desirability of alternative sources of energy;

1 {c}--availability---and---desirability---of---aiternative  
 2 sources-of-energy-in-lieu-of-the-proposed-facility;  
 3 {d}--promotional-activities-of--the--utility--which--may  
 4 have-given-rise-to-the-need-for-this-facility;  
 5 {e}--socially--beneficial--uses--of--the--output-of-this  
 6 facility;--including--its--uses--to---protect---or---enhance  
 7 environmental-quality;  
 8 {f}--conservation-activities-which-could-reduce-the-need  
 9 for-more-energy;  
 10 {g}--research---activities---of---the---utility--of--new  
 11 technology---available---to---it---which---might---minimize  
 12 environmental-impact;  
 13 {2}--land-use-impacts:  
 14 {a}--area-of-land-required-and-ultimate-use;  
 15 {b}--consistency--with--areawide-state-and-regional-land  
 16 use-plans;  
 17 {c}--consistency-with-existing-and-projected-nearby-land  
 18 use;  
 19 {d}--alternative-uses-of-the-site;  
 20 {e}--impact--on--population---already---in---the---area;  
 21 population--attracted--by--construction--or--operation-of-the  
 22 facility-itself;  
 23 {f}--impact-of-availability-of-energy-from-this-facility  
 24 on-growth-patterns-and-population-dispersal;  
 25 {g}--geologic-suitability-of-the-site-or-route;

1 {h}--seismologic-characteristics;  
 2 {i}--construction-practices;  
 3 {j}--extent-of-erosion, scouring, wasting-of-land,--both  
 4 at--site--and--as--a--result--of--fossil-fuel-demands-of-the  
 5 facility;  
 6 {k}--corridor-design-and--construction--precautions--for  
 7 transmission-lines-or-aqueducts;  
 8 {l}--scenic-impacts;  
 9 {m}--effects-on-natural-systems, wildlife, plant-life,  
 10 {n}--impacts---on---important---historic---architectural,  
 11 archaeological--and-cultural-areas-and-features;  
 12 {o}--extent--of--recreation--opportunities--and--related  
 13 compatible-uses;  
 14 {p}--public-recreation-plan-for-the-project;  
 15 {q}--public-facilities-and-accommodation;  
 16 {r}--opportunities-for-joint-use--with--energy-intensive  
 17 industries--or--other--activities--to-utilize-the-waste-heat  
 18 from-facilities;  
 19 {s}--opportunities-for-using-public-lands--for--location  
 20 of--facilities--whenever--as-economically-practicable-as-the  
 21 use-of-private-lands-and-compatible-with-the-requirements-of  
 22 this-section;  
 23 {3}--water-resources-impacts:  
 24 {a}--hydrologic-studies-of-adequacy-of-water-supply--and  
 25 impact-of-facility-on-streamflow, lakes, and reservoirs;

1 {b}--hydrologic--studies--of--impact--of--facilities--on  
 2 ground-water;  
 3 {c}--cooling--system-evaluation--including-consideration  
 4 of-alternatives;  
 5 {d}--inventory---of---effluents---including---physical,  
 6 chemical--biological--and-radiological-characteristics;  
 7 {e}--hydrologic--studies--of--effects--of--effluents--on  
 8 receiving--waters--including--mixing---characteristics---of  
 9 receiving--waters--changed--evaporation--due-to-temperature  
 10 differentials--and-effect-of-discharge-on-bottom-sediments;  
 11 {f}--relationship-to-water-quality-standards;  
 12 {g}--effects-of-changes-in-quantity-and-quality-on-water  
 13 use-by-others--including-both-withdrawal-and-in-situ-uses;  
 14 {h}--relationship-to-projected-uses;  
 15 {i}--relationship-to-water-rights;  
 16 {j}--effects-on-plant-and-animal-life--including--algae,  
 17 macroinvertebrates--and-fish-population;  
 18 {k}--effects---on---unique---or---otherwise---significant  
 19 ecosystems--e.g., wetlands;  
 20 {l}--monitoring-programs;  
 21 {4}--air-quality-impacts;  
 22 {a}--meteorology--wind-direction-and--velocity--ambient  
 23 temperature---ranges--precipitation---values---inversion  
 24 occurrence--other-effects-on-dispersion;  
 25 {b}--topography--factors-affecting-dispersion;

1 {c}--standards-in-effect-and-projected-for-emissions;  
 2 {d}--design-capability-to-meet-standards;  
 3 {e}--emissions-and-controls:  
 4 {i}--stack-design;  
 5 {ii}--particulates;  
 6 {iii}--sulfur-oxides;  
 7 {iv}--oxides-of-nitrogen--and  
 8 {v}--heavy---metals---trace---elements---radioactive  
 9 materials--and-other-toxic-substances;  
 10 {f}--relationship--to--present-and-projected-air-quality  
 11 of-the-area;  
 12 {g}--monitoring-program;  
 13 {5}--solid-wastes-impacts:  
 14 {a}--solid-waste-inventory;  
 15 {b}--disposal-program;  
 16 {c}--relationship-of-disposal-practices-to-environmental  
 17 quality-criteria;  
 18 {d}--capacity-of--disposal--sites--to--accept--projected  
 19 waste-loadings;  
 20 {6}--radiation-impacts;  
 21 {a}--land-use-controls-over-development-and-population;  
 22 {b}--wastes--and--associated-disposal-program-for-solid,  
 23 liquid--radioactive--and-gaseous-wastes;  
 24 {c}--analyses-and-studies-of-the-adequacy-of-engineering  
 25 safeguards-and-operating-procedures;

~~(d)--monitoring--adequacy--of---devices---and---sampling  
techniques;~~

~~(7)--noise-impacts;~~

~~(a)--construction-period-levels;~~

~~(b)--operational-levels;~~

~~(c)--relationship--of-present-and-projected-noise-levels  
to-existing-and-potential-strict-noise-standards;~~

~~(d)--monitoring--adequacy-of-devices-and-methods;"~~

**SECTION 4. SECTION 1, CHAPTER 793, LAWS OF 1991, IS  
AMENDED TO READ:**

"Section 1. Appropriation. (1) There is appropriated \$750,000 from the local impact account, to be used by June 30, 1993, as provided in subsection (2).

