

1 SENATE BILL NO. 168

2 INTRODUCED BY K. VAN DYK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE ECONOMIC DEVELOPMENT ADVISORY
5 COUNCIL, THE GRANT REVIEW COMMITTEE, AND THE BOARD OF RESEARCH AND
6 COMMERCIALIZATION TECHNOLOGY AND TRANSFERRING THEIR DUTIES AND RULEMAKING
7 AUTHORITY TO THE DEPARTMENT OF COMMERCE; AMENDING SECTIONS 39-11-103, 39-11-201,
8 39-11-202, 90-1-116, AND 90-3-1003, MCA; REPEALING SECTIONS 2-15-1819, 2-15-1820, 90-3-1005, AND
9 90-3-1006, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

- 12
13 **Section 1.** Section 39-11-103, MCA, is amended to read:
- 14 **"39-11-103. Definitions.** As used in this chapter, the following definitions apply:
- 15 (1) "Average weekly wage" has the meaning provided in 39-71-116.
- 16 (2) "Department" means the department of commerce established in 2-15-1801.
- 17 (3) "Eligible training provider" means:
- 18 (a) a unit of the university system, as defined in 20-25-201;
- 19 (b) a community college district, as defined in 20-15-101;
- 20 (c) an accredited, tribally controlled community college located in the state of Montana; or
- 21 (d) an entity approved to provide workforce training that is included on the eligible training provider list.
- 22 (4) "Eligible training provider list" means the list maintained by the department of labor and industry of
- 23 those eligible training providers who may be used to provide workforce training under a grant authorized in
- 24 39-11-202.
- 25 (5) "Employee" means the individual employed in a new job.
- 26 (6) "Employer" means the individual, corporation, partnership, or association providing new jobs and
- 27 entering into a grant contract.
- 28 (7) "Full-time job" means a predominantly year-round position requiring an average of 35 hours of work
- 29 each week.
- 30 (8) (a) "New job" means a newly created full-time job in an eligible business.

1 (b) The term does not include:

2 (i) jobs for recalled employees returning to positions held previously, for replacement employees, or for
3 employees newly hired as a result of a labor dispute, part-time or seasonal jobs, or other jobs that previously
4 existed within the employment of the employer in the state; or

5 (ii) jobs created by an employer as the result of an acquisition of a Montana company or entity if those
6 jobs previously existed in the state of Montana in the acquired company or entity unless it is demonstrated that
7 the jobs:

8 (A) are substantially different as a result of the acquisition; and

9 (B) will require new training for the employee to meet new job requirements.

10 (9) "Primary sector business" means an employer engaged in establishing or expanding operations
11 within Montana that through the employment of knowledge or labor add value to a product, process, or export
12 service that results in the creation of new wealth and:

13 (a) for which at least 50% of the sales of the employer occur outside of Montana;

14 (b) the employer is a manufacturing company with at least 50% of its sales to other Montana companies
15 that have 50% of their sales occurring outside of Montana; or

16 (c) the employer is a new business that provides, as determined by the ~~committee~~ department as
17 provided for in 39-11-201, a product or a service that is not available in Montana or a substantially similar product
18 or service that is not available in Montana, which results in state residents leaving the state to purchase the
19 product or service.

20 (10) "Primary sector business training program" or "program" means the grant provided to employers for
21 the purpose of working with eligible training providers to provide employees with education and training required
22 for jobs in new or expanding primary sector businesses in the state.

23 (11) (a) "Program costs" means all necessary and incidental costs of providing program services.

24 (b) The term does not include the cost of equipment to be owned or used by the eligible training provider.

