

HOUSE BILL NO. 863

INTRODUCED BY D. BROWN, MAZUREK, LYNCH, THAYER, QUILICI,  
NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,  
S. RICE, PHILLIPS, LARSON, MEASURE

IN THE HOUSE

FEBRUARY 14, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & ECONOMIC DEVELOPMENT.

FEBRUARY 15, 1991           FIRST READING.

FEBRUARY 20, 1991           COMMITTEE RECOMMEND BILL  
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 21, 1991           PRINTING REPORT.

FEBRUARY 25, 1991           SECOND READING, DO PASS AS AMENDED.  
ENGROSSING REPORT.

FEBRUARY 26, 1991           THIRD READING, PASSED.  
AYES, 96; NOES, 3.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991           INTRODUCED AND REFERRED TO COMMITTEE  
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 12, 1991           COMMITTEE RECOMMEND BILL BE  
CONCURRED IN AS AMENDED. REPORT  
ADOPTED.

MARCH 14, 1991           SECOND READING, CONCURRED IN.

MARCH 15, 1991           THIRD READING, CONCURRED IN.  
AYES, 48; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 19, 1991           RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

MARCH 20, 1991

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0863, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to generally revise the Montana Capital Company Act by providing for the designation of a Montana Small Business Investment Capital Company (SBIC) to be allocated a portion of the unused tax credits; limiting the allocations of tax credits to capital companies; and providing an immediate effective date and a retroactive applicability date.

ASSUMPTIONS:

Department of Revenue:

1. Only one Montana Small Business Investment Capital Company is authorized under this proposal and will be allocated all capital company credits available as of January 1, 1991.
2. Capital company credits available as of January 1, 1991 total \$1,887,592.50 (Board of Investments).
3. The maximum tax credit allowed any single investor in an SBIC is \$250,000.
4. Tax credits against individual income tax or corporation license tax stemming from investment in an SBIC are available for use only to taxpayers who invest in an SBIC prior to July 1, 1995.

Department of Commerce:

5. The tax credits available under current statute would have been used by capital companies by June 30, 1991.
6. The tax credits allocated by the 1989 Legislature are reflected in revenue estimates prepared by LFA and OBPP.

FISCAL IMPACT:

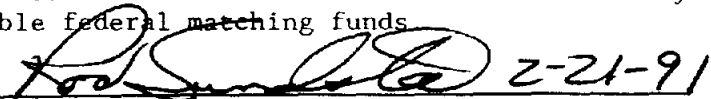
None.

Revenues:

There is no revenue impact given these assumptions. The proposed legislation merely reallocates existing tax credits. At the most, the proposed legislation would result in a reduction in income tax and corporation license tax revenue of approximately \$1,887,592.50 by the end of FY96. Any reduction in revenue requires the allocation of remaining capital company credits to an SBIC authorized by the Small Business Administration (SBA). The SBA acknowledges that currently no SBICs exist in Montana. In addition, full use of the credits would require investments sufficient to permit total utilization of available credits. Generally, credits currently allocated to existing capital companies have not been fully utilized.

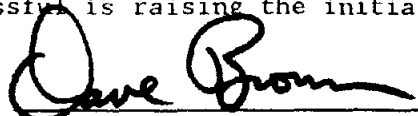
LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

An SBIC could be beneficial to the Montana economy if it is successful in raising the initial capital and thus receives the available federal matching funds.

  
ROD SUNDSTED, BUDGET DIRECTOR

DATE

Office of Budget and Program Planning

  
DAVE BROWN, PRIMARY SPONSOR

DATE

Fiscal Note for HB0863, as introduced

2/22/91  
HB 863

HOUSE BILL NO. 563

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION

OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303, 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this section expressly provided, 30-10-201 through 30-10-207 shall do not apply to any-of the following transactions:

(1) any a nonissuer isolated transaction, whether effected through a broker-dealer or not. A transaction is presumed to be isolated if it is one of not more than three transactions during the prior 12-month period.

(2) (a) any a nonissuer distribution of an outstanding security by a broker-dealer registered pursuant to 30-10-201

if:

(i) quotations for the securities to be offered or sold (or the securities issuable upon exercise of any warrant or right to purchase or subscribe to such securities) are reported by the automated quotations system operated by the national association of securities dealers, inc., (NASDAQ) or by any other quotation system approved by the commissioner by rule; or

(ii) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the 3 preceding fiscal years, or during the existence of the issuer and any predecessors if less than 3 years, in the payment of principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the exemption specified in subsection (2)(a) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor for the order and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and



-2- INTRODUCED BILL HB 863

1 opportunity for hearing to all interested persons, may  
 2 modify or vacate the order or extend it until final  
 3 determination. No An order under this subsection may not  
 4 operate retroactively. No A person may not be considered to  
 5 have violated parts 1 through 3 of this chapter by reason of  
 6 any offer or sale effected after the entry of an order under  
 7 this subsection if he sustains the burden of proof that he  
 8 did not know and in the exercise of reasonable care could  
 9 not have known of the order.

10 (3) any a nonissuer transaction effected by or through  
 11 a registered broker-dealer pursuant to an unsolicited order  
 12 or offer to buy, but the commissioner may require that the  
 13 customer acknowledge upon a specified form that the sale was  
 14 unsolicited and that a signed copy of each form be preserved  
 15 by the broker-dealer for a specified period;

16 (4) any a transaction between the issuer or other  
 17 person on whose behalf the offering is made and an  
 18 underwriter or among underwriters;

19 (5) any a transaction by an executor, administrator,  
 20 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 21 or conservator in the performance of his official duties as  
 22 such;

23 (6) any a transaction executed by a bona fide pledgee  
 24 without any purpose of evading parts 1 through 3 of this  
 25 chapter;

1 (7) any an offer or sale to a bank, savings  
 2 institution, trust company, insurance company, investment  
 3 company as defined in the Investment Company Act of 1940,  
 4 pension or profit-sharing trust, or other financial  
 5 institution or institutional buyer, or to a broker-dealer,  
 6 whether the purchaser is acting for itself or in some  
 7 fiduciary capacity;

8 (8) (a) any a transaction pursuant to an offer made in  
 9 this state directed by the offeror to not more than 10  
 10 persons (other than those designated in subsection (7))  
 11 during any period of 12 consecutive months, if:

12 (i) the seller reasonably believes that all the buyers  
 13 are purchasing for investment; and

14 (ii) no a commission or other remuneration is not paid  
 15 or given directly or indirectly for soliciting any  
 16 prospective buyer; provided, however, that a commission may  
 17 be paid to a registered broker-dealer if the securities  
 18 involved are registered with the United States securities  
 19 and exchange commission under the federal Securities Act of  
 20 1933, as amended.

21 (b) For the purpose of the exemption provided for in  
 22 subsection (8)(a), an offer to sell is made in this state,  
 23 whether or not the offeror or any of the offerees is then  
 24 present in this state, if the offer either originates from  
 25 this state or is directed by the offeror to this state and

1 received at the place to which it is directed (or at any  
2 post office in this state in the case of a mailed offer).

3 (9) any an offer or sale of a preorganization  
4 certificate or subscription if:

5 (a) no a commission or other remuneration is not paid  
6 or given directly or indirectly for soliciting any  
7 prospective subscriber;

8 (b) the number of subscribers does not exceed 10; and

9 (c) no a payment is not made by any subscriber;

10 (10) any a transaction pursuant to an offer to existing  
11 security holders of the issuer, including persons who at the  
12 time of the transaction are holders of convertible  
13 securities, nontransferable warrants, or transferable  
14 warrants exercisable within not more than 90 days of their  
15 issuance, if:

16 (a) no a commission or other remuneration (other than a  
17 standby commission) is not paid or given directly or  
18 indirectly for soliciting any security holder in this state;  
19 or

20 (b) the issuer first files a notice specifying the  
21 terms of the offer and the commissioner does not by order  
22 disallow either (a) or (b) of this subsection;

23 (11) any an offer (but not a sale) of a security for  
24 which registration statements have been filed under both  
25 parts 1 through 3 of this chapter and the Securities Act of

1 1933 if no stop, refusal, denial, suspension, or revocation  
2 order is in effect and no a public proceeding or examination  
3 looking toward such an order is not pending under either  
4 law;

5 (12) any an offer (but not a sale) of a security for  
6 which a registration statement has been filed under parts 1  
7 through 3 of this chapter and the commissioner in his  
8 discretion does not disallow the offer in writing within 10  
9 days of such filing;

10 (13) the issuance of any a stock dividend, whether the  
11 corporation distributing the dividend is the issuer of the  
12 stock or not, if nothing of value is given by stockholders  
13 for the distribution other than the surrender of a right to  
14 a cash dividend where the stockholder can elect to take a  
15 dividend in cash or stock;

16 (14) any a transaction incident to a right of conversion  
17 or a statutory or judicially approved reclassification,  
18 recapitalization, reorganization, quasi-reorganization,  
19 stock split, reverse stock split, merger, consolidation, or  
20 sale of assets;

21 (15) any a transaction in compliance with such rules as  
22 that the commissioner in his discretion may adopt to serve  
23 the purposes of 30-10-102. The commissioner may in his  
24 discretion require that 30-10-201 through 30-10-207 apply to  
25 any or all transactional exemptions adopted by rule.

1 (16) any a transaction by a certified Montana capital  
 2 company or a certified Montana small business investment  
 3 capital company as defined in 90-8-104, provided that such  
 4 the company first files all disclosure documents, along with  
 5 a consent to service of process, with the commissioner. The  
 6 commissioner may not charge a fee for the filing.

7 (17) the sale of a commodity investment contract traded  
 8 on a commodities exchange recognized by the commissioner at  
 9 the time of sale;

10 (18) a transaction within the exclusive jurisdiction of  
 11 the commodity futures trading commission as granted under  
 12 the Commodity Exchange Act;

13 (19) a transaction that:

14 (a) involves the purchase of one or more precious  
 15 metals; and

16 (b) requires, and under which the purchaser receives  
 17 within 7 calendar days after payment in good funds of any  
 18 portion of the purchase price, physical delivery of the  
 19 quantity of the precious metals purchased. For the purposes  
 20 of this subsection, physical delivery is considered to have  
 21 occurred if, within the 7-day period, the quantity of  
 22 precious metals, whether in specifically segregated or  
 23 fungible bulk, purchased by such payment is delivered into  
 24 the possession of a depository (other than the seller) that:

25 (i) (A) is a financial institution (meaning a bank,

1 savings institution, or trust company organized under or  
 2 supervised pursuant to the laws of the United States or of  
 3 this state);

4 (B) is a depository the warehouse receipts of which are  
 5 recognized for delivery purposes for any commodity on a  
 6 contract market designated by the commodity futures trading  
 7 commission; or

8 (C) is a storage facility licensed by the United States  
 9 or any agency of the United States; and

10 (ii) issues, and the purchaser receives, a certificate,  
 11 document of title, confirmation, or other instrument  
 12 evidencing that such the quantity of precious metals has  
 13 been delivered to the depository and is being and will  
 14 continue to be held on the purchaser's behalf, free and  
 15 clear of all liens and encumbrances other than:

16 (A) liens of the purchaser;

17 (B) tax liens;

18 (C) liens agreed to by the purchaser; or

19 (D) liens of the depository for fees and expenses that  
 20 previously have been disclosed to the purchaser.

21 (20) a transaction involving a commodity investment  
 22 contract solely between persons engaged in producing,  
 23 processing, using commercially, or handling as merchants  
 24 each commodity subject to the contract or any byproduct of  
 25 the commodity;

1 (21) any an offer or sale of a security to an employee  
 2 of the issuer, pursuant to an employee stock ownership plan  
 3 qualified under section 401 of the Internal Revenue Code of  
 4 1986."

5 **Section 2.** Section 90-8-102, MCA, is amended to read:

6 "90-8-102. Declaration of policy. (1) The legislature  
 7 finds and declares that:

8 (a) economic insecurity due to unemployment is a  
 9 serious menace to the health, safety, and general welfare of  
 10 not only the affected people but of the people of the entire  
 11 state;

12 (b) involuntary unemployment, with its resulting burden  
 13 of indigency, falls with crushing force upon unemployed  
 14 workers and ultimately on the state itself in the form of  
 15 public assistance and unemployment compensation payments;  
 16 and

17 (c) unemployment causes a migration of Montana workers  
 18 and families seeking jobs and establishing homes elsewhere,  
 19 which deprives the state of its most valuable resource, its  
 20 people, and reduces the tax base of local governments,  
 21 impairing their ability to provide basic services.

22 (2) (a) The legislature further finds that the best  
 23 method of combating unemployment and protecting Montana  
 24 against the loss of its people is by promoting, stimulating,  
 25 developing, rehabilitating, and revitalizing the business

1 prosperity and economic welfare of the state and its  
 2 citizens.

3 (b) To accomplish this goal, the legislature seeks to  
 4 encourage the formation of venture and equity capital in  
 5 Montana for use in diversifying, strengthening, and  
 6 stabilizing the Montana economy by increasing Montana  
 7 employment and business opportunities while protecting the  
 8 people's constitutional right to a clean and healthful  
 9 environment.

10 (3) The legislature further finds that:

11 (a) private investment of venture and equity capital in  
 12 the Montana economy will be encouraged and promoted by  
 13 making tax credits available to taxpayers investing in a  
 14 Montana capital ~~companies~~ company or in a Montana small  
 15 business investment capital company;

16 (b) demands on state revenues restrict the financial  
 17 ability of the state to make unlimited tax credits available  
 18 for investment purposes and require that the state place  
 19 reasonable limits on the total amount of tax credits to be  
 20 made available for investment incentive;

21 (c) establishment of a rational tax credit program  
 22 which gives priority to investments in capital companies in  
 23 the order in which they are qualified or in a Montana small  
 24 business investment capital company will encourage prompt  
 25 private investment in Montana businesses.



1 (4) The legislature further finds that use of money  
2 from the Montana in-state investment fund established by  
3 17-6-306 to purchase debentures issued by a capital company  
4 or a Montana small business investment capital company will  
5 promote the business prosperity and economic welfare of the  
6 state and its citizens."

7 **Section 3.** Section 90-8-104, MCA, is amended to read:

8 **"90-8-104. Definitions.** As used in this chapter, unless  
9 the context requires otherwise, the following definitions  
10 apply:

11 (1) "Board" means the board of investments provided for  
12 in 2-15-1808.

13 (2) "Capital base" means equity capital raised by a  
14 certified Montana capital company or by a certified Montana  
15 small business investment capital company for which tax  
16 credits were claimed under this chapter.

17 (3) "Certified Montana capital company" or "certified  
18 Montana small business investment capital company" means:

19 (a) a development credit corporation created pursuant  
20 to Title 32, chapter 4; or

21 (b) a profit or nonprofit entity organized and existing  
22 under the laws of Montana, created for the purpose of making  
23 venture or risk capital available for qualified investments  
24 and that has been certified by the board.

25 (4) "Montana business" means a business which is

1 located or principally based within Montana.

2 (5) "Qualified investment" means:

3 (a) a debt or equity financing of a Montana business  
4 that meets both of the following criteria:

5 (i) the business is engaged in one or more of the  
6 following activities:

7 (A) manufacturing;

8 (B) agricultural, fishery, or forestry production and  
9 processing;

10 (C) mineral production and processing, except for  
11 conventional oil and gas exploration;

12 (D) recognized nonfossil forms of energy generation as  
13 defined in 15-32-102;

14 (E) transportation;

15 (F) research and development of products or processes  
16 associated with any of the activities enumerated in (A)  
17 through (E) above;

18 (G) wholesale or retail distribution activities for  
19 which products produced in Montana comprise 50% or more of  
20 the gross sales receipts;

21 (H) any activity conducted in the state for which 50%  
22 or more of the gross receipts are derived from the sale of  
23 products or services outside Montana; and

24 (I) tourism; and

25 (ii) the business is a small business as defined in

1 rules adopted by the board; or

2 (b) a debt or equity financing of a business outside  
3 Montana if such investment is likely to produce a qualified  
4 investment in Montana, as long as such investment does not  
5 exceed 25% of the capital base of the capital company.

6 (6) "Qualified Montana capital company" means a  
7 certified Montana capital company that has been designated a  
8 qualified capital company under the provisions of 90-8-202  
9 so that investors in the company may receive the tax credits  
10 authorized in 90-8-202.

11 (7) "Qualified Montana small business investment  
12 capital company" means a certified Montana small business  
13 investment capital company that has been designated a  
14 qualified small business investment capital company under  
15 the provisions of 90-8-202 so that investors in the company  
16 may receive the tax credits authorized in 90-8-202."