(2) (a) There is appropriated \$500,000 from the local impact account to eastern Montana college to be used by June 30, 1993 1995, to provide funding for a clean fuels information depository, distribution, and market development center at eastern Montana college. The center shall focus on all available clean coal technology information worldwide in order to allow Montana to become a leader in the field of clean fuels technology information and marketing. The clean fuels information center shall enhance the current technology research and development being conducted in the Montana university system.

(b) There is appropriated \$250,000 from the local

impact account to the department of natural resources and conservation to be used by June 30, 1993, for the loan described in subsection (2).

(3) A loan of \$250,000 to the MHD-Corette project is approved at an interest rate of 12% compounded annually. The loan must be matched on a 1-to-1 basis from nonstate appropriated sources, used for developing the project's application to receive clean coal technology program funding from the U.S. department of energy, and repaid to the state special revenue fund for state equalization aid to public schools from revenue the project's owner derives from the sale or licensing of the MHD technology or from the sale, lease, or licensing of the project. The total debt of the project related to this loan may not exceed 2 1/2 times the loan amount."

**NEW SECTION. Section 5. effective date.** [This act] is effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 4  
April 12, 1993

Page 2 of 4  
April 12, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 616 (third reading copy -- blue), respectfully report that House Bill No. 616 be amended as follows and as so amended be concurred in.

Signed:   
Senator Mike Halligan, Chair

That such amendments read:

1. Title, line 20.  
Following: "AMENDING"  
Insert: "SECTION 17-5-703, MCA, SECTION 11, CHAPTER 722, LAWS OF 1991, AND"
2. Page 5, line 1.  
Strike: line 1 in its entirety
3. Page 7, lines 8 and 9.  
Following: "as" on line 8  
Strike: remainder of line 8 through "OF" on line 9  
Insert: "same rate as"
4. Page 7, lines 11 and 12.  
Following: "parties" on line 11  
Strike: remainder of line 11 through "CREDITORS" on line 12
5. Page 8, line 1.  
Strike: "(I)"  
Following: "shall"  
Insert: ", when there is sufficient cash flow after the appropriate allowance for the payment of taxes,"
6. Page 8, line 9.  
Strike: "AS PART OF THE"  
Insert: "upon the occurrence of any of the following:  
(i) the beginning of the 17th year after the loan agreement is signed by the parties;  
(ii)"
7. Page 8, line 10.  
Following: "CREDITORS"  
Insert: "have been satisfied;  
(iii) changes in the price of electricity sold as a result of project operations, changes in expenses paid as a result of project operations, or changes in other financial factors cause net cash flow to be greater than that projected to be available

after making periodic payments to senior debt creditors and the appropriate allowance for taxes; or  
(iv) the successful completion of the MHD technology demonstration"

8. Page 8, lines 18 through 20.  
Strike: "(II)" on line 18  
Insert: "(C)"  
Following: "made" on line 18  
Strike: remainder of line 18 through ", " on line 20  
Renumber: subsequent subsection
9. Page 9, line 8.  
Following: line 7  
Insert: "(e) The payment made upon completion of the MHD technology demonstration must be a minimum of \$250,000 per year, are owed only for a year in which the MHD technology operates at least 50% of the year, and must be paid in full by March 31 of the following year."
10. Page 11, line 20.  
Strike: "are NOT subordinate to"  
Insert: "do not impair"
11. Page 23, line 9.  
Following: line 8  
Insert: "Section 4. Section 17-5-703, MCA, is amended to read:  
"17-5-703. Coal severance tax trust funds. (1) The trust established under Article IX, section 5, of the Montana constitution shall be composed of the following funds:  
(a) a coal severance tax bond fund into which the constitutionally dedicated receipts from the coal severance tax shall be deposited;  
(b) a treasure state endowment fund;  
(c) a clean coal technology demonstration fund;  
(d) a coal severance tax permanent fund;  
(e) a coal severance tax income fund; and  
(f) a coal severance tax school bond contingency loan fund.  
(2) The state treasurer shall determine the amount necessary to meet all principal and interest payments on bonds payable from the coal severance tax bond fund on the next two ensuing semiannual payment dates and retain that amount in the coal severance tax bond fund.  
(3) (a) On January 21, 1992, and continuing as long as any school district bonds secured by state loans under 20-9-466 are outstanding, the state treasurer shall from time to time and as provided in subsection (3)(b) transfer from the coal severance tax bond fund to the coal severance tax school bond contingency

loan fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund.

(b) The state treasurer shall transfer the amount referred to in subsection (3)(a) until and unless the balance in the coal severance tax school bond contingency loan fund is equal to the amount due as principal of and interest on the school district bonds secured by state loans under 20-9-466 during the next following 12 months.

(4) Beginning July 1, 1991, and ending June 30, 1997, from any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of any amount that is required to be transferred by subsection (3), the state treasurer department of revenue shall, upon request from the department of natural resources and conservation, from time to time transfer an amount not exceeding up to \$5 million per fiscal year to the clean coal technology demonstration fund.

(5) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall transfer to the treasure state endowment fund any amount in the coal severance tax bond fund in excess of the amount that is specified in subsection (2) to be retained in the fund and in excess of amounts that are transferred pursuant to subsections (3) and (4).

(6) (a) Beginning July 1, 1993, and ending June 30, 2013, the state treasurer shall from time to time transfer to the coal severance tax permanent fund 50% of the principal transferred from the coal severance tax bond fund to the treasure state endowment fund in the preceding year.

(b) The state treasurer shall annually transfer to the treasure state endowment special revenue account the amount of interest earnings required to meet the obligations of the state that are payable from the account in accordance with 90-6-710. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

Section 5. Section 11, Chapter 722, Laws of 1991, is amended to read:

"Section 11. Transfer of funds. There is transferred from the coal severance tax permanent fund up to \$25 million, upon request of the department of natural resources and conservation, to the clean coal technology demonstration fund for projects approved pursuant to the provisions of [sections 4 through 10]."  
Renumber: subsequent sections

12. Page 23, lines 12 and 13.

Following: "used"

Strike: remainder of line 12 through "1993," on line 13

13. Page 24, line 3.

Strike: "(2)"

Insert: "(3)"

-END-



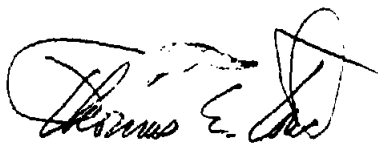
SENATE COMMITTEE OF THE WHOLE AMENDMENT

April 14, 1993 9:04 am

Mr. Chairman: I move to amend House Bill No. 616 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator Thomas Towe

That such amendments read:

1. Page 7, line 7.

Following: "(6)"

Insert: "(a)"

Strike: "INTEREST"

Insert: "Subject to subsection (6)(b), interest"

2. Page 7, line 14.

Following: "~~million~~."