25 (12) "Program services" means training and education specifically directed to the new jobs, including:

26 (a) all direct training costs, such as:

27 (i) program promotion;

28 (ii) instructor wages, per diem, and travel;

29 (iii) curriculum development and training materials;

30 (iv) lease of training equipment and training space;

- 1 (v) miscellaneous direct training costs;
 2 (vi) administrative costs; and
 3 (vii) assessment and testing;
 4 (b) in-house or on-the-job training; and
 5 (c) subcontracted services with eligible training providers."
 6

7 **Section 2.** Section 39-11-201, MCA, is amended to read:

8 **"39-11-201. Grant review committee -- appointment -- powers and duties -- rulemaking authority.**

9 ~~(1) There is a seven-member grant review committee, as follows:~~

10 ~~—— (a) two representatives from the private sector representing economic development, appointed by the~~
 11 ~~governor;~~

12 ~~—— (b) two representatives from the commercial banking community, one appointed by the president of the~~
 13 ~~senate and one appointed by the speaker of the house, one of whom serves on a local workforce investment~~
 14 ~~board;~~

15 ~~—— (c) one representative from a 2-year postsecondary institution, as defined in 20-9-706, appointed by the~~
 16 ~~governor;~~

17 ~~—— (d) one representative from the department, appointed by the governor; and~~

18 ~~—— (e) one representative from the department of labor and industry, appointed by the governor.~~

19 ~~(2)(1) Subject to appropriation by the legislature and 39-11-202(4)(d), the committee department shall~~
 20 ~~award training grants to a primary sector business qualified under 39-11-202 after a determination that the~~
 21 ~~primary sector business:~~

- 22 (a) has prospects for achieving commercial success and for creating new jobs in the state;
 23 (b) has prospects for collaboration between the public and private sectors of the state's economy;
 24 (c) has potential for commercial success related to the specific product, process, or business
 25 development methodology proposed; and
 26 (d) can provide matching funds.

27 ~~(3) A committee member may not personally apply for or receive a primary sector business workforce~~
 28 ~~training grant. If an organization with which a member is affiliated applies for a grant, the member shall disclose~~
 29 ~~the nature of the affiliation and, if the committee member is a board member or officer of the organization, may~~
 30 ~~not participate in the decision of the committee regarding the grant application.~~

1 ~~(4)(2)~~ The ~~committee~~ department shall adopt rules to:

2 (a) provide for grant application procedures;

3 (b) develop procedures for awarding grants pursuant to the criteria provided in 39-11-202; and

4 (c) develop independent review and audit procedures to ensure that grants have been used for the
5 purposes identified in the grant contracts.

6 ~~(5)(3)~~ All decisions of the ~~committee~~ department are final and are not subject to the contested case
7 provisions of Title 2, chapter 4.

8 ~~(6) The committee is allocated to the department for administrative purposes only as provided in
9 2-15-121."~~

10

11 **Section 3.** Section 39-11-202, MCA, is amended to read:

12 **"39-11-202. Primary sector business workforce training grants -- eligibility.** (1) Subject to
13 appropriation by the legislature, the ~~grant review committee provided for in 39-11-201~~ department may award
14 workforce training grants to primary sector businesses that provide education or skills-based training, through
15 eligible training providers from the eligible training provider list, for employees in new jobs.

16 (2) To be eligible for a grant, an applicant shall demonstrate that at least 50% of the applicant's sales
17 will be from outside of Montana or that the applicant is a manufacturing company with 50% of its sales from
18 companies that have 50% of their sales outside of Montana and must meet at least one of the following criteria:

19 (a) be a value-adding business as defined by the Montana board of investments;

20 (b) demonstrate a significant positive economic impact to the region and state beyond the job creation
21 involved;

22 (c) provide a service or function that is essential to the locality or the state; or

23 (d) be a for-profit or a nonprofit hospital or medical center providing a variety of medical services for the
24 community or region.

25 (3) An applicant shall also provide a match of at least \$1 for every \$3 requested. The match:

26 (a) must be from new, unexpended funds available at the time of application;

27 (b) may include new loans and investments and expenditures for direct project-related costs such as new
28 equipment and buildings. The ~~committee~~ department may consider recent purchases of fixed assets directly
29 related to the proposal on a case-by-case basis. A purchase of fixed assets directly related to the proposed
30 training activities that have been made within 90 days after submission of the application may be considered

1 eligible by the ~~committee~~ department.