17 **Section 4.** Section 90-8-201, MCA, is amended to read:

18 "90-8-201. Certification of Montana capital companies  
19 -- certification of a Montana small business investment  
20 capital company. (1) From The board shall certify one  
21 Montana small business investment capital company, and from  
22 time to time the board shall certify Montana capital  
23 companies. A company seeking to be certified as a Montana  
24 capital company must or as the Montana small business  
25 investment capital company shall make written application to

1 the board on forms provided by the board. The application  
2 must contain the information required by 90-8-204 and such  
3 other information as that the board requires. The  
4 application and certificate must specify the level of  
5 capitalization that the company expects to qualify for the  
6 tax credits provided for in 90-8-202.

7 (2) The application must show that the applicant's  
8 purpose is to increase the general economic welfare of the  
9 state of Montana by:

10 (a) making investment capital available to businesses  
11 in Montana; and

12 (b) allowing for investment of up to 25% of its capital  
13 base in businesses outside Montana if there is a substantial  
14 likelihood that such investment will produce a qualified  
15 investment in Montana.

16 (3) Certifiable applicants include but are not limited  
17 to local and community development corporations, small  
18 business administration 503 corporations, and small business  
19 investment companies.

20 (4) Certification is a prerequisite to and must be  
21 completed before seeking designation as a qualified capital  
22 company or as the qualified Montana small business  
23 investment capital company.

24 (5) To be eligible for certification under this section  
25 as the Montana small business investment capital company,

1 the applicant shall commit to:

2 (a) utilize the tax credits to accumulate private  
3 capital with the intention of being designated a small  
4 business investment corporation by the United States small  
5 business administration as provided in Title III of the  
6 Small Business Act of 1958, as amended, and as implemented  
7 under 13 CFR 107; and

8 (b) target its investments as a small business  
9 investment capital company toward commercialization projects  
10 emerging from centers of excellence and entrepreneurship,  
11 federal laboratories, the federal small business innovative  
12 research program, the federal cooperative research and  
13 development agreement program, Montana university system  
14 research and development, the Montana board of science and  
15 technology development (second stage), incubators, community  
16 development block grant programs with the objective of  
17 providing significant investment opportunities in an area  
18 where economic development capital is limited, and projects  
19 emerging from economic development programs of Montana  
20 certified communities."

21 **Section 5.** Section 90-8-202, MCA, is amended to read:

22 **"90-8-202.** Designation of qualified Montana capital  
23 companies -- designation of qualified Montana small business  
24 investment capital company -- tax credit. (1) The board  
25 shall designate as:

1 (a) qualified Montana capital companies those certified  
2 companies that have been privately capitalized at a minimum  
3 level of \$200,000; or

4 (b) the qualified Montana small business investment  
5 capital company a company that has been privately  
6 capitalized at a minimum level of \$500,000.

7 (2) A certified company seeking designation as a  
8 qualified Montana capital company or as the qualified  
9 Montana small business investment capital company must make  
10 written application to the board on forms provided by the  
11 board. The application must contain the information required  
12 by 90-8-204 and such other information as that the board  
13 requires.

14 ~~(2)~~(3) (a) The total amount of tax credits authorized  
15 for a single qualified capital company or the qualified  
16 Montana small business investment capital company may not  
17 exceed \$1,500,000, except that the qualified Montana small  
18 business investment capital company must receive all  
19 remaining tax credits under this section available as of  
20 January 1, 1991. In the event the capitalization of the a  
21 qualified capital company is later increased, the company  
22 may apply for authorization of additional tax credits within  
23 the foregoing limitation.

24 (b) The total credits authorized for all companies may  
25 not exceed a total of \$1 million prior to June 30, 1985. The

1 total credits authorized for all companies between July 1,  
 2 1985, and June 30, 1987, may not exceed \$1 million plus any  
 3 portion of the \$1 million available for authorization before  
 4 June 30, 1985, that is allocated to qualified companies. The  
 5 total credits authorized for all companies between July 1,  
 6 1987, and June 30, 1989, may not exceed \$3 million plus any  
 7 portion of the credits available for authorization before  
 8 June 30, 1987, that is allocated to qualified companies. The  
 9 total credits authorized for all companies between July 1,  
 10 1989, and June 30, 1991, may not exceed \$3 million plus any  
 11 portion of the credits available for authorization before  
 12 June 30, 1989, that is allocated to qualified companies.

13 ~~(3)~~(4) (a) Before January 1, 1991, credits shall  
 14 must be allocated to qualified companies in the order that  
 15 completed applications for designation as qualified capital  
 16 companies are received by the board, and the board shall  
 17 certify to each such company its appropriate allocation.

18 (b) All tax credits allowed under subsection (3) that  
 19 are not allocated as of January 1, 1991, must be allocated  
 20 to the qualified Montana small business investment capital  
 21 company, and the board shall certify the allocation to the  
 22 company.

23 ~~(4)~~(5) Investors in a qualified Montana capital company  
 24 or in the qualified Montana small business investment  
 25 capital company are entitled to the tax credits provided for

1 in subsection ~~(5)~~ (6). Funds invested in a certified company  
 2 prior to designation as a qualified Montana capital company  
 3 or as the qualified Montana small business investment  
 4 capital company may, at the discretion of the investor, be  
 5 placed in an escrow account in a Montana financial  
 6 institution pending designation of the company as a  
 7 qualified Montana capital company or as the qualified  
 8 Montana small business investment capital company.

9 ~~(5)~~(6) Subject to the provisions of subsections ~~(2)~~ (3)  
 10 and ~~(8)~~ (9), an individual, small business corporation,  
 11 partnership, trust, decedent's estate, or corporate taxpayer  
 12 that makes a capital investment in a qualified Montana  
 13 capital company or the qualified Montana small business  
 14 investment capital company is entitled to a tax credit equal  
 15 to 50% of the investment, up to a maximum credit of \$150,000  
 16 per taxpayer, except that, as applied to the small business  
 17 investment capital company, the maximum tax credit is  
 18 \$250,000 per taxpayer. The credit may be taken against the  
 19 tax liability imposed on the investor pursuant to Title 15,  
 20 chapter 30, 31, or 35. The credit for investments by a small  
 21 business corporation electing to be taxed under 15-31-202 or  
 22 a partnership may be claimed by the small business  
 23 corporation shareholders or the partners.

24 ~~(6)~~(7) The tax credit allowed under subsection ~~(5)~~ (6)  
 25 is to be credited against the taxpayer's income tax

1 liability or coal severance tax liability for the taxable  
 2 year in which the investment in a qualified Montana capital  
 3 company or the qualified Montana small business investment  
 4 capital company is made. If the amount of the tax credit  
 5 exceeds the taxpayer's tax liability for the taxable year,  
 6 the amount of the credit which exceeds the tax liability may  
 7 be carried back or carried forward in the following manner:

8 (a) If the sum of the amount of credit for the current  
 9 taxable year plus the amount of credit, if any, carried  
 10 forward from a previous taxable year exceeds the taxpayer's  
 11 tax liability for the current taxable year, the excess must  
 12 be carried back as a credit to the 3 preceding taxable years  
 13 and, if the full credit remains unused, carried forward as a  
 14 credit to the 15 succeeding taxable years.

15 (b) The amount of unused credit must be used to offset  
 16 the entire tax liability of each of the 18 taxable years,  
 17 beginning with the earliest and commencing to the next  
 18 succeeding year until the credit is exhausted.

19 ~~(7)~~(8) The tax credit provided for in this section is  
 20 available only to those taxpayers who invest in a qualified  
 21 Montana capital company within 4 years of July 1, 1987, or  
 22 in the qualified Montana small business investment capital  
 23 company within 4 years of July 1, 1991.

24 ~~(8)~~(9) (a) An individual, small business corporation,  
 25 partnership, or corporate taxpayer who obtains the tax

1 credit allowed under subsection ~~(5)~~ (6) may not obtain  
 2 credits in excess of the ~~\$150,000-limit~~ limits contained in  
 3 subsection ~~(5)~~ (6) by making investments as more than one  
 4 entity.

5 (b) A partner or shareholder in a small business  
 6 corporation may not obtain more than \$150,000, or not more  
 7 than \$250,000 in the case of a partner or shareholder in the  
 8 qualified Montana small business investment capital company,  
 9 in credits as an individual and as the partnership or small  
 10 business corporation. A corporate taxpayer that obtains the  
 11 maximum ~~\$150,000---credit~~ credits allowed under this  
 12 subsection (9)(b) may not obtain additional credits through  
 13 investments by wholly owned subsidiaries or affiliates. An  
 14 individual, small business corporation, partnership, or  
 15 corporate taxpayer who obtains the tax credit allowed under  
 16 subsection (6) may not claim deduction under the provisions  
 17 of Title 15, chapter 30 or 31, for donation of stock in the  
 18 qualified Montana small business investment capital  
 19 company."

20 **Section 6.** Section 90-8-203, MCA, is amended to read:

21 "90-8-203. No recapture -- unqualified investments. If  
 22 the amount invested by a taxpayer in a qualified Montana  
 23 capital company or in the qualified Montana small business  
 24 investment capital company is not used by the company for  
 25 qualified investments as provided in 90-8-301, the taxpayer

1 is not subject to a recapture provision for any tax credit  
2 claimed by him but the company is subject to the penalty  
3 provided for in 90-8-301(3)(4)."

4 **Section 7.** Section 90-8-204, MCA, is amended to read:

5 "90-8-204. **Application requirements.** A company applying  
6 to become either a certified or qualified Montana capital  
7 company or the certified or qualified Montana small business  
8 investment capital company shall include in its application  
9 evidence that it has disclosed or will disclose to all  
10 investors the following:

11 (1) the condition that a tax credit is not available  
12 for investment in a company until the company has been  
13 designated a qualified Montana capital company or the  
14 qualified Montana small business investment capital company  
15 and the investor has received a certificate approving the  
16 credit from the board;

17 (2) the condition that a tax credit will not be made  
18 available until the a qualified capital company raises at  
19 least \$200,000 in capital, and has been designated a  
20 qualified capital company, or the qualified Montana small  
21 business investment capital company raises at least \$500,000  
22 in capital before July 1, 1995, and has been designated the  
23 qualified Montana small business investment capital company  
24 and the limits on tax credits that may be authorized; and

25 (3) the fact that the state of Montana is not liable

1 for damages in accordance with 90-8-205."

2 **Section 8.** Section 90-8-205, MCA, is amended to read:

3 "90-8-205. **State liability disclaimed.** The state of  
4 Montana may not be held liable for any damages to an  
5 investor in a Montana;

6 (1) capital company that fails to become designated as  
7 a certified or qualified Montana capital company; or

8 (2) small business investment capital company that  
9 fails to become designated as a certified or qualified  
10 Montana small business investment capital company."

11 **Section 9.** Section 90-8-301, MCA, is amended to read:

12 "90-8-301. **Qualified investments -- penalty --**  
13 **extension permissible.** (1) A qualified Montana capital  
14 company receiving investments for which a taxpayer has  
15 applied and received a tax credit must use its capital base  
16 to make qualified investments according to the following  
17 schedule:

18 (a) at least 30% of its capital base raised through  
19 investments for which tax credits were taken within 3 years  
20 of the date on which the certified company was designated as  
21 a qualified capital company by the board and, in the case of  
22 capital raised by a qualified Montana capital company under  
23 an amended application for additional tax credits filed  
24 after its initial designation as a qualified Montana capital  
25 company, at least 30% of its capital base raised through

1 investments for which tax credits were taken within 3 years  
2 of the date on which the board approves the amended  
3 application;

4 (b) at least 50% of its capital base raised through  
5 investments for which tax credits were taken within 4 years  
6 of the date on which the certified company was designated as  
7 a qualified capital company by the board and, in the case of  
8 capital raised by a qualified Montana capital company under  
9 an amended application for additional tax credits filed  
10 after its initial designation as a qualified Montana capital  
11 company, at least 50% of its capital base raised through  
12 investments for which tax credits were taken within 4 years  
13 of the date on which the board approves the amended  
14 application; and

15 (c) at least 70% of its capital base raised through  
16 investments for which tax credits were taken within 5 years  
17 of the date on which the certified company was designated as  
18 a qualified capital company by the board and, in the case of  
19 capital raised by a qualified Montana capital company under  
20 an amended application for additional tax credits filed  
21 after its initial designation as a qualified Montana capital  
22 company, at least 70% of its capital base raised through  
23 investments for which tax credits were taken within 5 years  
24 of the date on which the board approves the amended  
25 application.

1 (2) The qualified Montana small business investment  
2 capital company receiving investments for which a taxpayer  
3 has applied and received a tax credit must use its capital  
4 base to make qualified investments according to the  
5 following schedule:

6 (a) of its capital base raised through investments for  
7 which tax credits were taken:

8 (i) 30% within 3 years of the date on which the  
9 certified company was designated as the qualified Montana  
10 small business investment capital company by the board or  
11 within 3 years of its designation as a small business  
12 investment corporation by the small business administration,  
13 whichever is later;

14 (ii) 50% within 4 years of the date on which the  
15 certified company was designated as the qualified Montana  
16 small business investment capital company by the board or  
17 within 4 years after its designation as a small business  
18 investment corporation by the small business administration,  
19 whichever is later; and

20 (iii) 70% within 5 years of the date on which the  
21 certified company was designated as the qualified Montana  
22 small business investment capital company by the board or  
23 within 5 years after its designation as a small business  
24 investment corporation by the small business administration,  
25 whichever is later; and

1 (b) of its capital base, in the case of capital raised  
 2 through a loan from the small business administration  
 3 pursuant to 13 CFR 107, as provided under this chapter.

4 ~~(2)~~(3) Following each annual examination, the  
 5 commissioner of financial institutions shall notify the  
 6 department of revenue of any companies that are not in  
 7 compliance with this section.

8 ~~(3)~~(4) A qualified Montana capital company that fails  
 9 to make qualified investments pursuant to subsection (1) or  
 10 the qualified Montana small business investment capital  
 11 company that fails to make qualified investments pursuant to  
 12 subsection (2) shall pay to the department of revenue a  
 13 penalty equal to all of the tax credits allowed to the  
 14 taxpayers investing in that company during that time period,  
 15 with interest at 1% a month from the date the tax credits  
 16 were certified as allocated to the qualified Montana capital  
 17 company or to the qualified Montana small business  
 18 investment capital company. The department of revenue may  
 19 abate the penalty if the capital company or the Montana  
 20 small business investment capital company establishes  
 21 reasonable cause for the failure to make qualified  
 22 investments pursuant to subsection (1) or (2) and if the  
 23 failure was not due to neglect on the part of the company.

24 ~~(4)~~(5) The department of revenue may grant an extension  
 25 of time in which to make qualified investments pursuant to

1 subsection (1) or (2) upon application by a capital company  
 2 or the Montana small business investment capital company  
 3 showing reasonable cause for an extension.

4 ~~(5)~~(6) The department of revenue shall deposit any  
 5 amount received under this subsection to the credit of the  
 6 state general fund."

7 **Section 10.** Section 90-8-302, MCA, is amended to read:

8 "90-8-302. Restriction on investment. In addition to  
 9 the requirements of 90-8-301, no more than 50% of the equity  
 10 raised by a Montana capital company or by the Montana small  
 11 business investment capital company may be invested in any  
 12 one business, and no more than 25% of the total funds raised  
 13 for which tax credits were claimed pursuant to the  
 14 investment credit provisions of this chapter may be invested  
 15 in any one business."

16 **Section 11.** Section 90-8-303, MCA, is amended to read:

17 "90-8-303. Conflict of interest. (1) (a) The members of  
 18 the board, the commissioner of financial institutions, or a  
 19 bank examiner may not have a monetary interest in or be a  
 20 borrower from any a Montana capital company or from the  
 21 Montana small business investment capital company, either  
 22 directly or indirectly.

23 (b) These restrictions do not prohibit the board,  
 24 acting as a whole, from purchasing debentures issued by a  
 25 Montana capital company or by the Montana small business



1 investment capital company.

2 (2) A member of the investment committee of a Montana  
3 capital company or of the Montana small business investment  
4 capital company who has an interest in a venture that comes  
5 before the committee for a vote shall disclose such the  
6 interest and abstain from voting on investment in the  
7 venture."

8 **Section 12.** Section 90-8-304, MCA, is amended to read:

9 "90-8-304. **Application of securities law.** In lieu of  
10 registration under Title 30, chapter 10, a certified Montana  
11 capital company or the certified Montana small business  
12 investment capital company may file all disclosure  
13 documents, along with a consent to service of process, with  
14 the state securities commissioner. The commissioner may not  
15 charge a fee for such the filing."

16 **Section 13.** Section 90-8-305, MCA, is amended to read:

17 "90-8-305. **Sale of debentures.** (1) A qualified Montana  
18 capital company or the qualified Montana small business  
19 investment capital company is authorized to issue and sell  
20 debentures to the in-state investment fund established in  
21 17-6-306.

22 (2) Proceeds received by a qualified Montana capital  
23 company or by the qualified Montana small business  
24 investment capital company from the sale of debentures  
25 authorized in subsection (1) must be invested in accordance

1 with the provisions of 90-8-301, except that the time  
2 periods for making qualified investments must be calculated  
3 from the date the company sells the debentures to the  
4 in-state investment fund."