Insert: "(b)(i) The interest rate must be established by taking into account the credit provided for in subsection (6)(b)(ii), the direct income to the state from coal severance taxes from coal used by the project, corporate income taxes related to project construction, and corporate and individual income taxes related to the operation of the project. The interest rate may not be less than the rate stated in subsection (6)(a) as adjusted by the total amount of the credit available pursuant to subsection (6)(b)(ii). (ii) The MHD development corporation must receive a credit against the interest rate in subsection (6)(a) at a rate of .05% for each job certified by the MHD corporation to be created by the Billings MHD demonstration project up to a total credit of 2.5%."

-END-

HB 616  
SENATE

## 1 HOUSE BILL NO. 616

2 INTRODUCED BY DRISCOLL, FORRESTER, R. JOHNSON, HARRINGTON,  
3 LYNCH, SIMON, MENAHAN, PAVLOVICH, QUILICI, DAILY, JACOBSON,  
4 BECK, WHALEN, MCCULLOCH, SCHYE, BLAYLOCK, RYE, HARP,  
5 CRIPPEN, HAGER, WINSLOW, BOHLINGER, STOVALL, MOLNAR,  
6 MILLS, FAGG, VOGEL  
7

8 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A CLEAN COAL  
9 TECHNOLOGY DEMONSTRATION LOAN TO THE MHD DEVELOPMENT  
10 CORPORATION; ESTABLISHING TERMS AND CONDITIONS AROUND WHICH  
11 A LOAN AGREEMENT BETWEEN THE DEPARTMENT OF NATURAL RESOURCES  
12 AND CONSERVATION AND THE MHD DEVELOPMENT CORPORATION WILL BE  
13 ESTABLISHED; ~~DETERMINING THAT THE BILLINGS MHD DEMONSTRATION~~  
14 ~~PROJECT IS A NEEDED FACILITY UNDER THE REQUIREMENTS OF THE~~  
15 ~~MONTANA MAJOR FACILITY SITING ACT; DETERMINING THAT~~  
16 ~~ELECTRICAL POWER PRODUCED BY THE PROJECT IS NEEDED AND HAS A~~  
17 ~~BENEFICIAL IMPACT ON THE ENVIRONMENT; AMENDING SECTIONS~~  
18 ~~75-20-301 AND 75-20-503, MCA; CONTINUING THE APPROPRIATION~~  
19 ~~FOR THE CLEAN FUELS INFORMATION DEPOSITORY, DISTRIBUTION,~~  
20 ~~AND MARKET DEVELOPMENT CENTER; AMENDING SECTION 17-5-703,~~  
21 ~~MCA, SECTION 11, CHAPTER 722, LAWS OF 1991, AND SECTION 1,~~  
22 ~~CHAPTER 793, LAWS OF 1991; AND PROVIDING AN IMMEDIATE~~  
23 ~~EFFECTIVE DATE."~~  
24

25 WHEREAS, the 52nd Legislature established and provided

1 funds for a clean coal technology demonstration fund within  
2 the coal severance tax trust fund; and

3 WHEREAS, the Billings MHD demonstration project was  
4 designated by the 52nd Legislature as a clean coal  
5 technology demonstration project eligible to receive a clean  
6 coal technology demonstration loan in the amount of \$25  
7 million; and

8 WHEREAS, the Department of Natural Resources and  
9 Conservation has the authority to review clean coal  
10 technology demonstration loan applications and to make  
11 recommendations to the legislature concerning the approval  
12 of loan requests; and

13 WHEREAS, the Department has reviewed the loan request  
14 from the MHD Development Corporation for the Billings MHD  
15 demonstration project and recommends that the loan be  
16 approved based on the terms and conditions provided in this  
17 bill.

18  
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Definitions. As used in  
21 [sections 1 through 4 ], the following definitions apply:

22 (1) "Billings MHD demonstration project" means the  
23 project to be developed by the MHD development corporation  
24 to commercially demonstrate the magnetohydrodynamics (MHD)  
25 technology and to produce electric power as described in the

1 application for federal clean coal V funding submitted to  
 2 the U.S. department of energy by the MHD development  
 3 corporation. THE METHODS DESCRIBED IN THE CLEAN COAL V  
 4 APPLICATION FOR PRODUCTION OF ELECTRIC POWER PROVIDE FOR A  
 5 PROCESS THAT WILL OPERATE WITH OR WITHOUT THE SUCCESSFUL  
 6 DEMONSTRATION OF THE MHD TECHNOLOGY.

7 (2) "Budget period" means a segment of time in which  
 8 the Billings MHD demonstration project is expected to reach  
 9 certain engineering, procurement, or construction milestones  
 10 through the use of a designated amount of funds.

11 (3) "Department" means the department of natural  
 12 resources and conservation provided for in 2-15-3301.

13 (4) "Loan proceeds" means clean coal technology  
 14 development project loan funds received by the MHD  
 15 development corporation from the department as a result of  
 16 passage and approval of [sections 1 through 4 3] and the  
 17 execution of a loan agreement described in [sections 1  
 18 through 4 3].

19 (5) "MHD development corporation" means ~~the company~~  
 20 ~~that owns the MHD technology and~~ A CONSORTIUM OF PRIVATE  
 21 COMPANIES that has applied to the U.S. department of energy  
 22 for funding through the clean coal V funding program to  
 23 commercially demonstrate the MHD technology through the  
 24 development, engineering, construction, and operation of the  
 25 Billings MHD demonstration project.

1 (6) "MHD technology" means the intellectual property  
 2 used to construct the physical components, or processes that  
 3 utilize those physical components, to produce electricity  
 4 through the technology known as magnetohydrodynamics as  
 5 described in the application for federal clean coal V  
 6 funding.

7 (7) "Participating companies" means those corporate  
 8 entities that have provided the technical expertise,  
 9 component equipment, capital, or other assets or resources  
 10 in the development of the MHD technology, that hold  
 11 positions of equity ownership in the MHD development  
 12 corporation, and that have transferred any proprietary  
 13 interest INTERESTS in the MHD technology ~~that they may have~~  
 14 ~~at one time possessed~~ to the MHD development corporation to  
 15 enable the MHD development corporation to commercially  
 16 demonstrate the MHD technology through the development,  
 17 engineering, construction, and operation of the Billings MHD  
 18 demonstration project and to enable the MHD development  
 19 corporation to engage in subsequent commercial applications  
 20 of the MHD technology.