2 (4) (a) Except as provided in subsection (4)(c), a grant provided under this section may not exceed
3 \$5,000 for each full-time position for which an employee is being trained. A grant may be provided only for a new
4 job that has an average weekly wage that meets or exceeds the lesser of Montana's current average weekly
5 wage or the current average weekly wage of the county in which the employees are to be principally employed.

6 (b) The department may consider the value of employee benefits in calculating the expected annual
7 wage.

8 (c) The ~~committee~~ department may, in exceptional circumstances, consider a higher grant ceiling for jobs
9 that will pay significantly higher wages and benefits if the need for higher training costs is documented in the
10 application.

11 (d) A grant provided under this section must be proportional to the number of jobs provided, the expected
12 average annual wage of all jobs provided, and the underlying economic indicators of the region where the majority
13 of the jobs will be created.

14 (5) Funding ceilings must be determined by the availability of funding, the cost for each job, the quality
15 of the primary sector business proposal, and whether training will be provided in Montana.

16 (6) The grant application, at a minimum, must contain:

17 (a) a business plan containing information that is sufficient for the ~~committee~~ department to obtain an
18 adequate understanding of the business to be assisted, including the products or services offered, estimated
19 market potential, management experience of principals, current financial position, and details of the proposed
20 venture. In lieu of a business plan, the ~~committee~~ department may consider a copy of the current loan application
21 to entities such as the Montana board of investments, the federal business and industry guarantee program, or
22 the small business administration.

23 (b) financial statements and projections for the 2 most recent years of operation and projections for each
24 of the 2 years following the grant, including but not limited to balance sheets, profit and loss statements, and cash
25 flow statements. A business operating for less than 2 years shall provide all available financial statements.

26 (c) a hiring and training plan, which must include:

27 (i) a breakdown of the jobs to be created or retained, including the number and type of jobs that are
28 full-time, part-time, skilled, semiskilled, or unskilled positions;

29 (ii) a timetable for creating the positions and the total number of employees to be hired;

30 (iii) an assurance that the business will comply with the equal opportunity and nondiscrimination laws;

- 1 (iv) procedures for outreach, recruitment, screening, training, and placement of employees;
- 2 (v) a description of the training curriculum and resources;
- 3 (vi) written commitments from any agency or organization participating in the implementation of the hiring
- 4 plan; and
- 5 (vii) a description of the type and method of training to be provided to employees, the starting wage and
- 6 wage to be paid after training for each position, the job benefits to be paid or provided, and any payment to
- 7 eligible training providers.

8 (7) If the ~~committee~~ department determines that an applicant meets the criteria established in this section

9 and has complied with the applicable procedures and review processes established by the ~~committee~~

10 department, the ~~committee~~ department may award a primary sector business workforce development grant to

11 the employer and authorize the disbursement of funds under contract to the primary sector business.

12 (8) (a) A contract with a grant recipient must contain provisions:

13 (i) certifying that the amount of the grant already expended will be reimbursed in the event that the

14 primary sector business ceases operation in the state of Montana within the grant contract period, which may be

15 up to 2 years;

16 (ii) specifying that the employer may receive grant funds over the contract period only upon documenting

17 the creation of eligible jobs, the hiring of employees for the jobs, or the incurring of eligible training expenses; and

18 (iii) providing the department with annual reports and a final closeout report that documents the higher

19 wages paid to an employee upon completion of the training.

20 (b) The contract must be signed by the person in the primary sector business who is assigned the duties

21 and responsibilities for training and the overall success of the program and by the primary sector business's chief

22 executive."