5 **Section 14.** Section 90-8-311, MCA, is amended to read:

6 "90-8-311. **Legislative review and oversight.** The board  
7 shall report on an annual basis to the revenue oversight  
8 committee of the legislature concerning Montana capital  
9 companies and the Montana small business investment capital  
10 company."

11 **Section 15.** Section 90-8-312, MCA, is amended to read:

12 "90-8-312. **Investment reporting and recordkeeping.** (1)  
13 Each qualified Montana capital company and each qualified  
14 Montana small business investment capital company shall  
15 report to the board on a quarterly basis:

16 (a) the name of each investor in the qualified Montana  
17 capital company or in the qualified Montana small business  
18 investment capital company who has applied for a tax credit;

19 (b) the amount of each investor's investment; and

20 (c) the amount of the tax credit allowed to the  
21 investor and the date on which the investment was made.

22 (2) The board shall provide the information contained  
23 in subsection (1) to the department of revenue on a  
24 quarterly basis.

25 (3) The board shall provide each investor in a

1 qualified Montana capital company and each investor in the  
 2 qualified Montana small business investment capital company  
 3 with a certificate authorizing the tax credit, and the  
 4 certificate ~~shall~~ must be submitted with each tax return  
 5 requesting a credit under 90-8-202.

6 (4) Each qualified Montana capital company and the  
 7 qualified Montana small business investment capital company  
 8 shall report to the board on a quarterly basis all qualified  
 9 investments that the company has made. The board shall share  
 10 the information with the department of revenue, in order  
 11 that the provisions of 90-8-301 may be complied with."

12 **Section 16.** Section 90-8-313, MCA, is amended to read:

13 "90-8-313. Examination. (1) At least once a year the  
 14 bank examiners of the department of commerce shall examine  
 15 the books and affairs of each Montana capital company and of  
 16 each Montana small business investment capital company. The  
 17 examination must address the methods of operation and  
 18 conduct of the business of the Montana capital company or of  
 19 the Montana small business investment capital company to  
 20 determine if the company is abiding by the purposes of this  
 21 chapter and that the funds received by the company have been  
 22 invested within the time limits required for a qualified  
 23 Montana capital company or for the qualified Montana small  
 24 business investment capital company in 90-8-301.

25 (2) The department of commerce may examine under oath

1 any of the officers, directors, agents, employees, or  
 2 investors of a Montana capital company regarding the affairs  
 3 and business of the company. The department of commerce may  
 4 issue subpoenas and administer oaths. Refusal to obey such a  
 5 subpoena may at once be reported to the district court of  
 6 the district in which the company is located, and the court  
 7 shall enforce obedience to the subpoena in the manner  
 8 provided by law.

9 (3) The cost of the annual review must be paid by each  
 10 Montana capital company or by the Montana small business  
 11 investment capital company in accordance with reasonable  
 12 fees assessed by the department."

13 **Section 17.** Section 90-8-321, MCA, is amended to read:

14 "90-8-321. Decertification. (1) If the examination  
 15 conducted pursuant to 90-8-313 discloses that a Montana  
 16 capital company or the Montana small business investment  
 17 capital company is not in compliance with the provisions of  
 18 this chapter, the department of commerce may exercise any of  
 19 the powers with regard to banks granted in Title 32, chapter  
 20 1, part 5, and may seize the assets of the company and  
 21 liquidate it. In the event of liquidation of the assets, any  
 22 penalty imposed pursuant to 90-8-301 ~~shall~~ must be included  
 23 in the claims to be paid.

24 (2) If in the discretion of the department of commerce  
 25 the action allowed under subsection (1) is not required to

1 protect the company's investors, the department may place  
 2 the company on notice that it will lose its certification as  
 3 a Montana capital company or as the Montana small business  
 4 investment capital company within a specified period of time  
 5 if the company does not come into compliance with the  
 6 provisions of this chapter. The department shall  
 7 automatically decertify a Montana capital company or the  
 8 Montana small business investment capital company that is  
 9 assessed a penalty under 90-8-301~~(3)~~(4).

10 (3) As long as the department acts in good faith, the  
 11 department and its employees and agents may not be held  
 12 civilly or criminally liable or liable upon their official  
 13 bonds for action taken under this section or for any failure  
 14 to act under it.

15 (4) A Montana capital company or the Montana small  
 16 business investment capital company may apply to the  
 17 department for decertification."

18 NEW SECTION. Section 18. Saving clause. [This act]  
 19 does not affect rights and duties that matured, penalties  
 20 that were incurred, or proceedings that were begun before  
 21 [the effective date of this act].

22 NEW SECTION. Section 19. Severability. If a part of  
 23 [this act] is invalid, all valid parts that are severable  
 24 from the invalid part remain in effect. If a part of [this  
 25 act] is invalid in one or more of its applications, the part

1 remains in effect in all valid applications that are  
 2 severable from the invalid applications.

3 NEW SECTION. Section 20. Retroactive applicability.  
 4 [This act] applies retroactively, within the meaning of  
 5 1-2-109, to events occurring after December 31, 1990.

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

-End-

HOUSE BILL NO. 863

INTRODUCED BY D. BROWN, MAZUREK, LYNCH, THAYER, QUILICI,  
NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,  
S. RICE, PHILLIPS, LARSON, MEASURE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION  
OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE  
ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE  
ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING  
SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202,  
90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,  
90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND  
90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 30-10-105, MCA, is amended to read:

**"30-10-105. Exempt transactions.** Except as in this  
section expressly provided, 30-10-201 through 30-10-207  
~~shall do~~ not apply to ~~any-of~~ the following transactions:

(1) any a nonissuer isolated transaction, whether  
effected through a broker-dealer or not. A transaction is  
presumed to be isolated if it is one of not more than three  
transactions during the prior 12-month period.

(2) (a) any a nonissuer distribution of an outstanding  
security by a broker-dealer registered pursuant to 30-10-201  
if:

(i) quotations for the securities to be offered or sold  
(or the securities issuable upon exercise of any warrant or  
right to purchase or subscribe to such securities) are  
reported by the automated quotations system operated by the  
national association of securities dealers, inc., (NASDAQ)  
or by any other quotation system approved by the  
commissioner by rule; or

(ii) the security has a fixed maturity or a fixed  
interest or dividend provision and there has been no default  
during the current fiscal year or within the 3 preceding  
fiscal years, or during the existence of the issuer and any  
predecessors if less than 3 years, in the payment of  
principal, interest, or dividends on the security.

(b) The commissioner may by order deny or revoke the  
exemption specified in subsection (2)(a) with respect to a  
specific security. Upon the entry of such an order, the  
commissioner shall promptly notify all registered  
broker-dealers that it has been entered and of the reasons  
~~therefor for the order~~ and that within 15 days of the  
receipt of a written request the matter will be set down for  
hearing. If no hearing is requested and none is ordered by  
the commissioner, the order will remain in effect until it

1 is modified or vacated by the commissioner. If a hearing is  
 2 requested or ordered, the commissioner, after notice of and  
 3 opportunity for hearing to all interested persons, may  
 4 modify or vacate the order or extend it until final  
 5 determination. No An order under this subsection may not  
 6 operate retroactively. No A person may not be considered to  
 7 have violated parts 1 through 3 of this chapter by reason of  
 8 any offer or sale effected after the entry of an order under  
 9 this subsection if he sustains the burden of proof that he  
 10 did not know and in the exercise of reasonable care could  
 11 not have known of the order.

12 (3) any a nonissuer transaction effected by or through  
 13 a registered broker-dealer pursuant to an unsolicited order  
 14 or offer to buy, but the commissioner may require that the  
 15 customer acknowledge upon a specified form that the sale was  
 16 unsolicited and that a signed copy of each form be preserved  
 17 by the broker-dealer for a specified period;

18 (4) any a transaction between the issuer or other  
 19 person on whose behalf the offering is made and an  
 20 underwriter or among underwriters;

21 (5) any a transaction by an executor, administrator,  
 22 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 23 or conservator in the performance of his official duties as  
 24 such;

25 (6) any a transaction executed by a bona fide pledgee

1 without any purpose of evading parts 1 through 3 of this  
 2 chapter;

3 (7) any an offer or sale to a bank, savings  
 4 institution, trust company, insurance company, investment  
 5 company as defined in the Investment Company Act of 1940,  
 6 pension or profit-sharing trust, or other financial  
 7 institution or institutional buyer, or to a broker-dealer,  
 8 whether the purchaser is acting for itself or in some  
 9 fiduciary capacity;

10 (8) (a) any a transaction pursuant to an offer made in  
 11 this state directed by the offeror to not more than 10  
 12 persons (other than those designated in subsection (7))  
 13 during any period of 12 consecutive months, if:

14 (i) the seller reasonably believes that all the buyers  
 15 are purchasing for investment; and

16 (ii) no a commission or other remuneration is not paid  
 17 or given directly or indirectly for soliciting any  
 18 prospective buyer; provided, however, that a commission may  
 19 be paid to a registered broker-dealer if the securities  
 20 involved are registered with the United States securities  
 21 and exchange commission under the federal Securities Act of  
 22 1933, as amended.

23 (b) For the purpose of the exemption provided for in  
 24 subsection (8)(a), an offer to sell is made in this state,  
 25 whether or not the offeror or any of the offerees is then

1 present in this state, if the offer either originates from  
2 this state or is directed by the offeror to this state and  
3 received at the place to which it is directed (or at any  
4 post office in this state in the case of a mailed offer).

5 (9) any an offer or sale of a preorganization  
6 certificate or subscription if:

7 (a) no a commission or other remuneration is not paid  
8 or given directly or indirectly for soliciting any  
9 prospective subscriber;

10 (b) the number of subscribers does not exceed 10; and

11 (c) no a payment is not made by any subscriber;

12 (10) any a transaction pursuant to an offer to existing  
13 security holders of the issuer, including persons who at the  
14 time of the transaction are holders of convertible  
15 securities, nontransferable warrants, or transferable  
16 warrants exercisable within not more than 90 days of their  
17 issuance, if:

18 (a) no a commission or other remuneration (other than a  
19 standby commission) is not paid or given directly or  
20 indirectly for soliciting any security holder in this state;  
21 or

22 (b) the issuer first files a notice specifying the  
23 terms of the offer and the commissioner does not by order  
24 disallow either (a) or (b) of this subsection;

25 (11) any an offer (but not a sale) of a security for

1 which registration statements have been filed under both  
2 parts 1 through 3 of this chapter and the Securities Act of  
3 1933 if no stop, refusal, denial, suspension, or revocation  
4 order is in effect and no a public proceeding or examination  
5 looking toward such an order is not pending under either  
6 law;

7 (12) any an offer (but not a sale) of a security for  
8 which a registration statement has been filed under parts 1  
9 through 3 of this chapter and the commissioner in his  
10 discretion does not disallow the offer in writing within 10  
11 days of such filing;

12 (13) the issuance of any a stock dividend, whether the  
13 corporation distributing the dividend is the issuer of the  
14 stock or not, if nothing of value is given by stockholders  
15 for the distribution other than the surrender of a right to  
16 a cash dividend where the stockholder can elect to take a  
17 dividend in cash or stock;

18 (14) any a transaction incident to a right of conversion  
19 or a statutory or judicially approved reclassification,  
20 recapitalization, reorganization, quasi-reorganization,  
21 stock split, reverse stock split, merger, consolidation, or  
22 sale of assets;

23 (15) any a transaction in compliance with such rules as  
24 that the commissioner in his discretion may adopt to serve  
25 the purposes of 30-10-102. The commissioner may in his

1 discretion require that 30-10-201 through 30-10-207 apply to  
2 any or all transactional exemptions adopted by rule.

3 (16) any a transaction by IN THE SECURITIES OF a  
4 certified Montana capital company or a certified Montana  
5 small business investment capital company as defined in  
6 90-8-104, provided that such the company first files all  
7 disclosure documents, along with a consent to service of  
8 process, with the commissioner. The commissioner may not  
9 charge a fee for the filing.

10 (17) the sale of a commodity investment contract traded  
11 on a commodities exchange recognized by the commissioner at  
12 the time of sale;

13 (18) a transaction within the exclusive jurisdiction of  
14 the commodity futures trading commission as granted under  
15 the Commodity Exchange Act;

16 (19) a transaction that:

17 (a) involves the purchase of one or more precious  
18 metals; and

19 (b) requires, and under which the purchaser receives  
20 within 7 calendar days after payment in good funds of any  
21 portion of the purchase price, physical delivery of the  
22 quantity of the precious metals purchased. For the purposes  
23 of this subsection, physical delivery is considered to have  
24 occurred if, within the 7-day period, the quantity of  
25 precious metals, whether in specifically segregated or

1 fungible bulk, purchased by such payment is delivered into  
2 the possession of a depository (other than the seller) that:

3 (i) (A) is a financial institution (meaning a bank,  
4 savings institution, or trust company organized under or  
5 supervised pursuant to the laws of the United States or of  
6 this state);

7 (B) is a depository the warehouse receipts of which are  
8 recognized for delivery purposes for any commodity on a  
9 contract market designated by the commodity futures trading  
10 commission; or

11 (C) is a storage facility licensed by the United States  
12 or any agency of the United States; and

13 (ii) issues, and the purchaser receives, a certificate,  
14 document of title, confirmation, or other instrument  
15 evidencing that such the quantity of precious metals has  
16 been delivered to the depository and is being and will  
17 continue to be held on the purchaser's behalf, free and  
18 clear of all liens and encumbrances other than:

19 (A) liens of the purchaser;

20 (B) tax liens;

21 (C) liens agreed to by the purchaser; or

22 (D) liens of the depository for fees and expenses that  
23 previously have been disclosed to the purchaser.

24 (20) a transaction involving a commodity investment  
25 contract solely between persons engaged in producing,

1 processing, using commercially, or handling as merchants  
 2 each commodity subject to the contract or any byproduct of  
 3 the commodity;

4 (21) any an offer or sale of a security to an employee  
 5 of the issuer, pursuant to an employee stock ownership plan  
 6 qualified under section 401 of the Internal Revenue Code of  
 7 1986."

8 **Section 2.** Section 90-8-102, MCA, is amended to read:

9 "90-8-102. Declaration of policy. (1) The legislature  
 10 finds and declares that:

11 (a) economic insecurity due to unemployment is a  
 12 serious menace to the health, safety, and general welfare of  
 13 not only the affected people but of the people of the entire  
 14 state;

15 (b) involuntary unemployment, with its resulting burden  
 16 of indigency, falls with crushing force upon unemployed  
 17 workers and ultimately on the state itself in the form of  
 18 public assistance and unemployment compensation payments;  
 19 and

20 (c) unemployment causes a migration of Montana workers  
 21 and families seeking jobs and establishing homes elsewhere,  
 22 which deprives the state of its most valuable resource, its  
 23 people, and reduces the tax base of local governments,  
 24 impairing their ability to provide basic services.

25 (2) (a) The legislature further finds that the best

1 method of combating unemployment and protecting Montana  
 2 against the loss of its people is by promoting, stimulating,  
 3 developing, rehabilitating, and revitalizing the business  
 4 prosperity and economic welfare of the state and its  
 5 citizens.

6 (b) To accomplish this goal, the legislature seeks to  
 7 encourage the formation of venture and equity capital in  
 8 Montana for use in diversifying, strengthening, and  
 9 stabilizing the Montana economy by increasing Montana  
 10 employment and business opportunities while protecting the  
 11 people's constitutional right to a clean and healthful  
 12 environment.

13 (3) The legislature further finds that:

14 (a) private investment of venture and equity capital in  
 15 the Montana economy will be encouraged and promoted by  
 16 making tax credits available to taxpayers investing in a  
 17 Montana capital companies company or in a Montana small  
 18 business investment capital company;

19 (b) demands on state revenues restrict the financial  
 20 ability of the state to make unlimited tax credits available  
 21 for investment purposes and require that the state place  
 22 reasonable limits on the total amount of tax credits to be  
 23 made available for investment incentive;

24 (c) establishment of a rational tax credit program  
 25 which gives priority to investments in capital companies in



1 the order in which they are qualified or in a Montana small  
 2 business investment capital company will encourage prompt  
 3 private investment in Montana businesses.

4 (4) The legislature further finds that use of money  
 5 from the Montana in-state investment fund established by  
 6 17-6-306 to purchase debentures issued by a capital company  
 7 or a Montana small business investment capital company will  
 8 promote the business prosperity and economic welfare of the  
 9 state and its citizens."

10 **Section 3.** Section 90-8-104, MCA, is amended to read:

11 **"90-8-104. Definitions.** As used in this chapter, unless  
 12 the context requires otherwise, the following definitions  
 13 apply:

14 (1) "Board" means the board of investments provided for  
 15 in 2-15-1808.