21 (8) "Senior debt creditor" means a lender or consortium  
 22 of lenders that has provided a larger share of debt  
 23 financing to the Billings MHD demonstration project than any  
 24 other lender or consortium of lenders and that has properly  
 25 secured its loan against the assets of the Billings MHD

demonstration project or the MHD development corporation.

~~THE STATE OF MONTANA IS A SENIOR DEBT CREDITOR.~~

NEW SECTION. Section 2. Approval of loan. A clean coal technology demonstration loan in the amount of \$25 million is approved for the MHD development corporation to pay a portion of the costs involved in development, engineering, procurement, and construction related to the Billings MHD demonstration project if the loan agreement described in [section 3] is entered into by the department and the MHD development corporation.

NEW SECTION. Section 3. Loan agreement. The department shall enter into a loan agreement with the MHD development corporation that includes the following provisions:

(1) The amount of the loan is \$25 million.

(2) The loan agreement must be for a term of 25 years from the date it is signed by the parties or until all principal and interest have been retired, whichever occurs first.

(3) Loan proceeds may be applied to the costs of developing engineering specifications, procuring equipment, or constructing physical facilities or to other costs directly related to negotiating for the final commitment of the U.S. department of energy funding and for the development and construction of the Billings MHD demonstration project for the commercial demonstration of

the MHD technology.

(4) Loan proceeds must be disbursed according to a series of scheduled budget periods. A disbursement may not be made prior to May 1, 1993. The total amount of the loan may not be released in less than five disbursements. A disbursement may not exceed \$10 million and may not be less than \$400,000.

(5) The following matching funds requirements apply to the disbursement of loan proceeds:

(a) Loan proceeds may not be disbursed unless the MHD development corporation has received a notice of award SELECTION from the U.S. department of energy stating that it has been selected to receive at least \$100 million AN AWARD through the federal clean coal V funding program.

(b) Loan proceeds may not be disbursed for expenditure in any budget period unless the department has received satisfactory evidence that federal or private funds will be expended in that budget period in an amount that is at least four times greater than the amount of loan proceeds to be expended in that budget period.

(c) No more than \$8 million in loan proceeds may be disbursed unless the U.S. department of energy has issued a final authorization to proceed after project definition activities, as described in the federal clean coal V program offering notice, have been concluded and the department of

energy has committed to spend the entire federal clean coal award amount allocated for the Billings MHD demonstration project.

(d) Before disbursing loan proceeds in any budget period, the department must be satisfied that the matching funds requirement for the previous budget periods has been met.

(6) ~~{a}{A}~~ Subject--to--subsection---{6}{b},---interest ~~INTEREST~~ SUBJECT TO SUBSECTION (6)(B), INTEREST must accrue AND BE CAPITALIZED at the ~~same-rate-as GREATER-OF SAME RATE~~ AS the rate applicable to TAXABLE 20-year general obligation bonds issued by the state on the date nearest in time to the date that the loan agreement is signed by the parties ~~OR-THE~~ RATE-PAYABLE-TO-OTHER-SENIOR-DEBT-CREDITORS.

~~{b}--The--total--interest--amount--may--not--exceed--\$20 million.~~ (B) (I) THE INTEREST RATE MUST BE ESTABLISHED BY TAKING INTO ACCOUNT THE CREDIT PROVIDED FOR IN SUBSECTION (6)(B)(II), THE DIRECT INCOME TO THE STATE FROM COAL SEVERANCE TAXES FROM COAL USED BY THE PROJECT, CORPORATE INCOME TAXES RELATED TO PROJECT CONSTRUCTION, AND CORPORATE AND INDIVIDUAL INCOME TAXES RELATED TO THE OPERATION OF THE PROJECT. THE INTEREST RATE MAY NOT BE LESS THAN THE RATE STATED IN SUBSECTION (6)(A) AS ADJUSTED BY THE TOTAL AMOUNT OF THE CREDIT AVAILABLE PURSUANT TO SUBSECTION (6)(B)(II).

(II) THE MHD DEVELOPMENT CORPORATION MUST RECEIVE A

CREDIT AGAINST THE INTEREST RATE IN SUBSECTION (6)(A) AT A RATE OF 0.05% FOR EACH JOB CERTIFIED BY THE MHD CORPORATION TO BE CREATED BY THE BILLINGS MHD DEMONSTRATION PROJECT UP TO A TOTAL CREDIT OF 2.5%.

(7) (a) Subject to subsections (7)(b) and (7)(c), the following sources must be used to pay the principal and interest payments on the loan:

(i) up to 5% of gross fees or royalties derived from the sale, lease, or licensing of the MHD technology; and

(ii) up to ~~0.05%~~ 0.5% of all revenue derived from the sale of component equipment that embodies the MHD technology.

~~(b) Beginning-in-the-17th-year-after-the-loan-agreement is--signed--by-the-parties-or-after-repayment-obligations-to senior-debt-creditors-have-been-satisfied,whichever--occurs first,--the {i} THE MHD development corporation shall, WHEN THERE IS SUFFICIENT CASH FLOW AFTER THE APPROPRIATE ALLOWANCE FOR THE PAYMENT OF TAXES,--when--there--is sufficient--cash--flow--available--after--the--appropriate allowance--for--the--payment--of--taxes, make payments to the department using revenue derived from the sale of electric power UPON-THE-OCCURRENCE-OF-THE-FIRST-OF-THE-FOLLOWING:~~

{A}--THE--BEGINNING--OF--THE--17TH--YEAR--AFTER--THE--LOAN AGREEMENT--IS--SIGNED--BY--THE--PARTIES;

{B}--AS--PART--OF--THE UPON THE OCCURRENCE OF ANY OF THE

1 FOLLOWING:

2 (I) THE BEGINNING OF THE 17TH YEAR AFTER THE LOAN  
3 AGREEMENT IS SIGNED BY THE PARTIES;

4 (II) REPAYMENT OBLIGATIONS TO SENIOR DEBT CREDITORS HAVE  
5 BEEN SATISFIED;