23

24 **Section 4.** Section 90-1-116, MCA, is amended to read:

25 **"90-1-116. State matching funds program for economic development -- distribution of proceeds**

26 **-- criteria for grants -- local economic development matching funds.** (1) As used in this section, the following

27 definitions apply:

28 (a) "Certified regional development corporation" means a private, nonprofit corporation that has been

29 designated by the department through a competitive process to manage and administer funds and programs for

30 the department on a regional basis.

1 ~~(b) "Council" means the economic development advisory council established in 2-15-1820.~~

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

3 ~~(d)~~(c) "Treasure community" means a community that meets and maintains requirements for certification
4 established by the department and administered by the certified regional development corporation.

5 (2) The department shall create a program to provide state funds to match local economic development
6 funds and to fund up to 12 certified regional development corporations. The provision of state matching funds is
7 contingent upon specific appropriations to the department for that purpose.

8 (3) An assistance grant to a certified regional development corporation ~~will~~ must be made based on rules
9 adopted by the department for the state matching funds program. The rules for distribution of funds must include
10 consideration of:

11 (a) the size of the geographic area represented by the certified regional development corporation;

12 (b) the number of communities served by the certified regional development corporation;

13 (c) the population served by the certified regional development corporation; and

14 (d) the services offered by the certified regional development corporation.

15 (4) To be eligible to receive a grant, a certified regional development corporation:

16 (a) must be designated as the certified regional development corporation by the department;

17 (b) shall maintain department requirements for certification;

18 (c) shall match each \$1 of the grant with \$1 raised from public or private sources;

19 (d) shall administer the treasure community designation and reporting process for the communities and
20 counties in the region;

21 (e) shall encourage and organize full participation in regional economic development activities, meetings,
22 projects, and planning by the treasure communities in the region; and

23 (f) shall deliver services and resources to the citizens, businesses, and treasure communities throughout
24 the region.

25 (5) Grants under this section must be used to conduct economic development programs consistent with
26 strategic plans that are adopted by the certified regional development corporations and the treasure communities
27 in the region and that are filed with the department."

28

29 **Section 5.** Section 90-3-1003, MCA, is amended to read:

30 **"90-3-1003. Research and commercialization account -- use.** (1) The research and commercialization

1 account provided for in 90-3-1002 is statutorily appropriated, as provided in 17-7-502, to the ~~board of research~~
2 ~~and commercialization technology~~ department of commerce, provided for in ~~2-15-1819~~ 2-15-1801, for the
3 purposes provided in this section.

4 (2) The establishment of the account in 90-3-1002 is intended to enhance the economic growth
5 opportunities for Montana and constitute a public purpose.

6 (3) The account may be used only for:

7 (a) loans that are to be used for research and commercialization projects to be conducted at research
8 and commercialization centers located in Montana;

9 (b) grants that are to be used for production agriculture research and commercialization projects, clean
10 coal research and development projects, or renewable resource research and development projects to be
11 conducted at research and commercialization centers located in Montana;

12 (c) matching funds for grants from nonstate sources that are to be used for research and
13 commercialization projects to be conducted at research and commercialization centers located in Montana; or

14 (d) administrative costs that are incurred by the ~~board~~ department in carrying out the provisions of this
15 part.

16 (4) At least 20% of the account funds approved for research and commercialization projects must be
17 directed toward projects that enhance production agriculture.

18 (5) (a) At least 30% of the account funds approved for research and commercialization projects must
19 be directed toward projects that enhance clean coal research and development or renewable resource research
20 and development.

21 (b) If the ~~board~~ department is not in receipt of a qualified application for a project to enhance clean coal
22 research and development or renewable resource research and development, subsection (5)(a) does not apply.

23 (6) An applicant for a grant shall provide matching funds from nonstate sources equal to 25% of total
24 project costs. The requirement to provide matching funds is a qualifier, but not a criterion, for approval of a grant.