16 (2) "Capital base" means equity capital raised by a  
 17 certified Montana capital company or by a certified Montana  
 18 small business investment capital company for which tax  
 19 credits were claimed under this chapter.

20 (3) "Certified Montana capital company" or "certified  
 21 Montana small business investment capital company" means:

22 (a) a development credit corporation created pursuant  
 23 to Title 32, chapter 4; or

24 (b) a profit or nonprofit entity organized and existing  
 25 under the laws of Montana, created for the purpose of making

1 venture or risk capital available for qualified investments  
 2 and that has been certified by the board.

3 (4) "Montana business" means a business which is  
 4 located or principally based within Montana.

5 (5) "Qualified investment" means:

6 (a) a debt or equity financing of a Montana business  
 7 that meets both of the following criteria:

8 (i) the business is engaged in one or more of the  
 9 following activities:

10 (A) manufacturing;

11 (B) agricultural, fishery, or forestry production and  
 12 processing;

13 (C) mineral production and processing, except for  
 14 conventional oil and gas exploration;

15 (D) recognized nonfossil forms of energy generation as  
 16 defined in 15-32-102;

17 (E) transportation;

18 (F) research and development of products or processes  
 19 associated with any of the activities enumerated in (A)  
 20 through (E) above;

21 (G) wholesale or retail distribution activities for  
 22 which products produced in Montana comprise 50% or more of  
 23 the gross sales receipts;

24 (H) any activity conducted in the state for which 50%  
 25 or more of the gross receipts are derived from the sale of

1 products or services outside Montana; and  
 2 (I) tourism; and  
 3 (ii) the business is a small business as defined in  
 4 rules adopted by the board; or  
 5 (b) a debt or equity financing of a business outside  
 6 Montana if such investment is likely to produce a qualified  
 7 investment in Montana, as long as such investment does not  
 8 exceed 25% of the capital base of the capital company.  
 9 (6) "Qualified Montana capital company" means a  
 10 certified Montana capital company that has been designated a  
 11 qualified capital company under the provisions of 90-8-202  
 12 so that investors in the company may receive the tax credits  
 13 authorized in 90-8-202.  
 14 (7) "Qualified Montana small business investment  
 15 capital company" means a certified Montana small business  
 16 investment capital company that has been designated a  
 17 qualified small business investment capital company under  
 18 the provisions of 90-8-202 so that investors in the company  
 19 may receive the tax credits authorized in 90-8-202."

20 **Section 4.** Section 90-8-201, MCA, is amended to read:  
 21 **"90-8-201. Certification of Montana capital companies**  
 22 **-- certification of a Montana small business investment**  
 23 **capital company. (1) From The board shall certify one**  
 24 **Montana small business investment capital company, and from**  
 25 **time to time the board shall certify Montana capital**

1 companies. A company seeking to be certified as a Montana  
 2 capital company must or as the Montana small business  
 3 investment capital company shall make written application to  
 4 the board on forms provided by the board. The application  
 5 must contain the information required by 90-8-204 and ~~such~~  
 6 other information as that the board requires. The  
 7 application and certificate must specify the level of  
 8 capitalization that the company expects to qualify for the  
 9 tax credits provided for in 90-8-202.

10 (2) The application must show that the applicant's  
 11 purpose is to increase the general economic welfare of the  
 12 state of Montana by:

13 (a) making investment capital available to businesses  
 14 in Montana; and

15 (b) allowing for investment of up to 25% of its capital  
 16 base in businesses outside Montana if there is a substantial  
 17 likelihood that such investment will produce a qualified  
 18 investment in Montana.

19 (3) Certifiable applicants include but are not limited  
 20 to local and community development corporations, small  
 21 business administration 503 corporations, and small business  
 22 investment companies.

23 (4) Certification is a prerequisite to and must be  
 24 completed before seeking designation as a qualified capital  
 25 company or as the qualified Montana small business

1 investment capital company.

2 (5) To be eligible for certification under this section  
 3 as the Montana small business investment capital company,  
 4 the applicant shall commit to:

5 (a) utilize the tax credits to accumulate private  
 6 capital with the intention of being designated a small  
 7 business investment corporation by the United States small  
 8 business administration as provided in Title III of the  
 9 Small Business Act of 1958, as amended, and as implemented  
 10 under 13 CFR 107; and

11 (b) target its investments as a small business  
 12 investment capital company toward commercialization projects  
 13 emerging from centers of excellence and entrepreneurship,  
 14 federal laboratories, the federal small business innovative  
 15 research program, the federal cooperative research and  
 16 development agreement program, Montana university system  
 17 research and development, the Montana board of science and  
 18 technology development (second stage), SMALL BUSINESS  
 19 incubators, community development block grant programs, AND  
 20 PROJECTS EMERGING FROM ECONOMIC DEVELOPMENT PROGRAMS OF  
 21 MONTANA CERTIFIED COMMUNITIES with the objective of  
 22 providing significant investment opportunities in an area  
 23 where economic development capital is limited; and projects  
 24 emerging from economic development programs of Montana  
 25 certified communities; AND

1 (C) CONSIDER INVESTMENT OPPORTUNITIES ORIGINATING IN  
 2 ANY MONTANA COUNTY."

3 **Section 5.** Section 90-8-202, MCA, is amended to read:

4 **"90-8-202.** Designation of qualified Montana capital  
 5 companies -- designation of qualified Montana small business  
 6 investment capital company -- tax credit. (1) The board  
 7 shall designate as:

8 (a) qualified Montana capital companies those certified  
 9 companies that have been privately capitalized at a minimum  
 10 level of \$200,000; or

11 (b) the qualified CERTIFIED Montana small business  
 12 investment capital company a company that has been privately  
 13 capitalized at a minimum level of \$500,000.

14 (2) A certified company seeking designation as a  
 15 qualified Montana capital company or as the qualified  
 16 Montana small business investment capital company must make  
 17 written application to the board on forms provided by the  
 18 board. The application must contain the information required  
 19 by 90-8-204 and such other information as that the board  
 20 requires.

21 +2+(3) (a) The total amount of tax credits authorized  
 22 for a single qualified capital company or the qualified  
 23 Montana small business investment capital company may not  
 24 exceed \$1,500,000, except that the qualified Montana small  
 25 business investment capital company must receive all

1 remaining tax credits under this section available as of  
 2 January 1, 1991. In the event the capitalization of the a  
 3 qualified capital company is later increased, the company  
 4 may apply for authorization of additional tax credits within  
 5 the foregoing limitation.

6 (b) The total credits authorized for all companies may  
 7 not exceed a total of \$1 million prior to June 30, 1985. The  
 8 total credits authorized for all companies between July 1,  
 9 1985, and June 30, 1987, may not exceed \$1 million plus any  
 10 portion of the \$1 million available for authorization before  
 11 June 30, 1985, that is allocated to qualified companies. The  
 12 total credits authorized for all companies between July 1,  
 13 1987, and June 30, 1989, may not exceed \$3 million plus any  
 14 portion of the credits available for authorization before  
 15 June 30, 1987, that is allocated to qualified companies. The  
 16 total credits authorized for all companies between July 1,  
 17 1989, and June 30, 1991, may not exceed \$3 million plus any  
 18 portion of the credits available for authorization before  
 19 June 30, 1989, that is allocated to qualified companies.

20 ~~{3}{4}~~ (a) The Before January 1, 1991, credits shall  
 21 must be allocated to qualified companies in the order that  
 22 completed applications for designation as qualified capital  
 23 companies are received by the board, and the board shall  
 24 certify to each such company its appropriate allocation.

25 (b) All tax credits allowed under subsection (3) that

1 are not allocated as of January 1, 1991, must be allocated  
 2 to the qualified Montana small business investment capital  
 3 company, and the board shall certify the allocation to the  
 4 company.

5 (C) IF THE LEGISLATURE PROVIDES ADDITIONAL TAX CREDITS  
 6 UNDER THIS CHAPTER AFTER JUNE 30, 1991, OR IF TAX CREDITS  
 7 BECOME AVAILABLE BY REVERSION TO THE BOARD BY A CAPITAL  
 8 COMPANY OR BY THE QUALIFIED MONTANA SMALL BUSINESS  
 9 INVESTMENT CAPITAL COMPANY, THOSE ADDITIONAL OR REVERTED TAX  
 10 CREDITS MAY BE ALLOCATED BY THE BOARD TO QUALIFIED CAPITAL  
 11 COMPANIES OR TO THE QUALIFIED MONTANA SMALL BUSINESS  
 12 INVESTMENT CAPITAL COMPANY IN ACCORDANCE WITH THIS CHAPTER  
 13 AND THE RULES OF THE BOARD.

14 ~~{4}{5}~~ Investors in a qualified Montana capital company  
 15 or in the qualified Montana small business investment  
 16 capital company are entitled to the tax credits provided for  
 17 in subsection ~~{5}~~ {6}. Funds invested in a certified company  
 18 prior to designation as a qualified Montana capital company  
 19 or as the qualified Montana small business investment  
 20 capital company may, at the discretion of the investor, be  
 21 placed in an escrow account in a Montana financial  
 22 institution pending designation of the company as a  
 23 qualified Montana capital company or as the qualified  
 24 Montana small business investment capital company.

25 ~~{5}{6}~~ Subject to the provisions of subsections ~~{2}~~ {3}

1 and ~~(8)~~ (9), an individual, small business corporation,  
 2 partnership, trust, decedent's estate, or corporate taxpayer  
 3 that makes a capital investment in a qualified Montana  
 4 capital company or the qualified Montana small business  
 5 investment capital company is entitled to a tax credit equal  
 6 to 50% of the investment, up to a maximum credit of \$150,000  
 7 per taxpayer, except that, as applied to the small business  
 8 investment capital company, the maximum tax credit is  
 9 \$250,000 per taxpayer. The credit may be taken against the  
 10 tax liability imposed on the investor pursuant to Title 15,  
 11 chapter 30, 31, or 35. The credit for investments by a small  
 12 business corporation electing to be taxed under 15-31-202 or  
 13 a partnership may be claimed by the small business  
 14 corporation shareholders or the partners.

15 ~~(6)~~(7) The tax credit allowed under subsection ~~(5)~~ (6)  
 16 is to be credited against the taxpayer's income tax  
 17 liability or coal severance tax liability for the taxable  
 18 year in which the investment in a qualified Montana capital  
 19 company or the qualified Montana small business investment  
 20 capital company is made. If the amount of the tax credit  
 21 exceeds the taxpayer's tax liability for the taxable year,  
 22 the amount of the credit which exceeds the tax liability may  
 23 be carried back or carried forward in the following manner:

24 (a) If the sum of the amount of credit for the current  
 25 taxable year plus the amount of credit, if any, carried

1 forward from a previous taxable year exceeds the taxpayer's  
 2 tax liability for the current taxable year, the excess must  
 3 be carried back as a credit to the 3 preceding taxable years  
 4 and, if the full credit remains unused, carried forward as a  
 5 credit to the 15 succeeding taxable years.

6 (b) The amount of unused credit must be used to offset  
 7 the entire tax liability of each of the 18 taxable years,  
 8 beginning with the earliest and commencing to the next  
 9 succeeding year until the credit is exhausted.

10 ~~(7)~~(8) The tax credit provided for in this section is  
 11 available only to those taxpayers who invest in a qualified  
 12 Montana capital company within 4 years of July 1, 1987, or  
 13 in the qualified Montana small business investment capital  
 14 company within 4 years of July 1, 1991.

15 ~~(8)~~(9) (a) An individual, small business corporation,  
 16 partnership, or corporate taxpayer who obtains the tax  
 17 credit allowed under subsection ~~(5)~~ (6) may not obtain  
 18 credits in excess of the ~~\$150,000-limit~~ limits contained in  
 19 subsection ~~(5)~~ (6) by making investments as more than one  
 20 entity.

21 (b) A partner or shareholder in a small business  
 22 corporation may not obtain more than \$150,000, or not more  
 23 than \$250,000 in the case of a partner or shareholder in the  
 24 qualified Montana small business investment capital company,  
 25 in credits as an individual and as the partnership or small

1 business corporation. A corporate taxpayer that obtains the  
 2 maximum ~~50,000~~ credit credits allowed under this  
 3 subsection (9)(b) may not obtain additional credits through  
 4 investments by wholly owned subsidiaries or affiliates. An  
 5 individual, small business corporation, partnership, or  
 6 corporate taxpayer who obtains the tax credit allowed under  
 7 subsection (6) may not claim deduction under the provisions  
 8 of Title 15, chapter 30 or 31, for donation of stock in the  
 9 qualified Montana small business investment capital  
 10 company."

11 **Section 6.** Section 90-8-203, MCA, is amended to read:

12 "90-8-203. No recapture -- unqualified investments. If  
 13 the amount invested by a taxpayer in a qualified Montana  
 14 capital company or in the qualified Montana small business  
 15 investment capital company is not used by the company for  
 16 qualified investments as provided in 90-8-301, the taxpayer  
 17 is not subject to a recapture provision for any tax credit  
 18 claimed by him but the company is subject to the penalty  
 19 provided for in 90-8-301~~(3)~~(4)."

20 **Section 7.** Section 90-8-204, MCA, is amended to read:

21 "90-8-204. Application requirements. A company applying  
 22 to become either a certified or qualified Montana capital  
 23 company or the certified or qualified Montana small business  
 24 investment capital company shall include in its application  
 25 evidence that it has disclosed or will disclose to all

1 investors the following:

2 (1) the condition that a tax credit is not available  
 3 for investment in a company until the company has been  
 4 designated a qualified Montana capital company or the  
 5 qualified Montana small business investment capital company  
 6 and the investor has received a certificate approving the  
 7 credit from the board;

8 (2) the condition that a tax credit will not be made  
 9 available until the a qualified capital company raises at  
 10 least \$200,000 in capital, and has been designated a  
 11 qualified capital company, or the qualified Montana small  
 12 business investment capital company raises at least \$500,000  
 13 in capital before July 1, 1995, and has been designated the  
 14 qualified Montana small business investment capital company  
 15 and the limits on tax credits that may be authorized; and

16 (3) the fact that the state of Montana is not liable  
 17 for damages in accordance with 90-8-205."

18 **Section 8.** Section 90-8-205, MCA, is amended to read:

19 "90-8-205. State liability disclaimed. The state of  
 20 Montana may not be held liable for any damages to an  
 21 investor in a Montana;

22 (1) capital company that fails to become designated as  
 23 a certified or qualified Montana capital company; or

24 (2) small business investment capital company that  
 25 fails to become designated as a certified or qualified

1 Montana small business investment capital company."

2 **Section 9.** Section 90-8-301, MCA, is amended to read:

3 **"90-8-301. Qualified investments -- penalty --**  
 4 **extension permissible.** (1) A qualified Montana capital  
 5 company receiving investments for which a taxpayer has  
 6 applied and received a tax credit must use its capital base  
 7 to make qualified investments according to the following  
 8 schedule:

9 (a) at least 30% of its capital base raised through  
 10 investments for which tax credits were taken within 3 years  
 11 of the date on which the certified company was designated as  
 12 a qualified capital company by the board and, in the case of  
 13 capital raised by a qualified Montana capital company under  
 14 an amended application for additional tax credits filed  
 15 after its initial designation as a qualified Montana capital  
 16 company, at least 30% of its capital base raised through  
 17 investments for which tax credits were taken within 3 years  
 18 of the date on which the board approves the amended  
 19 application;

20 (b) at least 50% of its capital base raised through  
 21 investments for which tax credits were taken within 4 years  
 22 of the date on which the certified company was designated as  
 23 a qualified capital company by the board and, in the case of  
 24 capital raised by a qualified Montana capital company under  
 25 an amended application for additional tax credits filed

1 after its initial designation as a qualified Montana capital  
 2 company, at least 50% of its capital base raised through  
 3 investments for which tax credits were taken within 4 years  
 4 of the date on which the board approves the amended  
 5 application; and

6 (c) at least 70% of its capital base raised through  
 7 investments for which tax credits were taken within 5 years  
 8 of the date on which the certified company was designated as  
 9 a qualified capital company by the board and, in the case of  
 10 capital raised by a qualified Montana capital company under  
 11 an amended application for additional tax credits filed  
 12 after its initial designation as a qualified Montana capital  
 13 company, at least 70% of its capital base raised through  
 14 investments for which tax credits were taken within 5 years  
 15 of the date on which the board approves the amended  
 16 application.