6 (III) CHANGES IN THE PRICE OF ELECTRICITY SOLD AS A  
7 RESULT OF PROJECT OPERATIONS, CHANGES IN EXPENSES PAID AS A  
8 RESULT OF PROJECT OPERATIONS, OR CHANGES IN OTHER FINANCIAL  
9 FACTORS CAUSE NET CASH FLOW TO BE GREATER THAN THAT  
10 PROJECTED TO BE AVAILABLE AFTER MAKING PERIODIC PAYMENTS TO  
11 SENIOR DEBT CREDITORS AND THE APPROPRIATE ALLOWANCE FOR  
12 TAXES; OR

13 (IV) THE SUCCESSFUL COMPLETION OF THE MHD TECHNOLOGY  
14 DEMONSTRATION HAVE BEEN SATISFIED; OR

15 ~~(E) CHANGES IN THE PRICE OF ELECTRICITY SOLD AS A~~  
16 ~~RESULT OF PROJECT OPERATIONS, CHANGES IN EXPENSES PAID AS A~~  
17 ~~RESULT OF PROJECT OPERATIONS, OR CHANGES IN OTHER FINANCIAL~~  
18 ~~FACTORS CAUSE NET CASH FLOW TO BE GREATER THAN THAT~~  
19 ~~PROJECTED TO BE AVAILABLE AFTER MAKING PERIODIC PAYMENTS TO~~  
20 ~~SENIOR DEBT CREDITORS AND THE APPROPRIATE ALLOWANCE FOR~~  
21 ~~TAXES.~~

22 ~~(F) (C) The payments must be made WHEN THERE IS~~  
23 ~~SUFFICIENT CASH FLOW AVAILABLE AFTER THE APPROPRIATE~~  
24 ~~ALLOWANCE FOR THE PAYMENT OF TAXES, in amounts and according~~  
25 ~~to a schedule to be agreed upon by the parties that is~~

1 sufficient to ensure that the entire amount of principal and  
2 interest owed on the loan is fully retired by the 25th year  
3 after the loan agreement is signed.

4 ~~(E) (D)~~ If the department and the U.S. department of  
5 energy both receive repayment from a source listed in  
6 subsection (7)(a)(i) or (7)(a)(ii), the department shall  
7 receive payment on a pro rata basis taking into account its  
8 financial contribution to the Billings MHD demonstration  
9 project compared to the contribution of the department of  
10 energy contribution. The percentage limit contained in  
11 subsection (7)(a)(i) or (7)(a)(ii) may not be exceeded.

12 (E) A PAYMENT MADE UPON COMPLETION OF THE MHD  
13 TECHNOLOGY DEMONSTRATION MUST BE A MINIMUM OF \$250,000 PER  
14 YEAR, IS OWED ONLY FOR A YEAR IN WHICH THE MHD TECHNOLOGY  
15 OPERATES AT LEAST 50% OF THE YEAR, AND MUST BE PAID IN FULL  
16 BY MARCH 31 OF THE FOLLOWING YEAR.

17 (8) If EXCEPT AS PROVIDED IN SUBSECTION (10), IF at any  
18 time the principal and prorated interest amounts owing on  
19 the loan are retired, the loan is considered retired and  
20 further payments are not required to be made. There may not  
21 be a penalty associated with early repayment.

22 (9) The payment of the principal and interest on the  
23 loan is governed by the following provisions:

24 (a) Payments made from the sources listed in subsection  
25 (7)(a)(i) or (7)(a)(ii) before the time provided for in

1 subsection (7)(b) must be FIRST applied to the principal of  
2 the loan, THEN TO ANY INTEREST ACCUMULATED ON THE PRINCIPAL.

3 (b) Payments made after the beginning of the time  
4 period provided for in subsection (7)(b) must be first  
5 applied to interest accumulated on the principal amount of  
6 the loan and any payments greater than the accumulated  
7 interest must be applied to the principal.

8 (10) Notwithstanding the provisions of subsections (2),  
9 (6), and (8) and in addition to the requirement for the  
10 payment of principal and interest contained in this section,  
11 the MHD development corporation shall pay to the department  
12 from the sources described in subsections (7)(a)(i) and  
13 (7)(a)(ii) one-half of the amount of the loan proceeds  
14 disbursed as described in subsection (5)(c). This additional  
15 payment requirement must begin immediately after all  
16 principal and interest have been paid and continues until  
17 the appropriate amount has been paid, even if the loan  
18 agreement has expired.

19 (11) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (3),  
20 (6), (7), AND (9), THE MHD DEVELOPMENT CORPORATION SHALL  
21 MAKE A PAYMENT TO THE DEPARTMENT NO LATER THAN JUNE 30,  
22 1994, AND A SECOND PAYMENT NO LATER THAN JUNE 30, 1995, FROM  
23 LOAN PROCEEDS IN AN AMOUNT EQUAL TO THE INTEREST THAT WOULD  
24 HAVE BEEN EARNED FOR THE GENERAL FUND FROM THE INVESTMENT OF  
25 THE AMOUNT OF THE CLEAN COAL TECHNOLOGY DEMONSTRATION FUNDS

1 DISBURSED TO THE MHD DEVELOPMENT CORPORATION. THE PAYMENTS  
2 MUST BE DEPOSITED IN THE GENERAL FUND. THE PAYMENT PERIODS  
3 BEGIN ON THE DATE OF THE FIRST DISBURSEMENT UNDER THE LOAN  
4 AGREEMENT, THE FIRST PERIOD ENDS JUNE 30, 1994, AND THE  
5 SECOND PERIOD ENDS ON THE DATE THE U.S. DEPARTMENT OF ENERGY  
6 ISSUES A FINAL AUTHORIZATION TO PROCEED AS DESCRIBED IN  
7 SUBSECTION (5)(C) OR ON JUNE 30, 1995, WHICHEVER OCCURS  
8 FIRST. THE AMOUNT MUST BE CALCULATED BY THE DEPARTMENT WITH  
9 THE ASSISTANCE OF THE OFFICE OF BUDGET AND PROGRAM PLANNING,  
10 BASED ON:

11 (A) THE INTEREST RATE APPLICABLE TO THE INVESTMENT OF  
12 THE COAL SEVERANCE TAX PERMANENT FUND FOR THE DATES ON WHICH  
13 THE LOAN PROCEEDS WERE DISBURSED;

14 (B) THE AMOUNT OF DISBURSEMENT; AND

15 (C) THE ACTUAL IMPACT ON THE GENERAL FUND.