25 (7) The ~~board~~ department shall establish policies, procedures, and criteria that achieve the objectives
26 in its research and commercialization strategic plan for the awarding of grants and loans. The criteria must
27 include:

28 (a) the project's potential to diversify or add value to a traditional basic industry of the state's economy;

29 (b) whether the project shows promise for enhancing technology-based sectors of Montana's economy
30 or promise for commercial development of discoveries;

- 1 (c) whether the project employs or otherwise takes advantage of existing research and commercialization
2 strengths within the state's public university and private research establishment;
- 3 (d) whether the project involves a realistic and achievable research project design;
- 4 (e) whether the project develops or employs an innovative technology;
- 5 (f) verification that the project activity is located within the state;
- 6 (g) whether the project's research team possesses sufficient expertise in the appropriate technology area
7 to complete the research objective of the project;
- 8 (h) verification that the project was awarded based on its scientific merits, following review by a
9 recognized federal agency, philanthropic foundation, or other private funding source; and
- 10 (i) whether the project includes research opportunities for students.
- 11 (8) The ~~board~~ department shall direct the state treasurer to distribute funds for approved projects.
12 Unallocated interest and earnings from the account must be retained in the account. Repayments of loans and
13 any agreements authorizing the ~~board~~ department to take a financial right to licensing or royalty fees paid in
14 connection with the transfer of technology from a research and commercialization center to another nonstate
15 organization or ownership of corporate stock in a private sector organization must be deposited in the account.
- 16 (9) The ~~board~~ department shall refer grant applications to external peer review groups. The ~~board~~
17 department shall compile a list of persons willing to serve on peer review groups for purposes of this section. The
18 peer review group shall review the application and make a recommendation to the ~~board~~ department as to
19 whether the application for a grant should be approved. The ~~board~~ department shall review the recommendation
20 of the peer review group and either approve or deny a grant application.
- 21 (10) The ~~board~~ department shall identify whether a grant or loan is to be used for basic research, applied
22 research, or some combination of both. For the purposes of this section, "applied research" means research that
23 is conducted to attain a specific benefit or solve a practical problem and "basic research" means research that
24 is conducted to uncover the basic function or mechanism of a scientific question.
- 25 (11) For the purposes of this section:
- 26 (a) "clean coal research and development" means research and development of projects that would
27 advance the efficiency, environmental performance, and cost-competitiveness of using coal as an energy source
28 well beyond the current level of technology used in commercial service;
- 29 (b) "renewable resource research and development" means research and development that would
30 advance:

1 (i) the use of any of the sources of energy listed in 69-3-2003(10) to produce electricity; and
2 (ii) the efficiency, environmental performance, and cost-competitiveness of using renewable resources
3 as an energy source well beyond the current level of technology used in commercial service."
4

5 **NEW SECTION. Section 6. Department duties -- rulemaking.** (1) The department of commerce is
6 responsible for:

7 (a) documenting and monitoring grants approved by the department according to performance
8 benchmarks established by the department;

9 (b) reporting to the legislature and governor about investments made in research and commercialization
10 activities and developments and opportunities in diversified research arenas;

11 (c) monitoring and promoting activities that increase the presence of Montana products in new and
12 expanding markets;

13 (d) promoting and facilitating program strategies that add value to Montana products; and

14 (e) any additional responsibilities determined necessary and appropriate by the department.

15 (2) The department of commerce may adopt rules to implement the provisions of this part.
16

17 **NEW SECTION. Section 7. Repealer.** The following sections of the Montana Code Annotated are
18 repealed:

19 2-15-1819. Board of research and commercialization technology.

20 2-15-1820. Economic development advisory council.

21 90-3-1005. Meetings -- compensation.

22 90-3-1006. Executive director -- qualifications.
23

24 **NEW SECTION. Section 8. Codification instruction.** [Section 6] is intended to be codified as an
25 integral part of Title 90, chapter 3, part 10, and the provisions of Title 90, chapter 3, part 10, apply to [section 6].
26

27 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2011.
28

- END -