17 (2) The qualified Montana small business investment  
 18 capital company receiving investments for which a taxpayer  
 19 has applied and received a tax credit must use its capital  
 20 base to make qualified investments according to the  
 21 following schedule:

22 (a) of its capital base raised through investments for  
 23 which tax credits were taken:

24 (i) 30% within 3 years of the date on which the  
 25 certified company was designated as the qualified Montana

1 small business investment capital company by the board or  
 2 within 3 years of its designation as a small business  
 3 investment corporation by the small business administration,  
 4 whichever is later;

5 (ii) 50% within 4 years of the date on which the  
 6 certified company was designated as the qualified Montana  
 7 small business investment capital company by the board or  
 8 within 4 years after its designation as a small business  
 9 investment corporation by the small business administration,  
 10 whichever is later; and

11 (iii) 70% within 5 years of the date on which the  
 12 certified company was designated as the qualified Montana  
 13 small business investment capital company by the board or  
 14 within 5 years after its designation as a small business  
 15 investment corporation by the small business administration,  
 16 whichever is later; and OR

17 (b) of its capital base, in the case of capital raised  
 18 through a loan from the small business administration  
 19 pursuant to 13 CFR 107, as provided under this chapter  
 20 EXCEPT AS PROVIDED IN SUBSECTION (2)(A).

21 ~~(2)~~(3) Following each annual examination, the  
 22 commissioner of financial institutions shall notify the  
 23 department of revenue of any companies that are not in  
 24 compliance with this section.

25 ~~(3)~~(4) A qualified Montana capital company that fails

1 to make qualified investments pursuant to subsection (1) or  
 2 the qualified Montana small business investment capital  
 3 company that fails to make qualified investments pursuant to  
 4 subsection (2) shall pay to the department of revenue a  
 5 penalty equal to all of the tax credits allowed to the  
 6 taxpayers investing in that company during that time period,  
 7 with interest at 1% a month from the date the tax credits  
 8 were certified as allocated to the qualified Montana capital  
 9 company or to the qualified Montana small business  
 10 investment capital company. The department of revenue may  
 11 abate the penalty if the capital company or the Montana  
 12 small business investment capital company establishes  
 13 reasonable cause for the failure to make qualified  
 14 investments pursuant to subsection (1) or (2) and if the  
 15 failure was not due to neglect on the part of the company.

16 ~~(4)~~(5) The department of revenue may grant an extension  
 17 of time in which to make qualified investments pursuant to  
 18 subsection (1) or (2) upon application by a capital company  
 19 or the Montana small business investment capital company  
 20 showing reasonable cause for an extension.

21 ~~(5)~~(6) The department of revenue shall deposit any  
 22 amount received under this subsection to the credit of the  
 23 state general fund."

24 **Section 10.** Section 90-8-302, MCA, is amended to read:  
 25 **"90-8-302. Restriction on investment.** In addition to



1 the requirements of 90-8-301, no more than 50% of the equity  
 2 raised by a Montana capital company or by the Montana small  
 3 business investment capital company may be invested in any  
 4 one business, and no more than 25% of the total funds raised  
 5 for which tax credits were claimed pursuant to the  
 6 investment credit provisions of this chapter may be invested  
 7 in any one business."

8 **Section 11.** Section 90-8-303, MCA, is amended to read:

9 **"90-8-303. Conflict of interest.** (1) (a) The members of  
 10 the board, the commissioner of financial institutions, or a  
 11 bank examiner may not have a monetary interest in or be a  
 12 borrower from any a Montana capital company or from the  
 13 Montana small business investment capital company, either  
 14 directly or indirectly.

15 (b) These restrictions do not prohibit the board,  
 16 acting as a whole, from purchasing debentures issued by a  
 17 Montana capital company or by the Montana small business  
 18 investment capital company.

19 (2) A member of the investment committee of a Montana  
 20 capital company or of the Montana small business investment  
 21 capital company who has an interest in a venture that comes  
 22 before the committee for a vote shall disclose such the  
 23 interest and abstain from voting on investment in the  
 24 venture."

25 **Section 12.** Section 90-8-304, MCA, is amended to read:

1 **"90-8-304. Application of securities law.** In lieu of  
 2 registration under Title 30, chapter 10, a certified Montana  
 3 capital company or the certified Montana small business  
 4 investment capital company may file all disclosure  
 5 documents, along with a consent to service of process, with  
 6 the state securities commissioner. The commissioner may not  
 7 charge a fee for such the filing."

8 **Section 13.** Section 90-8-305, MCA, is amended to read:

9 **"90-8-305. Sale of debentures.** (1) A qualified Montana  
 10 capital company or the qualified Montana small business  
 11 investment capital company is authorized to issue and sell  
 12 debentures to the in-state investment fund established in  
 13 17-6-306.

14 (2) Proceeds received by a qualified Montana capital  
 15 company or by the qualified Montana small business  
 16 investment capital company from the sale of debentures  
 17 authorized in subsection (1) must be invested in accordance  
 18 with the provisions of 90-8-301, except that the time  
 19 periods for making qualified investments must be calculated  
 20 from the date the company sells the debentures to the  
 21 in-state investment fund."

22 **Section 14.** Section 90-8-311, MCA, is amended to read:

23 **"90-8-311. Legislative review and oversight.** The board  
 24 shall report on an annual basis to the revenue oversight  
 25 committee of the legislature concerning Montana capital

1 companies and the Montana small business investment capital  
2 company."

3 **Section 15.** Section 90-8-312, MCA, is amended to read:

4 **"90-8-312. Investment reporting and recordkeeping.** (1)  
5 Each qualified Montana capital company and each qualified  
6 Montana small business investment capital company shall  
7 report to the board on a quarterly basis:

8 (a) the name of each investor in the qualified Montana  
9 capital company or in the qualified Montana small business  
10 investment capital company who has applied for a tax credit;

11 (b) the amount of each investor's investment; and

12 (c) the amount of the tax credit allowed to the  
13 investor and the date on which the investment was made.

14 (2) The board shall provide the information contained  
15 in subsection (1) to the department of revenue on a  
16 quarterly basis.

17 (3) The board shall provide each investor in a  
18 qualified Montana capital company and each investor in the  
19 qualified Montana small business investment capital company  
20 with a certificate authorizing the tax credit, and the  
21 certificate ~~shall~~ must be submitted with each tax return  
22 requesting a credit under 90-8-202.

23 (4) Each qualified Montana capital company and the  
24 qualified Montana small business investment capital company  
25 shall report to the board on a quarterly basis all qualified

1 investments that the company has made. The board shall share  
2 the information with the department of revenue, in order  
3 that the provisions of 90-8-301 may be complied with."

4 **Section 16.** Section 90-8-313, MCA, is amended to read:

5 **"90-8-313. Examination.** (1) At least once a year the  
6 bank examiners of the department of commerce shall examine  
7 the books and affairs of each Montana capital company and of  
8 each THE QUALIFIED Montana small business investment capital  
9 company. The examination must address the methods of  
10 operation and conduct of the business of the Montana capital  
11 company or of the Montana small business investment capital  
12 company to determine if the company is abiding by the  
13 purposes of this chapter and that the funds received by the  
14 company have been invested within the time limits required  
15 for a qualified Montana capital company or for the qualified  
16 Montana small business investment capital company in  
17 90-8-301.

18 (2) The department of commerce may examine under oath  
19 any of the officers, directors, agents, employees, or  
20 investors of a Montana capital company regarding the affairs  
21 and business of the company. The department of commerce may  
22 issue subpoenas and administer oaths. Refusal to obey such a  
23 subpoena may at once be reported to the district court of  
24 the district in which the company is located, and the court  
25 shall enforce obedience to the subpoena in the manner

1 provided by law.

2 (3) The cost of the annual review must be paid by each  
 3 Montana capital company or by the Montana small business  
 4 investment capital company in accordance with reasonable  
 5 fees assessed by the department."

6 **Section 17.** Section 90-8-321, MCA, is amended to read:

7 \*90-8-321. Decertification. (1) If the examination  
 8 conducted pursuant to 90-8-313 discloses that a Montana  
 9 capital company or the Montana small business investment  
 10 capital company is not in compliance with the provisions of  
 11 this chapter, the department of commerce may exercise any of  
 12 the powers with regard to banks granted in Title 32, chapter  
 13 1, part 5, and may seize the assets of the company and  
 14 liquidate it. In the event of liquidation of the assets, any  
 15 penalty imposed pursuant to 90-8-301 ~~shall~~ must be included  
 16 in the claims to be paid.

17 (2) If in the discretion of the department of commerce  
 18 the action allowed under subsection (1) is not required to  
 19 protect the company's investors, the department may place  
 20 the company on notice that it will lose its certification as  
 21 a Montana capital company or as the Montana small business  
 22 investment capital company within a specified period of time  
 23 if the company does not come into compliance with the  
 24 provisions of this chapter. The department shall  
 25 automatically decertify a Montana capital company or the

1 Montana small business investment capital company that is  
 2 assessed a penalty under 90-8-301~~(3)~~(4).

3 (3) As long as the department acts in good faith, the  
 4 department and its employees and agents may not be held  
 5 civilly or criminally liable or liable upon their official  
 6 bonds for action taken under this section or for any failure  
 7 to act under it.

8 (4) A Montana capital company or the Montana small  
 9 business investment capital company may apply to the  
 10 department for decertification."

11 **NEW SECTION. Section 18. Saving clause.** [This act]  
 12 does not affect rights and duties that matured, penalties  
 13 that were incurred, or proceedings that were begun before  
 14 [the effective date of this act].

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

21 **NEW SECTION. Section 20. Retroactive applicability.**  
 22 [This act] applies retroactively, within the meaning of  
 23 1-2-109, to events occurring after December 31, 1990.

24 **NEW SECTION. Section 21. Effective date.** [This act] is  
 25 effective on passage and approval.

## 1 HOUSE BILL NO. 863

2 INTRODUCED BY D. BROWN, MAZUREK, LYNCH, TRAYER, QUILICI,  
3 NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,  
4 S. RICE, PHILLIPS, LARSON, MEASURE

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION  
8 OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE  
9 ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE  
10 ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING  
11 SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202,  
12 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,  
13 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND  
14 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
15 A RETROACTIVE APPLICABILITY DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 **Section 1.** Section 30-10-105, MCA, is amended to read:

19 "30-10-105. Exempt transactions. Except as in this  
20 section expressly provided, 30-10-201 through 30-10-207  
21 shall do not apply to any of the following transactions:

22 (1) any a nonissuer isolated transaction, whether  
23 effected through a broker-dealer or not. A transaction is  
24 presumed to be isolated if it is one of not more than three  
25 transactions during the prior 12-month period.

There are no changes in this bill,  
and will not be reprinted. Please  
refer to yellow copy for complete  
text.

## 1 HOUSE BILL NO. 863

2 INTRODUCED BY D. BROWN, MAZUREK, LYNCH, THAYER, QUILICI,  
3 NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,  
4 S. RICE, PHILLIPS, LARSON, MEASURE

5  
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
7 MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION  
8 OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE  
9 ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE  
10 ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING  
11 SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202,  
12 90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,  
13 90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND  
14 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
15 A RETROACTIVE APPLICABILITY DATE."  
16

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

18 **Section 1.** Section 30-10-105, MCA, is amended to read:

19 "30-10-105. **Exempt transactions.** Except as in this  
20 section expressly provided, 30-10-201 through 30-10-207  
21 ~~shall~~ do not apply to ~~any of~~ the following transactions:

22 (1) any a nonissuer isolated transaction, whether  
23 effected through a broker-dealer or not. A transaction is  
24 presumed to be isolated if it is one of not more than three  
25 transactions during the prior 12-month period.

1 (2) (a) any a nonissuer distribution of an outstanding  
2 security by a broker-dealer registered pursuant to 30-10-201  
3 if:

4 (i) quotations for the securities to be offered or sold  
5 (or the securities issuable upon exercise of any warrant or  
6 right to purchase or subscribe to such securities) are  
7 reported by the automated quotations system operated by the  
8 national association of securities dealers, inc., (NASDAQ)  
9 or by any other quotation system approved by the  
10 commissioner by rule; or

11 (ii) the security has a fixed maturity or a fixed  
12 interest or dividend provision and there has been no default  
13 during the current fiscal year or within the 3 preceding  
14 fiscal years, or during the existence of the issuer and any  
15 predecessors if less than 3 years, in the payment of  
16 principal, interest, or dividends on the security.

17 (b) The commissioner may by order deny or revoke the  
18 exemption specified in subsection (2)(a) with respect to a  
19 specific security. Upon the entry of such an order, the  
20 commissioner shall promptly notify all registered  
21 broker-dealers that it has been entered and of the reasons  
22 ~~therefor~~ for the order and that within 15 days of the  
23 receipt of a written request the matter will be set down for  
24 hearing. If no hearing is requested and none is ordered by  
25 the commissioner, the order will remain in effect until it

1 is modified or vacated by the commissioner. If a hearing is  
 2 requested or ordered, the commissioner, after notice of and  
 3 opportunity for hearing to all interested persons, may  
 4 modify or vacate the order or extend it until final  
 5 determination. No An order under this subsection may not  
 6 operate retroactively. No A person may not be considered to  
 7 have violated parts 1 through 3 of this chapter by reason of  
 8 any offer or sale effected after the entry of an order under  
 9 this subsection if he sustains the burden of proof that he  
 10 did not know and in the exercise of reasonable care could  
 11 not have known of the order.

12 (3) any a nonissuer transaction effected by or through  
 13 a registered broker-dealer pursuant to an unsolicited order  
 14 or offer to buy, but the commissioner may require that the  
 15 customer acknowledge upon a specified form that the sale was  
 16 unsolicited and that a signed copy of each form be preserved  
 17 by the broker-dealer for a specified period;

18 (4) any a transaction between the issuer or other  
 19 person on whose behalf the offering is made and an  
 20 underwriter or among underwriters;

21 (5) any a transaction by an executor, administrator,  
 22 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
 23 or conservator in the performance of his official duties as  
 24 such;

25 (6) any a transaction executed by a bona fide pledgee

1 without any purpose of evading parts 1 through 3 of this  
 2 chapter;

3 (7) any an offer or sale to a bank, savings  
 4 institution, trust company, insurance company, investment  
 5 company as defined in the Investment Company Act of 1940,  
 6 pension or profit-sharing trust, or other financial  
 7 institution or institutional buyer, or to a broker-dealer,  
 8 whether the purchaser is acting for itself or in some  
 9 fiduciary capacity;

10 (8) (a) any a transaction pursuant to an offer made in  
 11 this state directed by the offeror to not more than 10  
 12 persons (other than those designated in subsection (7))  
 13 during any period of 12 consecutive months, if:

14 (i) the seller reasonably believes that all the buyers  
 15 are purchasing for investment; and

16 (ii) no a commission or other remuneration is not paid  
 17 or given directly or indirectly for soliciting any  
 18 prospective buyer; provided, however, that a commission may  
 19 be paid to a registered broker-dealer if the securities  
 20 involved are registered with the United States securities  
 21 and exchange commission under the federal Securities Act of  
 22 1933, as amended.

23 (b) For the purpose of the exemption provided for in  
 24 subsection (8)(a), an offer to sell is made in this state,  
 25 whether or not the offeror or any of the offerees is then

1 present in this state, if the offer either originates from  
 2 this state or is directed by the offeror to this state and  
 3 received at the place to which it is directed (or at any  
 4 post office in this state in the case of a mailed offer).

5 (9) any an offer or sale of a preorganization  
 6 certificate or subscription if:

7 (a) no a commission or other remuneration is not paid  
 8 or given directly or indirectly for soliciting any  
 9 prospective subscriber;

10 (b) the number of subscribers does not exceed 10; and

11 (c) no a payment is not made by any subscriber;

12 (10) any a transaction pursuant to an offer to existing  
 13 security holders of the issuer, including persons who at the  
 14 time of the transaction are holders of convertible  
 15 securities, nontransferable warrants, or transferable  
 16 warrants exercisable within not more than 90 days of their  
 17 issuance, if:

18 (a) no a commission or other remuneration (other than a  
 19 standby commission) is not paid or given directly or  
 20 indirectly for soliciting any security holder in this state;  
 21 or

22 (b) the issuer first files a notice specifying the  
 23 terms of the offer and the commissioner does not by order  
 24 disallow either (a) or (b) of this subsection;

25 (11) any an offer (but not a sale) of a security for

1 which registration statements have been filed under both  
 2 parts 1 through 3 of this chapter and the Securities Act of  
 3 1933 if no stop, refusal, denial, suspension, or revocation  
 4 order is in effect and no a public proceeding or examination  
 5 looking toward such an order is not pending under either  
 6 law;

7 (12) any an offer (but not a sale) of a security for  
 8 which a registration statement has been filed under parts 1  
 9 through 3 of this chapter and the commissioner in his  
 10 discretion does not disallow the offer in writing within 10  
 11 days of such filing;

12 (13) the issuance of any a stock dividend, whether the  
 13 corporation distributing the dividend is the issuer of the  
 14 stock or not, if nothing of value is given by stockholders  
 15 for the distribution other than the surrender of a right to  
 16 a cash dividend where the stockholder can elect to take a  
 17 dividend in cash or stock;

18 (14) any a transaction incident to a right of conversion  
 19 or a statutory or judicially approved reclassification,  
 20 recapitalization, reorganization, quasi-reorganization,  
 21 stock split, reverse stock split, merger, consolidation, or  
 22 sale of assets;

23 (15) any a transaction in compliance with such rules as  
 24 that the commissioner in his discretion may adopt to serve  
 25 the purposes of 30-10-102. The commissioner may in his

1 discretion require that 30-10-201 through 30-10-207 apply to  
2 any or all transactional exemptions adopted by rule.