16 ~~(11)~~ (12) The MHD development corporation shall pay all  
17 principal and interest owed to the state on the loan made to  
18 the MHD-Corette project pursuant to Chapter 793, Laws of  
19 1991. This repayment requirement is effective at the time  
20 the MHD development corporation has secured the total amount  
21 of financing necessary to initially capitalize the Billings  
22 MHD development project. Notwithstanding section 1(3),  
23 Chapter 793, Laws of 1991, \$50,000 of the amount repaid  
24 under this subsection must be deposited in the state special  
25 revenue account created by 90-2-1104 for use by the

1 department in administering the clean coal technology  
2 demonstration program.

3 ~~{12}~~(13) The department may hold the following security  
4 positions if the positions are NOT subordinate to DO NOT  
5 IMPAIR the security positions of senior debt creditors to  
6 the Billings MHD demonstration project:

7 (a) a security position associated with any of the  
8 repayment sources listed in subsection (7); and

9 (b) a security position in the sale of the assets of  
10 the Billings MHD demonstration project.

11 ~~{13}~~(14) (a) The department must be satisfied, before  
12 the loan agreement is entered into, that:

13 (i) the MHD development corporation has acquired from  
14 the participating companies and other relevant parties  
15 ownership of ~~all~~ rights and other positions of ownership  
16 related to the MHD technology that are sufficient to meet  
17 its repayment obligations under the loan agreement; and

18 (ii) the projected level of initial capitalization,  
19 operating income, expenses, and other factors affecting the  
20 financial viability of the Billings MHD demonstration  
21 project is sufficient for the MHD development corporation,  
22 through its ownership and operation of the Billings MHD  
23 demonstration project, to operate the project AND TO MEET  
24 ITS REPAYMENT OBLIGATIONS TO CREDITORS.

25 (b) The following protective positions must be

1 contained in the loan agreement:

2 (i) the provisions contained in subsection ~~{13}~~(a)  
3 (14)(A) must be included;

4 (ii) the requirements for repayment, reporting, and  
5 other obligations of the MHD development corporation under  
6 the loan agreement must be assigned to any party that may  
7 purchase the assets or otherwise receive ownership of the  
8 MHD technology or the Billings MHD demonstration project;  
9 and

10 (iii) the obligations ~~must remain in effect during the~~  
11 ~~term of~~ EXTEND BEYOND the loan agreement.

12 ~~{14}~~(15) The following reports must be required by the  
13 loan agreement:

14 (a) During the time before the Billings MHD  
15 demonstration project begins operation, the MHD development  
16 corporation shall deliver to the department, within 30 days  
17 after the end of each ~~disbursement~~ SEMIANNUAL period, a  
18 ~~semiannual~~ progress report briefly describing the status of  
19 the project, any significant events that occurred in the  
20 previous period, and a summary of the project's financial  
21 position.

22 (b) After the project begins operation, the MHD  
23 development corporation shall deliver to the department  
24 reports of activities, financial statements, and other  
25 reports according to ~~the same requirements and schedule that~~



are---applicable--to ESTABLISHED BY THE DEPARTMENT. THE REQUIREMENTS MAY NOT BE LESS THAN THOSE IMPOSED UPON the ANY OTHER senior debt creditor to the project. The reports must detail the amount of principal and interest owed to the department, any payments made to the department, any events that trigger a payment requirement related to the loan, and any other factor of significance related to the loan agreement.

(c) The MHD development corporation shall provide to the department an annual statement of any transaction OR THE ABSENCE OF ANY TRANSACTION related to the sale, lease, or licensing of the MHD technology and to the sale of component equipment manufactured for use in the MHD technology and an annual statement of any amount owed to the department as a result of those activities.

(d) The department shall prepare and deliver a biennial report to the legislature describing the status of the loan agreement and the status of the project.

~~{15}~~(16) The terms of a repayment agreement established in relation to funds provided to the MHD development corporation for the Billings MHD demonstration project by the U.S. department of energy through the federal clean coal V funding program may not include an interest rate, security provision, or other term that increases the likelihood of repayment that is greater than that afforded to the

department under the loan agreement. If the department considers that the terms related to the U.S. department of energy are more favorable than those established in the loan agreement, the department and the MHD development corporation shall amend the loan agreement to strengthen its provisions accordingly.

~~{16}~~(17) The terms and conditions described in subsections (1) through ~~{15}~~ (16) may not be construed as inclusive of all terms and conditions that may constitute the loan agreement. The department and the--MHD--development corporation may include other terms and conditions they consider IT CONSIDERS necessary if the other terms and conditions do not substantially alter the provisions described in this section.

~~{17}~~(18) The department shall report to the first scheduled meeting of the legislative finance committee if:

(a) the MHD development corporation chooses not to pursue the loan agreement;

(b) the department and the MHD development corporation, after reasonable efforts, fail to agree on final terms and conditions of the loan agreement; or

(c) other events reasonably preclude the ability of the parties to establish an agreement.

~~NEW SECTION--Section 4--Facility--and--power--needed-----~~  
beneficial-under-major-facility-siting-act--The-Billings-MHD

demonstration project is considered to meet the requirements imposed upon the board of natural resources and conservation to find that:

(1) as a one-time demonstration project for this particular technology, the Billings MHB demonstration project is a needed facility under 75-20-301, and

(2) energy produced by the Billings MHB demonstration project fulfills the criteria for need and for beneficial impact on the environment as required by 75-20-301 and 75-20-503.

**Section 5.** Section 75-20-301, MCA, is amended to read:

"75-20-301. Decision of board --- findings necessary for certification. (1) Within Except as provided in {section 4}, within 60 days after submission of the recommended decision by the hearing examiner, the board shall make complete findings, issue an opinion, and render a decision upon the record, either granting or denying the application as filed or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the facility as the board considers appropriate.

(2) The board may not grant a certificate either as proposed by the applicant or as modified by the board unless it shall find and determine:

(a) the basis of the need for the facility;

(b) the nature of the probable environmental impact;

(c) that the facility minimizes adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives;

(d) each of the criteria listed in 75-20-503;

(e) in the case of an electric, gas, or liquid transmission line or aqueduct:

(i) what part, if any, of the line or aqueduct shall will be located underground;

(ii) that the facility is consistent with regional plans for expansion of the appropriate grid of the utility systems serving the state and interconnected utility systems; and

(iii) that the facility will serve the interests of utility system economy and reliability;

(f) that the location of the facility as proposed conforms to applicable state and local laws and regulations issued thereunder, except that the board may refuse to apply any local law or regulation if it finds that, as applied to the proposed facility, the law or regulation is unreasonably restrictive in view of the existing technology, of factors of cost or economics, or of the needs of consumers, whether located inside or outside of the directly affected government subdivisions;

(g) that the facility will serve the public interest, convenience, and necessity;

(h) that the department of health or board of health

1 have--issued--a--decision, opinion, order, certification, or  
 2 permit as required by 75-20-216(3); and  
 3 (i)--that the use of public lands for location of the  
 4 facility was evaluated and public lands were selected  
 5 whenever their use is as economically practicable as the use  
 6 of private lands and compatible with the environmental  
 7 criteria listed in 75-20-503;  
 8 (3)--in determining that the facility will serve the  
 9 public interest, convenience, and necessity under subsection  
 10 (2)(g) of this section, the board shall consider:  
 11 (a)--the items listed in subsections (2)(a) and (2)(b)  
 12 of this section;  
 13 (b)--the benefits to the applicant and the state  
 14 resulting from the proposed facility;  
 15 (c)--the effects of the economic activity resulting from  
 16 the proposed facility;  
 17 (d)--the effects of the proposed facility on the public  
 18 health, welfare, and safety;  
 19 (e)--any other factors that it considers relevant;  
 20 (4)--Considerations of need, public need, or public  
 21 convenience and necessity and demonstration thereof by the  
 22 applicant shall apply only to utility facilities."

23 **Section 6.** Section 75-20-503, MCA, is amended to read:--  
 24 "75-20-503. Environmental factors evaluated. In Except  
 25 as provided in (section 4), in evaluating long-range plans,

1 conducting 5-year site reviews, and evaluating applications  
 2 for certificates, the board and department shall give  
 3 consideration to the following list of environmental  
 4 factors, where applicable, and may by rule add to the  
 5 categories of this section:  
 6 (1)--energy needs:  
 7 (a)--growth in demand and projections of need;  
 8 (b)--availability and desirability of alternative  
 9 sources of energy;  
 10 (c)--availability and desirability of alternative  
 11 sources of energy in lieu of the proposed facility;  
 12 (d)--promotional activities of the utility which may  
 13 have given rise to the need for this facility;  
 14 (e)--socially beneficial uses of the output of this  
 15 facility, including its uses to protect or enhance  
 16 environmental quality;  
 17 (f)--conservation activities which could reduce the need  
 18 for more energy;  
 19 (g)--research activities of the utility of new  
 20 technology available to it which might minimize  
 21 environmental impact;  
 22 (2)--land use impacts:  
 23 (a)--area of land required and ultimate use;  
 24 (b)--consistency with areawide state and regional land  
 25 use plans;

1 (c)--consistency-with-existing-and-projected-nearby-land  
 2 use;  
 3 (d)--alternative-uses-of-the-site;  
 4 (e)--impact---on---population---already---in---the---area;  
 5 population-attracted-by-construction--or--operation--of--the  
 6 facility-itself;  
 7 (f)--impact-of-availability-of-energy-from-this-facility  
 8 on-growth-patterns-and-population-dispersal;  
 9 (g)--geologic-suitability-of-the-site-or-route;  
 10 (h)--seismologic-characteristics;  
 11 (i)--construction-practices;  
 12 (j)--extent--of--erosion--scouring--wasting-of-land--both  
 13 at-site-and-as-a--result--of--fossil-fuel--demands--of--the  
 14 facility;  
 15 (k)--corridor--design--and--construction-precautions-for  
 16 transmission-lines-or-aqueducts;  
 17 (l)--scenic-impacts;  
 18 (m)--effects-on-natural-systems--wildlife--plant-life;  
 19 (n)--impacts--on---important---historic---architectural;  
 20 archaeological--and-cultural--areas-and-features;  
 21 (o)--extent--of--recreation--opportunities--and--related  
 22 compatible-uses;  
 23 (p)--public-recreation-plan-for-the-project;  
 24 (q)--public-facilities-and-accommodation;  
 25 (r)--opportunities--for--joint-use-with-energy-intensive

1 industries-or-other-activities-to--utilize--the--waste--heat  
 2 from-facilities;  
 3 (s)--opportunities--for--using-public-lands-for-location  
 4 of-facilities-whenver-as-economically--practicable--as--the  
 5 use-of-private-lands-and-compatible-with-the-requirements-of  
 6 this-section;  
 7 (3)--water-resources-impacts;  
 8 (a)--hydrologic--studies-of-adequacy-of-water-supply-and  
 9 impact-of-facility-on-streamflow--lakes--and--reservoirs;  
 10 (b)--hydrologic--studies--of--impact--of--facilities--on  
 11 ground-water;  
 12 (c)--cooling-system-evaluation--including--consideration  
 13 of-alternatives;  
 14 (d)--inventory---of---effluents---including---physical;  
 15 chemical--biological--and--radiological--characteristics;  
 16 (e)--hydrologic--studies--of--effects--of--effluents--on  
 17 receiving---waters---including--mixing--characteristics--of  
 18 receiving-waters--changed--evaporation--due--to--temperature  
 19 differentials--and-effect-of-discharge-on-bottom-sediments;  
 20 (f)--relationship-to-water-quality-standards;  
 21 (g)--effects-of-changes-in-quantity-and-quality-on-water  
 22 use-by-others--including-both-withdrawal-and-in-situ-uses;  
 23 (h)--relationship-to-projected-uses;  
 24 (i)--relationship-to-water-rights;  
 25 (j)--effects--on-plant-and-animal-life--including-algae;

1 macroinvertebrates, and fish population;  
 2 {k}--effects--on---unique---or---otherwise---significant  
 3 ecosystems, e.g., wetlands;  
 4 {l}--monitoring programs;  
 5 {4}--air quality impacts;  
 6 {a}--meteorology--wind--direction--and--velocity, ambient  
 7 temperature---ranges,---precipitation---values,---inversion  
 8 occurrence, other effects on dispersion;  
 9 {b}--topography--factors affecting dispersion;  
 10 {c}--standards in effect and projected for emissions;  
 11 {d}--design capability to meet standards;  
 12 {e}--emissions and controls;  
 13 {i}--stack design;  
 14 {iii}--particulates;  
 15 {iii}--sulfur oxides;  
 16 {iv}--oxides of nitrogen; and  
 17 {v}--heavy---metals,---trace---elements,---radioactive  
 18 materials, and other toxic substances;  
 19 {f}--relationship to present and projected air quality  
 20 of the area;  
 21 {g}--monitoring program;  
 22 {5}--solid wastes impacts;  
 23 {a}--solid waste inventory;  
 24 {b}--disposal program;  
 25 {c}--relationship of disposal practices to environmental