3 (16) any a transaction by IN THE SECURITIES OF a  
4 certified Montana capital company or a certified Montana  
5 small business investment capital company as defined in  
6 90-8-104, provided that ~~such~~ the company first files all  
7 disclosure documents, along with a consent to service of  
8 process, with the commissioner. The commissioner may not  
9 charge a fee for the filing.

10 (17) the sale of a commodity investment contract traded  
11 on a commodities exchange recognized by the commissioner at  
12 the time of sale;

13 (18) a transaction within the exclusive jurisdiction of  
14 the commodity futures trading commission as granted under  
15 the Commodity Exchange Act;

16 (19) a transaction that:

17 (a) involves the purchase of one or more precious  
18 metals; and

19 (b) requires, and under which the purchaser receives  
20 within 7 calendar days after payment in good funds of any  
21 portion of the purchase price, physical delivery of the  
22 quantity of the precious metals purchased. For the purposes  
23 of this subsection, physical delivery is considered to have  
24 occurred if, within the 7-day period, the quantity of  
25 precious metals, whether in specifically segregated or

1 fungible bulk, purchased by such payment is delivered into  
2 the possession of a depository (other than the seller) that:

3 (i) (A) is a financial institution (meaning a bank,  
4 savings institution, or trust company organized under or  
5 supervised pursuant to the laws of the United States or of  
6 this state);

7 (B) is a depository the warehouse receipts of which are  
8 recognized for delivery purposes for any commodity on a  
9 contract market designated by the commodity futures trading  
10 commission; or

11 (C) is a storage facility licensed by the United States  
12 or any agency of the United States; and

13 (ii) issues, and the purchaser receives, a certificate,  
14 document of title, confirmation, or other instrument  
15 evidencing that ~~such~~ the quantity of precious metals has  
16 been delivered to the depository and is being and will  
17 continue to be held on the purchaser's behalf, free and  
18 clear of all liens and encumbrances other than:

19 (A) liens of the purchaser;

20 (B) tax liens;

21 (C) liens agreed to by the purchaser; or

22 (D) liens of the depository for fees and expenses that  
23 previously have been disclosed to the purchaser.

24 (20) a transaction involving a commodity investment  
25 contract solely between persons engaged in producing,



1 processing, using commercially, or handling as merchants  
 2 each commodity subject to the contract or any byproduct of  
 3 the commodity;

4 (21) any an offer or sale of a security to an employee  
 5 of the issuer, pursuant to an employee stock ownership plan  
 6 qualified under section 401 of the Internal Revenue Code of  
 7 1986."

8 **Section 2.** Section 90-8-102, MCA, is amended to read:

9 **"90-8-102. Declaration of policy.** (1) The legislature  
 10 finds and declares that:

11 (a) economic insecurity due to unemployment is a  
 12 serious menace to the health, safety, and general welfare of  
 13 not only the affected people but of the people of the entire  
 14 state;

15 (b) involuntary unemployment, with its resulting burden  
 16 of indigency, falls with crushing force upon unemployed  
 17 workers and ultimately on the state itself in the form of  
 18 public assistance and unemployment compensation payments;  
 19 and

20 (c) unemployment causes a migration of Montana workers  
 21 and families seeking jobs and establishing homes elsewhere,  
 22 which deprives the state of its most valuable resource, its  
 23 people, and reduces the tax base of local governments,  
 24 impairing their ability to provide basic services.

25 (2) (a) The legislature further finds that the best

1 method of combating unemployment and protecting Montana  
 2 against the loss of its people is by promoting, stimulating,  
 3 developing, rehabilitating, and revitalizing the business  
 4 prosperity and economic welfare of the state and its  
 5 citizens.

6 (b) To accomplish this goal, the legislature seeks to  
 7 encourage the formation of venture and equity capital in  
 8 Montana for use in diversifying, strengthening, and  
 9 stabilizing the Montana economy by increasing Montana  
 10 employment and business opportunities while protecting the  
 11 people's constitutional right to a clean and healthful  
 12 environment.

13 (3) The legislature further finds that:

14 (a) private investment of venture and equity capital in  
 15 the Montana economy will be encouraged and promoted by  
 16 making tax credits available to taxpayers investing in a  
 17 Montana capital companies company or in a Montana small  
 18 business investment capital company;

19 (b) demands on state revenues restrict the financial  
 20 ability of the state to make unlimited tax credits available  
 21 for investment purposes and require that the state place  
 22 reasonable limits on the total amount of tax credits to be  
 23 made available for investment incentive;

24 (c) establishment of a rational tax credit program  
 25 which gives priority to investments in capital companies in

1 the order in which they are qualified or in a Montana small  
 2 business investment capital company will encourage prompt  
 3 private investment in Montana businesses.

4 (4) The legislature further finds that use of money  
 5 from the Montana in-state investment fund established by  
 6 17-6-306 to purchase debentures issued by a capital company  
 7 or a Montana small business investment capital company will  
 8 promote the business prosperity and economic welfare of the  
 9 state and its citizens."

10 **Section 3.** Section 90-8-104, MCA, is amended to read:

11 "**90-8-104. Definitions.** As used in this chapter, unless  
 12 the context requires otherwise, the following definitions  
 13 apply:

14 (1) "Board" means the board of investments provided for  
 15 in 2-15-1808.

16 (2) "Capital base" means equity capital raised by a  
 17 certified Montana capital company or by a certified Montana  
 18 small business investment capital company for which tax  
 19 credits were claimed under this chapter.

20 (3) "Certified Montana capital company" or "certified  
 21 Montana small business investment capital company" means:

22 (a) a development credit corporation created pursuant  
 23 to Title 32, chapter 4; or

24 (b) a profit or nonprofit entity organized and existing  
 25 under the laws of Montana, created for the purpose of making

1 venture or risk capital available for qualified investments  
 2 and that has been certified by the board.

3 (4) "Montana business" means a business which is  
 4 located or principally based within Montana.

5 (5) "Qualified investment" means:

6 (a) a debt or equity financing of a Montana business  
 7 that meets both of the following criteria:

8 (i) the business is engaged in one or more of the  
 9 following activities:

10 (A) manufacturing;

11 (B) agricultural, fishery, or forestry production and  
 12 processing;

13 (C) mineral production and processing, except for  
 14 conventional oil and gas exploration;

15 (D) recognized nonfossil forms of energy generation as  
 16 defined in 15-32-102;

17 (E) transportation;

18 (F) research and development of products or processes  
 19 associated with any of the activities enumerated in (A)  
 20 through (E) above;

21 (G) wholesale or retail distribution activities for  
 22 which products produced in Montana comprise 50% or more of  
 23 the gross sales receipts;

24 (H) any activity conducted in the state for which 50%  
 25 or more of the gross receipts are derived from the sale of

1 products or services outside Montana; and

2 (I) tourism; and

3 (ii) the business is a small business as defined in  
4 rules adopted by the board; or

5 (b) a debt or equity financing of a business outside  
6 Montana if such investment is likely to produce a qualified  
7 investment in Montana, as long as such investment does not  
8 exceed 25% of the capital base of the capital company.

9 (6) "Qualified Montana capital company" means a  
10 certified Montana capital company that has been designated a  
11 qualified capital company under the provisions of 90-8-202  
12 so that investors in the company may receive the tax credits  
13 authorized in 90-8-202.

14 (7) "Qualified Montana small business investment  
15 capital company" means a certified Montana small business  
16 investment capital company that has been designated a  
17 qualified small business investment capital company under  
18 the provisions of 90-8-202 so that investors in the company  
19 may receive the tax credits authorized in 90-8-202."

20 **Section 4.** Section 90-8-201, MCA, is amended to read:

21 "90-8-201. Certification of Montana capital companies  
22 -- certification of a Montana small business investment  
23 capital company. (1) From The board shall certify one  
24 Montana small business investment capital company, and from  
25 time to time the board shall certify Montana capital

1 companies. A company seeking to be certified as a Montana  
2 capital company must or as the Montana small business  
3 investment capital company shall make written application to  
4 the board on forms provided by the board. The application  
5 must contain the information required by 90-8-204 and such  
6 other information as that the board requires. The  
7 application and certificate must specify the level of  
8 capitalization that the company expects to qualify for the  
9 tax credits provided for in 90-8-202.

10 (2) The application must show that the applicant's  
11 purpose is to increase the general economic welfare of the  
12 state of Montana by:

13 (a) making investment capital available to businesses  
14 in Montana; and

15 (b) allowing for investment of up to 25% of its capital  
16 base in businesses outside Montana if there is a substantial  
17 likelihood that such investment will produce a qualified  
18 investment in Montana.

19 (3) Certifiable applicants include but are not limited  
20 to local and community development corporations, small  
21 business administration 503 corporations, and small business  
22 investment companies.

23 (4) Certification is a prerequisite to and must be  
24 completed before seeking designation as a qualified capital  
25 company or as the qualified Montana small business

1 investment capital company.

2 (5) To be eligible for certification under this section  
3 as the Montana small business investment capital company,  
4 the applicant shall commit to:

5 (a) utilize the tax credits to accumulate private  
6 capital with the intention of being designated a small  
7 business investment corporation by the United States small  
8 business administration as provided in Title III of the  
9 Small Business Act of 1958, as amended, and as implemented  
10 under 13 CFR 107; and

11 (b) target its investments as a small business  
12 investment capital company toward commercialization projects  
13 emerging from centers of excellence and entrepreneurship,  
14 federal laboratories, the federal small business innovative  
15 research program, the federal cooperative research and  
16 development agreement program, Montana university system  
17 research and development, the Montana board of science and  
18 technology development (second stage), SMALL BUSINESS  
19 incubators, community development block grant programs, AND  
20 PROJECTS EMERGING FROM ECONOMIC DEVELOPMENT PROGRAMS OF  
21 MONTANA CERTIFIED COMMUNITIES with the objective of  
22 providing significant investment opportunities in an area  
23 where economic development capital is limited, and projects  
24 emerging from economic development programs of Montana  
25 certified communities; AND

1 (C) CONSIDER INVESTMENT OPPORTUNITIES ORIGINATING IN  
2 ANY MONTANA COUNTY; AND

3 (D) ADOPT INVESTMENT GUIDELINES THAT ENSURE THAT UP TO  
4 10% OF ITS AVAILABLE CAPITAL IS INVESTED IN COUNTIES WITH  
5 POPULATIONS OF 20,000 OR LESS."

6 **Section 5.** Section 90-8-202, MCA, is amended to read:

7 **"90-8-202. Designation of qualified Montana capital**  
8 **companies -- designation of qualified Montana small business**  
9 **investment capital company -- tax credit. (1) The board**  
10 **shall designate as:**

11 (a) qualified Montana capital companies those certified  
12 companies that have been privately capitalized at a minimum  
13 level of \$200,000; or

14 (b) the ~~qualified~~ CERTIFIED Montana small business  
15 investment capital company a company that has been privately  
16 capitalized at a minimum level of \$500,000.

17 (2) A certified company seeking designation as a  
18 qualified Montana capital company or as the qualified  
19 Montana small business investment capital company must make  
20 written application to the board on forms provided by the  
21 board. The application must contain the information required  
22 by 90-8-204 and such other information as that the board  
23 requires.

24 {2}{3} (a) The total amount of tax credits authorized  
25 for a single qualified capital company or the qualified

1 Montana small business investment capital company may not  
 2 exceed \$1,500,000, except that the qualified Montana small  
 3 business investment capital company must receive all  
 4 remaining tax credits under this section available as of  
 5 January 1, 1991. In the event the capitalization of the a  
 6 qualified capital company is later increased, the company  
 7 may apply for authorization of additional tax credits within  
 8 the foregoing limitation.

9 (b) The total credits authorized for all companies may  
 10 not exceed a total of \$1 million prior to June 30, 1985. The  
 11 total credits authorized for all companies between July 1,  
 12 1985, and June 30, 1987, may not exceed \$1 million plus any  
 13 portion of the \$1 million available for authorization before  
 14 June 30, 1985, that is allocated to qualified companies. The  
 15 total credits authorized for all companies between July 1,  
 16 1987, and June 30, 1989, may not exceed \$3 million plus any  
 17 portion of the credits available for authorization before  
 18 June 30, 1987, that is allocated to qualified companies. The  
 19 total credits authorized for all companies between July 1,  
 20 1989, and June 30, 1991, may not exceed \$3 million plus any  
 21 portion of the credits available for authorization before  
 22 June 30, 1989, that is allocated to qualified companies.

23 ~~(3)~~(4) (a) The Before January 1, 1991, credits shall  
 24 must be allocated to qualified companies in the order that  
 25 completed applications for designation as qualified capital

1 companies are received by the board, and the board shall  
 2 certify to each such company its appropriate allocation.

3 (b) All tax credits allowed under subsection (3) that  
 4 are not allocated as of January 1, 1991, must be allocated  
 5 to the qualified Montana small business investment capital  
 6 company, and the board shall certify the allocation to the  
 7 company.

8 (C) IF THE LEGISLATURE PROVIDES ADDITIONAL TAX CREDITS  
 9 UNDER THIS CHAPTER AFTER JUNE 30, 1991, OR IF TAX CREDITS  
 10 BECOME AVAILABLE BY REVERSION TO THE BOARD BY A CAPITAL  
 11 COMPANY OR BY THE QUALIFIED MONTANA SMALL BUSINESS  
 12 INVESTMENT CAPITAL COMPANY, THOSE ADDITIONAL OR REVERTED TAX  
 13 CREDITS MAY BE ALLOCATED BY THE BOARD TO QUALIFIED CAPITAL  
 14 COMPANIES OR TO THE QUALIFIED MONTANA SMALL BUSINESS  
 15 INVESTMENT CAPITAL COMPANY IN ACCORDANCE WITH THIS CHAPTER  
 16 AND THE RULES OF THE BOARD.

17 ~~(4)~~(5) Investors in a qualified Montana capital company  
 18 or in the qualified Montana small business investment  
 19 capital company are entitled to the tax credits provided for  
 20 in subsection ~~(5)~~ (6). Funds invested in a certified company  
 21 prior to designation as a qualified Montana capital company  
 22 or as the qualified Montana small business investment  
 23 capital company may, at the discretion of the investor, be  
 24 placed in an escrow account in a Montana financial  
 25 institution pending designation of the company as a

1 qualified Montana capital company or as the qualified  
2 Montana small business investment capital company.

3 ~~(5)~~(6) Subject to the provisions of subsections ~~(2)~~ (3)  
4 and ~~(8)~~ (9), an individual, small business corporation,  
5 partnership, trust, decedent's estate, or corporate taxpayer  
6 that makes a capital investment in a qualified Montana  
7 capital company or the qualified Montana small business  
8 investment capital company is entitled to a tax credit equal  
9 to 50% of the investment, up to a maximum credit of \$150,000  
10 per taxpayer, except that, as applied to the small business  
11 investment capital company, the maximum tax credit is  
12 \$250,000 per taxpayer. The credit may be taken against the  
13 tax liability imposed on the investor pursuant to Title 15,  
14 chapter 30, 31, or 35. The credit for investments by a small  
15 business corporation electing to be taxed under 15-31-202 or  
16 a partnership may be claimed by the small business  
17 corporation shareholders or the partners.

18 ~~(6)~~(7) The tax credit allowed under subsection ~~(5)~~ (6)  
19 is to be credited against the taxpayer's income tax  
20 liability or coal severance tax liability for the taxable  
21 year in which the investment in a qualified Montana capital  
22 company or the qualified Montana small business investment  
23 capital company is made. If the amount of the tax credit  
24 exceeds the taxpayer's tax liability for the taxable year,  
25 the amount of the credit which exceeds the tax liability may

1 be carried back or carried forward in the following manner:

2 (a) If the sum of the amount of credit for the current  
3 taxable year plus the amount of credit, if any, carried  
4 forward from a previous taxable year exceeds the taxpayer's  
5 tax liability for the current taxable year, the excess must  
6 be carried back as a credit to the 3 preceding taxable years  
7 and, if the full credit remains unused, carried forward as a  
8 credit to the 15 succeeding taxable years.

9 (b) The amount of unused credit must be used to offset  
10 the entire tax liability of each of the 18 taxable years,  
11 beginning with the earliest and commencing to the next  
12 succeeding year until the credit is exhausted.

13 ~~(7)~~(8) The tax credit provided for in this section is  
14 available only to those taxpayers who invest in a qualified  
15 Montana capital company within 4 years of July 1, 1987, or  
16 in the qualified Montana small business investment capital  
17 company within 4 years of July 1, 1991.