1 quality criteria;  
 2 {d}--capacity--of--disposal--sites--to--accept--projected  
 3 waste loadings;  
 4 {6}--radiation impacts;  
 5 {a}--land use controls over development and population;  
 6 {b}--wastes and associated disposal program for solid;  
 7 liquid, radioactive, and gaseous wastes;  
 8 {c}--analyses and studies of the adequacy of engineering  
 9 safeguards and operating procedures;  
 10 {d}--monitoring--adequacy---of---devices---and---sampling  
 11 techniques;  
 12 {7}--noise impacts;  
 13 {a}--construction period levels;  
 14 {b}--operational levels;  
 15 {c}--relationship of present and projected noise levels  
 16 to existing and potential stricter noise standards;  
 17 {d}--monitoring--adequacy--of--devices--and--methods."

18 **SECTION 4. SECTION 17-5-703, MCA, IS AMENDED TO READ:**

19 "17-5-703. Coal severance tax trust funds. (1) The  
 20 trust established under Article IX, section 5, of the  
 21 Montana constitution shall be composed of the following  
 22 funds:  
 23 (a) a coal severance tax bond fund into which the  
 24 constitutionally dedicated receipts from the coal severance  
 25 tax shall be deposited;

1 (b) a treasure state endowment fund;  
 2 (c) a clean coal technology demonstration fund;  
 3 (d) a coal severance tax permanent fund;  
 4 (e) a coal severance tax income fund; and  
 5 (f) a coal severance tax school bond contingency loan  
 6 fund.

7 (2) The state treasurer shall determine the amount  
 8 necessary to meet all principal and interest payments on  
 9 bonds payable from the coal severance tax bond fund on the  
 10 next two ensuing semiannual payment dates and retain that  
 11 amount in the coal severance tax bond fund.

12 (3) (a) On January 21, 1992, and continuing as long as  
 13 any school district bonds secured by state loans under  
 14 20-9-466 are outstanding, the state treasurer shall from  
 15 time to time and as provided in subsection (3)(b) transfer  
 16 from the coal severance tax bond fund to the coal severance  
 17 tax school bond contingency loan fund any amount in the coal  
 18 severance tax bond fund in excess of the amount that is  
 19 specified in subsection (2) to be retained in the fund.

20 (b) The state treasurer shall transfer the amount  
 21 referred to in subsection (3)(a) until and unless the  
 22 balance in the coal severance tax school bond contingency  
 23 loan fund is equal to the amount due as principal of and  
 24 interest on the school district bonds secured by state loans  
 25 under 20-9-466 during the next following 12 months.

1 (4) Beginning July 1, 1991, and ending June 30, 1997,  
 2 from any amount in the coal severance tax bond fund in  
 3 excess of the amount that is specified in subsection (2) to  
 4 be retained in the fund and in excess of any amount that is  
 5 required to be transferred by subsection (3), the state  
 6 treasurer department of revenue shall, upon request from the  
 7 department of natural resources and conservation, from-time  
 8 to-time transfer an amount not-exceeding up to \$5 million  
 9 per fiscal year to the clean coal technology demonstration  
 10 fund.

11 (5) Beginning July 1, 1993, and ending June 30, 2013,  
 12 the state treasurer shall transfer to the treasure state  
 13 endowment fund any amount in the coal severance tax bond  
 14 fund in excess of the amount that is specified in subsection  
 15 (2) to be retained in the fund and in excess of amounts that  
 16 are transferred pursuant to subsections (3) and (4).

17 (6) (a) Beginning July 1, 1993, and ending June 30,  
 18 2013, the state treasurer shall from time to time transfer  
 19 to the coal severance tax permanent fund 50% of the  
 20 principal transferred from the coal severance tax bond fund  
 21 to the treasure state endowment fund in the preceding year.

22 (b) The state treasurer shall annually transfer to the  
 23 treasure state endowment special revenue account the amount  
 24 of interest earnings required to meet the obligations of the  
 25 state that are payable from the account in accordance with

90-6-710. Interest earnings not transferred to the treasure state endowment special revenue account must be retained in the treasure state endowment fund."

**SECTION 5. SECTION 11, CHAPTER 722, LAWS OF 1991, IS AMENDED TO READ:**

"Section 11. Transfer of funds. There is transferred from the coal severance tax permanent fund up to \$25 million, upon request of the department of natural resources and conservation, to the clean coal technology demonstration fund for projects approved pursuant to the provisions of [sections 4 through 10]."

**SECTION 6. SECTION 1, CHAPTER 793, LAWS OF 1991, IS AMENDED TO READ:**

"Section 1. Appropriation. (1) There is appropriated \$750,000 from the local impact account, to be used by ~~June 30, 1993,~~ as provided in subsection (2).

(2) (a) There is appropriated \$500,000 from the local impact account to eastern Montana college to be used by June 30, 1993 1995, to provide funding for a clean fuels information depository, distribution, and market development center at eastern Montana college. The center shall focus on all available clean coal technology information worldwide in order to allow Montana to become a leader in the field of clean fuels technology information and marketing. The clean fuels information center shall enhance the current

technology research and development being conducted in the Montana university system.

(b) There is appropriated \$250,000 from the local impact account to the department of natural resources and conservation to be used by June 30, 1993, for the loan described in subsection ~~(2)~~ (3).

(3) A loan of \$250,000 to the MHD-Corette project is approved at an interest rate of 12% compounded annually. The loan must be matched on a 1-to-1 basis from nonstate appropriated sources, used for developing the project's application to receive clean coal technology program funding from the U.S. department of energy, and repaid to the state special revenue fund for state equalization aid to public schools from revenue the project's owner derives from the sale or licensing of the MHD technology or from the sale, lease, or licensing of the project. The total debt of the project related to this loan may not exceed 2 1/2 times the loan amount."

**NEW SECTION. Section 7. Effective date.** [This act] is effective on passage and approval.

-End-