18 ~~(8)~~(9) (a) An individual, small business corporation,  
19 partnership, or corporate taxpayer who obtains the tax  
20 credit allowed under subsection ~~(5)~~ (6) may not obtain  
21 credits in excess of the ~~\$150,000-limit~~ limits contained in  
22 subsection ~~(5)~~ (6) by making investments as more than one  
23 entity.

24 (b) A partner or shareholder in a small business  
25 corporation may not obtain more than \$150,000, or not more

1 than \$250,000 in the case of a-partner-or-shareholder-in the  
 2 qualified Montana small business investment capital company,  
 3 in credits as an individual and as the partnership or small  
 4 business corporation. A corporate taxpayer that obtains the  
 5 maximum \$150,000---credit credits allowed under this  
 6 subsection (9)(b) may not obtain additional credits through  
 7 investments by wholly owned subsidiaries or affiliates. An  
 8 individual, small business corporation, partnership, or  
 9 corporate taxpayer who obtains the tax credit allowed under  
 10 subsection (6) may not claim deduction under the provisions  
 11 of Title 15, chapter 30 or 31, for donation of stock in the  
 12 qualified Montana small business investment capital  
 13 company."

14 **Section 6.** Section 90-8-203, MCA, is amended to read:

15 "90-8-203. No recapture -- unqualified investments. If  
 16 the amount invested by a taxpayer in a qualified Montana  
 17 capital company or in the qualified Montana small business  
 18 investment capital company is not used by the company for  
 19 qualified investments as provided in 90-8-301, the taxpayer  
 20 is not subject to a recapture provision for any tax credit  
 21 claimed by him but the company is subject to the penalty  
 22 provided for in 90-8-301(3)(4)."

23 **Section 7.** Section 90-8-204, MCA, is amended to read:

24 "90-8-204. Application requirements. A company applying  
 25 to become either a certified or qualified Montana capital

1 company or the certified or qualified Montana small business  
 2 investment capital company shall include in its application  
 3 evidence that it has disclosed or will disclose to all  
 4 investors the following:

5 (1) the condition that a tax credit is not available  
 6 for investment in a company until the company has been  
 7 designated a qualified Montana capital company or the  
 8 qualified Montana small business investment capital company  
 9 and the investor has received a certificate approving the  
 10 credit from the board;

11 (2) the condition that a tax credit will not be made  
 12 available until the a qualified capital company raises at  
 13 least \$200,000 in capital, and has been designated a  
 14 qualified capital company, or the qualified Montana small  
 15 business investment capital company raises at least \$500,000  
 16 in capital before July 1, 1995, and has been designated the  
 17 qualified Montana small business investment capital company  
 18 and the limits on tax credits that may be authorized; and

19 (3) the fact that the state of Montana is not liable  
 20 for damages in accordance with 90-8-205."

21 **Section 8.** Section 90-8-205, MCA, is amended to read:

22 "90-8-205. State liability disclaimed. The state of  
 23 Montana may not be held liable for any damages to an  
 24 investor in a Montana:

25 (1) capital company that fails to become designated as

1 a certified or qualified Montana capital company; or  
 2 (2) small business investment capital company that  
 3 fails to become designated as a certified or qualified  
 4 Montana small business investment capital company."

5 **Section 9.** Section 90-8-301, MCA, is amended to read:

6 "90-8-301. Qualified investments -- penalty --  
 7 extension permissible. (1) A qualified Montana capital  
 8 company receiving investments for which a taxpayer has  
 9 applied and received a tax credit must use its capital base  
 10 to make qualified investments according to the following  
 11 schedule:

12 (a) at least 30% of its capital base raised through  
 13 investments for which tax credits were taken within 3 years  
 14 of the date on which the certified company was designated as  
 15 a qualified capital company by the board and, in the case of  
 16 capital raised by a qualified Montana capital company under  
 17 an amended application for additional tax credits filed  
 18 after its initial designation as a qualified Montana capital  
 19 company, at least 30% of its capital base raised through  
 20 investments for which tax credits were taken within 3 years  
 21 of the date on which the board approves the amended  
 22 application;

23 (b) at least 50% of its capital base raised through  
 24 investments for which tax credits were taken within 4 years  
 25 of the date on which the certified company was designated as

1 a qualified capital company by the board and, in the case of  
 2 capital raised by a qualified Montana capital company under  
 3 an amended application for additional tax credits filed  
 4 after its initial designation as a qualified Montana capital  
 5 company, at least 50% of its capital base raised through  
 6 investments for which tax credits were taken within 4 years  
 7 of the date on which the board approves the amended  
 8 application; and

9 (c) at least 70% of its capital base raised through  
 10 investments for which tax credits were taken within 5 years  
 11 of the date on which the certified company was designated as  
 12 a qualified capital company by the board and, in the case of  
 13 capital raised by a qualified Montana capital company under  
 14 an amended application for additional tax credits filed  
 15 after its initial designation as a qualified Montana capital  
 16 company, at least 70% of its capital base raised through  
 17 investments for which tax credits were taken within 5 years  
 18 of the date on which the board approves the amended  
 19 application.

20 (2) The qualified Montana small business investment  
 21 capital company receiving investments for which a taxpayer  
 22 has applied and received a tax credit must use its capital  
 23 base to make qualified investments according to the  
 24 following schedule:

25 (a) of its capital base raised through investments for



1 which tax credits were taken:

2 (i) 30% within 3 years of the date on which the  
3 certified company was designated as the qualified Montana  
4 small business investment capital company by the board or  
5 within 3 years of its designation as a small business  
6 investment corporation by the small business administration,  
7 whichever is later;

8 (ii) 50% within 4 years of the date on which the  
9 certified company was designated as the qualified Montana  
10 small business investment capital company by the board or  
11 within 4 years after its designation as a small business  
12 investment corporation by the small business administration,  
13 whichever is later; and

14 (iii) 70% within 5 years of the date on which the  
15 certified company was designated as the qualified Montana  
16 small business investment capital company by the board or  
17 within 5 years after its designation as a small business  
18 investment corporation by the small business administration,  
19 whichever is later; and OR

20 (b) of its capital base, in the case of capital raised  
21 through a loan from the small business administration  
22 pursuant to 13 CFR 107, as provided under this chapter  
23 EXCEPT AS PROVIDED IN SUBSECTION (2)(A).

24 †2†(3) Following each annual examination, the  
25 commissioner of financial institutions shall notify the

1 department of revenue of any companies that are not in  
2 compliance with this section.

3 †3†(4) A qualified Montana capital company that fails  
4 to make qualified investments pursuant to subsection (1) or  
5 the qualified Montana small business investment capital  
6 company that fails to make qualified investments pursuant to  
7 subsection (2) shall pay to the department of revenue a  
8 penalty equal to all of the tax credits allowed to the  
9 taxpayers investing in that company during that time period,  
10 with interest at 1% a month from the date the tax credits  
11 were certified as allocated to the qualified Montana capital  
12 company or to the qualified Montana small business  
13 investment capital company. The department of revenue may  
14 abate the penalty if the capital company or the Montana  
15 small business investment capital company establishes  
16 reasonable cause for the failure to make qualified  
17 investments pursuant to subsection (1) or (2) and if the  
18 failure was not due to neglect on the part of the company.

19 †4†(5) The department of revenue may grant an extension  
20 of time in which to make qualified investments pursuant to  
21 subsection (1) or (2) upon application by a capital company  
22 or the Montana small business investment capital company  
23 showing reasonable cause for an extension.

24 †5†(6) The department of revenue shall deposit any  
25 amount received under this subsection to the credit of the

1 state general fund."

2 **Section 10.** Section 90-8-302, MCA, is amended to read:

3 **"90-8-302. Restriction on investment.** In addition to  
4 the requirements of 90-8-301, no more than 50% of the equity  
5 raised by a Montana capital company or by the Montana small  
6 business investment capital company may be invested in any  
7 one business, and no more than 25% of the total funds raised  
8 for which tax credits were claimed pursuant to the  
9 investment credit provisions of this chapter may be invested  
10 in any one business."

11 **Section 11.** Section 90-8-303, MCA, is amended to read:

12 **"90-8-303. Conflict of interest.** (1) (a) The members of  
13 the board, the commissioner of financial institutions, or a  
14 bank examiner may not have a monetary interest in or be a  
15 borrower from any a Montana capital company or from the  
16 Montana small business investment capital company, either  
17 directly or indirectly.

18 (b) These restrictions do not prohibit the board,  
19 acting as a whole, from purchasing debentures issued by a  
20 Montana capital company or by the Montana small business  
21 investment capital company.

22 (2) A member of the investment committee of a Montana  
23 capital company or of the Montana small business investment  
24 capital company who has an interest in a venture that comes  
25 before the committee for a vote shall disclose such the

1 interest and abstain from voting on investment in the  
2 venture."

3 **Section 12.** Section 90-8-304, MCA, is amended to read:

4 **"90-8-304. Application of securities law.** In lieu of  
5 registration under Title 30, chapter 10, a certified Montana  
6 capital company or the certified Montana small business  
7 investment capital company may file all disclosure  
8 documents, along with a consent to service of process, with  
9 the state securities commissioner. The commissioner may not  
10 charge a fee for such the filing."

11 **Section 13.** Section 90-8-305, MCA, is amended to read:

12 **"90-8-305. Sale of debentures.** (1) A qualified Montana  
13 capital company or the qualified Montana small business  
14 investment capital company is authorized to issue and sell  
15 debentures to the in-state investment fund established in  
16 17-6-306.

17 (2) Proceeds received by a qualified Montana capital  
18 company or by the qualified Montana small business  
19 investment capital company from the sale of debentures  
20 authorized in subsection (1) must be invested in accordance  
21 with the provisions of 90-8-301, except that the time  
22 periods for making qualified investments must be calculated  
23 from the date the company sells the debentures to the  
24 in-state investment fund."

25 **Section 14.** Section 90-8-311, MCA, is amended to read:

1       **"90-8-311. Legislative review and oversight.** The board  
2 shall report on an annual basis to the revenue oversight  
3 committee of the legislature concerning Montana capital  
4 companies and the Montana small business investment capital  
5 company."

6       **Section 15.** Section 90-8-312, MCA, is amended to read:

7       **"90-8-312. Investment reporting and recordkeeping.** (1)  
8 Each qualified Montana capital company and each qualified  
9 Montana small business investment capital company shall  
10 report to the board on a quarterly basis:

11       (a) the name of each investor in the qualified Montana  
12 capital company or in the qualified Montana small business  
13 investment capital company who has applied for a tax credit;

14       (b) the amount of each investor's investment; and

15       (c) the amount of the tax credit allowed to the  
16 investor and the date on which the investment was made.

17       (2) The board shall provide the information contained  
18 in subsection (1) to the department of revenue on a  
19 quarterly basis.

20       (3) The board shall provide each investor in a  
21 qualified Montana capital company and each investor in the  
22 qualified Montana small business investment capital company  
23 with a certificate authorizing the tax credit, and the  
24 certificate ~~shall~~ must be submitted with each tax return  
25 requesting a credit under 90-8-202.

1       (4) Each qualified Montana capital company and the  
2 qualified Montana small business investment capital company  
3 shall report to the board on a quarterly basis all qualified  
4 investments that the company has made. The board shall share  
5 the information with the department of revenue, in order  
6 that the provisions of 90-8-301 may be complied with."

7       **Section 16.** Section 90-8-313, MCA, is amended to read:

8       **"90-8-313. Examination.** (1) At least once a year the  
9 bank examiners of the department of commerce shall examine  
10 the books and affairs of each Montana capital company and of  
11 each THE QUALIFIED Montana small business investment capital  
12 company. The examination must address the methods of  
13 operation and conduct of the business of the Montana capital  
14 company or of the Montana small business investment capital  
15 company to determine if the company is abiding by the  
16 purposes of this chapter and that the funds received by the  
17 company have been invested within the time limits required  
18 for a qualified Montana capital company or for the qualified  
19 Montana small business investment capital company in  
20 90-8-301.

21       (2) The department of commerce may examine under oath  
22 any of the officers, directors, agents, employees, or  
23 investors of a Montana capital company regarding the affairs  
24 and business of the company. The department of commerce may  
25 issue subpoenas and administer oaths. Refusal to obey such a

1 subpoena may at once be reported to the district court of  
 2 the district in which the company is located, and the court  
 3 shall enforce obedience to the subpoena in the manner  
 4 provided by law.

5 (3) The cost of the annual review must be paid by each  
 6 Montana capital company or by the Montana small business  
 7 investment capital company in accordance with reasonable  
 8 fees assessed by the department."

9 **Section 17.** Section 90-8-321, MCA, is amended to read:

10 **"90-8-321. Decertification.** (1) If the examination  
 11 conducted pursuant to 90-8-313 discloses that a Montana  
 12 capital company or the Montana small business investment  
 13 capital company is not in compliance with the provisions of  
 14 this chapter, the department of commerce may exercise any of  
 15 the powers with regard to banks granted in Title 32, chapter  
 16 1, part 5, and may seize the assets of the company and  
 17 liquidate it. In the event of liquidation of the assets, any  
 18 penalty imposed pursuant to 90-8-301 ~~shall~~ must be included  
 19 in the claims to be paid.

20 (2) If in the discretion of the department of commerce  
 21 the action allowed under subsection (1) is not required to  
 22 protect the company's investors, the department may place  
 23 the company on notice that it will lose its certification as  
 24 a Montana capital company or as the Montana small business  
 25 investment capital company within a specified period of time

1 if the company does not come into compliance with the  
 2 provisions of this chapter. The department shall  
 3 automatically decertify a Montana capital company or the  
 4 Montana small business investment capital company that is  
 5 assessed a penalty under 90-8-301~~+~~(4).

6 (3) As long as the department acts in good faith, the  
 7 department and its employees and agents may not be held  
 8 civilly or criminally liable or liable upon their official  
 9 bonds for action taken under this section or for any failure  
 10 to act under it.

11 (4) A Montana capital company or the Montana small  
 12 business investment capital company may apply to the  
 13 department for decertification."

14 **NEW SECTION. Section 18. Saving clause.** [This act]  
 15 does not affect rights and duties that matured, penalties  
 16 that were incurred, or proceedings that were begun before  
 17 [the effective date of this act].

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

24 **NEW SECTION. Section 20. Retroactive applicability.**  
 25 [This act] applies retroactively, within the meaning of

1 1-2-109, to events occurring after December 31, 1990.

2 NEW SECTION. **Section 21.** Effective date. [This act] is

3 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2  
March 12, 1991

Page 2 of 2  
March 12, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 863 (third reading copy as amended, second printing -- blue), respectfully report that House Bill No. 863 be amended and as so amended be concurred in:

1. Page 1, line 16.  
Insert: "STATEMENT OF INTENT"

A statement of intent is required for this bill in order to provide a guideline for the board of investments to follow in certifying a Montana small business investment capital company. The board shall take the steps necessary to ensure that the company certified as the small business investment capital company will represent and be concerned with the economic development needs of all communities of the state and not just one geographic area of the state."

2. Page 16, line 3.  
Strike: "UP TO".  
Insert: "not less than"

3. Page 16, line 14.  
Strike: "CERTIFIED"  
Insert: "qualified"

4. Page 16, line 15.  
Strike: "a"  
Insert: "the certified Montana small business investment capital"  
Strike: "that"  
Insert: "once it".

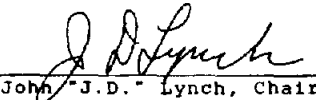
5. Page 18, line 13.  
Strike: "MAY"  
Insert: "must"

6. Page 19, line 10.  
Following: "the"  
Insert: "qualified"

7. Page 19, line 12.

Following: "taxpayer"

Insert: "and the tax credit limitation relating to a capital investment in the qualified Montana small business investment capital company must be in addition to any other tax credit limitation in this section"

Signed:   
John "J.D." Lynch, Chairman

*jm* 3-12-91  
Amd. Coord.  
*JB* 3/12 3:15  
Sec. of Senate

HOUSE BILL NO. 863

INTRODUCED BY D. BROWN, MAZUREK, LYNCH, THAYER, QUILICI,  
NOBLE, KENNEDY, PAVLOVICH, DAILY, FRITZ, WHALEN, DOHERTY,  
S. RICE, PHILLIPS, LARSON, MEASURE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
MONTANA CAPITAL COMPANY ACT BY PROVIDING FOR THE DESIGNATION  
OF A MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY TO BE  
ALLOCATED A PORTION OF THE UNUSED TAX CREDITS; LIMITING THE  
ALLOCATIONS OF TAX CREDITS TO CAPITAL COMPANIES; AMENDING  
SECTIONS 30-10-105, 90-8-102, 90-8-104, 90-8-201, 90-8-202,  
90-8-203, 90-8-204, 90-8-205, 90-8-301, 90-8-302, 90-8-303,  
90-8-304, 90-8-305, 90-8-311, 90-8-312, 90-8-313, AND  
90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND  
A RETROACTIVE APPLICABILITY DATE."

STATEMENT OF INTENT

A STATEMENT OF INTENT IS REQUIRED FOR THIS BILL IN ORDER  
TO PROVIDE A GUIDELINE FOR THE BOARD OF INVESTMENTS TO  
FOLLOW IN CERTIFYING A MONTANA SMALL BUSINESS INVESTMENT  
CAPITAL COMPANY. THE BOARD SHALL TAKE THE STEPS NECESSARY TO  
ENSURE THAT THE COMPANY CERTIFIED AS THE SMALL BUSINESS  
INVESTMENT CAPITAL COMPANY WILL REPRESENT AND BE CONCERNED  
WITH THE ECONOMIC DEVELOPMENT NEEDS OF ALL COMMUNITIES OF  
THE STATE AND NOT JUST ONE GEOGRAPHIC AREA OF THE STATE.

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

**Section 1.** Section 30-10-105, MCA, is amended to read:

"30-10-105. Exempt transactions. Except as in this  
section expressly provided, 30-10-201 through 30-10-207  
shall do not apply to any-of the following transactions:

(1) any a nonissuer isolated transaction, whether  
effected through a broker-dealer or not. A transaction is  
presumed to be isolated if it is one of not more than three  
transactions during the prior 12-month period.

(2) (a) any a nonissuer distribution of an outstanding  
security by a broker-dealer registered pursuant to 30-10-201  
if:

(i) quotations for the securities to be offered or sold  
(or the securities issuable upon exercise of any warrant or  
right to purchase or subscribe to such securities) are  
reported by the automated quotations system operated by the  
national association of securities dealers, inc., (NASDAQ)  
or by any other quotation system approved by the  
commissioner by rule; or

(ii) the security has a fixed maturity or a fixed  
interest or dividend provision and there has been no default  
during the current fiscal year or within the 3 preceding  
fiscal years, or during the existence of the issuer and any  
predecessors if less than 3 years, in the payment of



1 principal, interest, or dividends on the security.

2 (b) The commissioner may by order deny or revoke the  
3 exemption specified in subsection (2)(a) with respect to a  
4 specific security. Upon the entry of such an order, the  
5 commissioner shall promptly notify all registered  
6 broker-dealers that it has been entered and of the reasons  
7 therefor for the order and that within 15 days of the  
8 receipt of a written request the matter will be set down for  
9 hearing. If no hearing is requested and none is ordered by  
10 the commissioner, the order will remain in effect until it  
11 is modified or vacated by the commissioner. If a hearing is  
12 requested or ordered, the commissioner, after notice of and  
13 opportunity for hearing to all interested persons, may  
14 modify or vacate the order or extend it until final  
15 determination. No An order under this subsection may not  
16 operate retroactively. No A person may not be considered to  
17 have violated parts 1 through 3 of this chapter by reason of  
18 any offer or sale effected after the entry of an order under  
19 this subsection if he sustains the burden of proof that he  
20 did not know and in the exercise of reasonable care could  
21 not have known of the order.

22 (3) any a nonissuer transaction effected by or through  
23 a registered broker-dealer pursuant to an unsolicited order  
24 or offer to buy, but the commissioner may require that the  
25 customer acknowledge upon a specified form that the sale was

1 unsolicited and that a signed copy of each form be preserved  
2 by the broker-dealer for a specified period;

3 (4) any a transaction between the issuer or other  
4 person on whose behalf the offering is made and an  
5 underwriter or among underwriters;

6 (5) any a transaction by an executor, administrator,  
7 sheriff, marshal, receiver, trustee in bankruptcy, guardian,  
8 or conservator in the performance of his official duties as  
9 such;

10 (6) any a transaction executed by a bona fide pledgee  
11 without any purpose of evading parts 1 through 3 of this  
12 chapter;

13 (7) any an offer or sale to a bank, savings  
14 institution, trust company, insurance company, investment  
15 company as defined in the Investment Company Act of 1940,  
16 pension or profit-sharing trust, or other financial  
17 institution or institutional buyer, or to a broker-dealer,  
18 whether the purchaser is acting for itself or in some  
19 fiduciary capacity;

20 (8) (a) any a transaction pursuant to an offer made in  
21 this state directed by the offeror to not more than 10  
22 persons (other than those designated in subsection (7))  
23 during any period of 12 consecutive months, if:  
24 (i) the seller reasonably believes that all the buyers  
25 are purchasing for investment; and



1 (ii) no a commission or other remuneration is not paid  
 2 or given directly or indirectly for soliciting any  
 3 prospective buyer; provided, however, that a commission may  
 4 be paid to a registered broker-dealer if the securities  
 5 involved are registered with the United States securities  
 6 and exchange commission under the federal Securities Act of  
 7 1933, as amended.

8 (b) For the purpose of the exemption provided for in  
 9 subsection (8)(a), an offer to sell is made in this state,  
 10 whether or not the offeror or any of the offerees is then  
 11 present in this state, if the offer either originates from  
 12 this state or is directed by the offeror to this state and  
 13 received at the place to which it is directed (or at any  
 14 post office in this state in the case of a mailed offer).

15 (9) any an offer or sale of a preorganization  
 16 certificate or subscription if:

17 (a) no a commission or other remuneration is not paid  
 18 or given directly or indirectly for soliciting any  
 19 prospective subscriber;

20 (b) the number of subscribers does not exceed 10; and

21 (c) no a payment is not made by any subscriber;

22 (10) any a transaction pursuant to an offer to existing  
 23 security holders of the issuer, including persons who at the  
 24 time of the transaction are holders of convertible  
 25 securities, nontransferable warrants, or transferable

1 warrants exercisable within not more than 90 days of their  
 2 issuance, if:

3 (a) no a commission or other remuneration (other than a  
 4 standby commission) is not paid or given directly or  
 5 indirectly for soliciting any security holder in this state;  
 6 or

7 (b) the issuer first files a notice specifying the  
 8 terms of the offer and the commissioner does not by order  
 9 disallow either (a) or (b) of this subsection;

10 (11) any an offer (but not a sale) of a security for  
 11 which registration statements have been filed under both  
 12 parts 1 through 3 of this chapter and the Securities Act of  
 13 1933 if no stop, refusal, denial, suspension, or revocation  
 14 order is in effect and no a public proceeding or examination  
 15 looking toward such an order is not pending under either  
 16 law;

17 (12) any an offer (but not a sale) of a security for  
 18 which a registration statement has been filed under parts 1  
 19 through 3 of this chapter and the commissioner in his  
 20 discretion does not disallow the offer in writing within 10  
 21 days of such filing;

22 (13) the issuance of any a stock dividend, whether the  
 23 corporation distributing the dividend is the issuer of the  
 24 stock or not, if nothing of value is given by stockholders  
 25 for the distribution other than the surrender of a right to

1 a cash dividend where the stockholder can elect to take a  
2 dividend in cash or stock;

3 (14) any a transaction incident to a right of conversion  
4 or a statutory or judicially approved reclassification,  
5 recapitalization, reorganization, quasi-reorganization,  
6 stock split, reverse stock split, merger, consolidation, or  
7 sale of assets;

8 (15) any a transaction in compliance with such rules as  
9 that the commissioner in his discretion may adopt to serve  
10 the purposes of 30-10-102. The commissioner may in his  
11 discretion require that 30-10-201 through 30-10-207 apply to  
12 any or all transactional exemptions adopted by rule.

13 (16) any a transaction by IN THE SECURITIES OF a  
14 certified Montana capital company or a certified Montana  
15 small business investment capital company as defined in  
16 90-8-104, provided that such the company first files all  
17 disclosure documents, along with a consent to service of  
18 process, with the commissioner. The commissioner may not  
19 charge a fee for the filing.

20 (17) the sale of a commodity investment contract traded  
21 on a commodities exchange recognized by the commissioner at  
22 the time of sale;

23 (18) a transaction within the exclusive jurisdiction of  
24 the commodity futures trading commission as granted under  
25 the Commodity Exchange Act;

1 (19) a transaction that:

2 (a) involves the purchase of one or more precious  
3 metals; and

4 (b) requires, and under which the purchaser receives  
5 within 7 calendar days after payment in good funds of any  
6 portion of the purchase price, physical delivery of the  
7 quantity of the precious metals purchased. For the purposes  
8 of this subsection, physical delivery is considered to have  
9 occurred if, within the 7-day period, the quantity of  
10 precious metals, whether in specifically segregated or  
11 fungible bulk, purchased by such payment is delivered into  
12 the possession of a depository (other than the seller) that:

13 (i) (A) is a financial institution (meaning a bank,  
14 savings institution, or trust company organized under or  
15 supervised pursuant to the laws of the United States or of  
16 this state);

17 (B) is a depository the warehouse receipts of which are  
18 recognized for delivery purposes for any commodity on a  
19 contract market designated by the commodity futures trading  
20 commission; or

21 (C) is a storage facility licensed by the United States  
22 or any agency of the United States; and

23 (ii) issues, and the purchaser receives, a certificate,  
24 document of title, confirmation, or other instrument  
25 evidencing that such the quantity of precious metals has

1 been delivered to the depository and is being and will  
 2 continue to be held on the purchaser's behalf, free and  
 3 clear of all liens and encumbrances other than:

- 4 (A) liens of the purchaser;
- 5 (B) tax liens;
- 6 (C) liens agreed to by the purchaser; or
- 7 (D) liens of the depository for fees and expenses that  
 8 previously have been disclosed to the purchaser.

9 (20) a transaction involving a commodity investment  
 10 contract solely between persons engaged in producing,  
 11 processing, using commercially, or handling as merchants  
 12 each commodity subject to the contract or any byproduct of  
 13 the commodity;

14 (21) any an offer or sale of a security to an employee  
 15 of the issuer, pursuant to an employee stock ownership plan  
 16 qualified under section 401 of the Internal Revenue Code of  
 17 1986."

18 **Section 2.** Section 90-8-102, MCA, is amended to read:  
 19 **"90-8-102. Declaration of policy.** (F) The legislature  
 20 finds and declares that:

- 21 (a) economic insecurity due to unemployment is a  
 22 serious menace to the health, safety, and general welfare of  
 23 not only the affected people but of the people of the entire  
 24 state;
- 25 (b) involuntary unemployment, with its resulting burden

1 of indigency, falls with crushing force upon unemployed  
 2 workers and ultimately on the state itself in the form of  
 3 public assistance and unemployment compensation payments;  
 4 and

5 (c) unemployment causes a migration of Montana workers  
 6 and families seeking jobs and establishing homes elsewhere,  
 7 which deprives the state of its most valuable resource, its  
 8 people, and reduces the tax base of local governments,  
 9 impairing their ability to provide basic services.

10 (2) (a) The legislature further finds that the best  
 11 method of combating unemployment and protecting Montana  
 12 against the loss of its people is by promoting, stimulating,  
 13 developing, rehabilitating, and revitalizing the business  
 14 prosperity and economic welfare of the state and its  
 15 citizens.

16 (b) To accomplish this goal, the legislature seeks to  
 17 encourage the formation of venture and equity capital in  
 18 Montana for use in diversifying, strengthening, and  
 19 stabilizing the Montana economy by increasing Montana  
 20 employment and business opportunities while protecting the  
 21 people's constitutional right to a clean and healthful  
 22 environment.

23 (3) The legislature further finds that:

- 24 (a) private investment of venture and equity capital in  
 25 the Montana economy will be encouraged and promoted by

1 making tax credits available to taxpayers investing in a  
 2 Montana capital companies company or in a Montana small  
 3 business investment capital company;

4 (b) demands on state revenues restrict the financial  
 5 ability of the state to make unlimited tax credits available  
 6 for investment purposes and require that the state place  
 7 reasonable limits on the total amount of tax credits to be  
 8 made available for investment incentive;

9 (c) establishment of a rational tax credit program  
 10 which gives priority to investments in capital companies in  
 11 the order in which they are qualified or in a Montana small  
 12 business investment capital company will encourage prompt  
 13 private investment in Montana businesses.

14 (4) The legislature further finds that use of money  
 15 from the Montana in-state investment fund established by  
 16 17-6-306 to purchase debentures issued by a capital company  
 17 or a Montana small business investment capital company will  
 18 promote the business prosperity and economic welfare of the  
 19 state and its citizens."

20 **Section 3.** Section 90-8-104, MCA, is amended to read:

21 "90-8-104. **Definitions.** As used in this chapter, unless  
 22 the context requires otherwise, the following definitions  
 23 apply:

24 (1) "Board" means the board of investments provided for  
 25 in 2-15-1808.

1 (2) "Capital base" means equity capital raised by a  
 2 certified Montana capital company or by a certified Montana  
 3 small business investment capital company for which tax  
 4 credits were claimed under this chapter.

5 (3) "Certified Montana capital company" or "certified  
 6 Montana small business investment capital company" means:

7 (a) a development credit corporation created pursuant  
 8 to Title 32, chapter 4; or

9 (b) a profit or nonprofit entity organized and existing  
 10 under the laws of Montana, created for the purpose of making  
 11 venture or risk capital available for qualified investments  
 12 and that has been certified by the board.

13 (4) "Montana business" means a business which is  
 14 located or principally based within Montana.

15 (5) "Qualified investment" means:

16 (a) a debt or equity financing of a Montana business  
 17 that meets both of the following criteria:

18 (i) the business is engaged in one or more of the  
 19 following activities:

20 (A) manufacturing;

21 (B) agricultural, fishery, or forestry production and  
 22 processing;

23 (C) mineral production and processing, except for  
 24 conventional oil and gas exploration;

25 (D) recognized nonfossil forms of energy generation as

1 defined in 15-32-102;  
 2 (E) transportation;  
 3 (F) research and development of products or processes  
 4 associated with any of the activities enumerated in (A)  
 5 through (E) above;  
 6 (G) wholesale or retail distribution activities for  
 7 which products produced in Montana comprise 50% or more of  
 8 the gross sales receipts;  
 9 (H) any activity conducted in the state for which 50%  
 10 or more of the gross receipts are derived from the sale of  
 11 products or services outside Montana; and  
 12 (I) tourism; and  
 13 (ii) the business is a small business as defined in  
 14 rules adopted by the board; or  
 15 (b) a debt or equity financing of a business outside  
 16 Montana if such investment is likely to produce a qualified  
 17 investment in Montana, as long as such investment does not  
 18 exceed 25% of the capital base of the capital company.  
 19 (6) "Qualified Montana capital company" means a  
 20 certified Montana capital company that has been designated a  
 21 qualified capital company under the provisions of 90-8-202  
 22 so that investors in the company may receive the tax credits  
 23 authorized in 90-8-202.  
 24 (7) "Qualified Montana small business investment  
 25 capital company" means a certified Montana small business

1 investment capital company that has been designated a  
 2 qualified small business investment capital company under  
 3 the provisions of 90-8-202 so that investors in the company  
 4 may receive the tax credits authorized in 90-8-202."

5 **Section 4.** Section 90-8-201, MCA, is amended to read:  
 6 "90-8-201. Certification of Montana capital companies  
 7 -- certification of a Montana small business investment  
 8 capital company. (1) From The board shall certify one  
 9 Montana small business investment capital company, and from  
 10 time to time the board shall certify Montana capital  
 11 companies. A company seeking to be certified as a Montana  
 12 capital company must or as the Montana small business  
 13 investment capital company shall make written application to  
 14 the board on forms provided by the board. The application  
 15 must contain the information required by 90-8-204 and such  
 16 other information as that the board requires. The  
 17 application and certificate must specify the level of  
 18 capitalization that the company expects to qualify for the  
 19 tax credits provided for in 90-8-202.  
 20 (2) The application must show that the applicant's  
 21 purpose is to increase the general economic welfare of the  
 22 state of Montana by:  
 23 (a) making investment capital available to businesses  
 24 in Montana; and  
 25 (b) allowing for investment of up to 25% of its capital

1 base in businesses outside Montana if there is a substantial  
 2 likelihood that such investment will produce a qualified  
 3 investment in Montana.

4 (3) Certifiable applicants include but are not limited  
 5 to local and community development corporations, small  
 6 business administration 503 corporations, and small business  
 7 investment companies.

8 (4) Certification is a prerequisite to and must be  
 9 completed before seeking designation as a qualified capital  
 10 company or as the qualified Montana small business  
 11 investment capital company.

12 (5) To be eligible for certification under this section  
 13 as the Montana small business investment capital company,  
 14 the applicant shall commit to:

15 (a) utilize the tax credits to accumulate private  
 16 capital with the intention of being designated a small  
 17 business investment corporation by the United States small  
 18 business administration as provided in Title III of the  
 19 Small Business Act of 1958, as amended, and as implemented  
 20 under 13 CFR 107; and

21 (b) target its investments as a small business  
 22 investment capital company toward commercialization projects  
 23 emerging from centers of excellence and entrepreneurship,  
 24 federal laboratories, the federal small business innovative  
 25 research program, the federal cooperative research and

1 development agreement program, Montana university system  
 2 research and development, the Montana board of science and  
 3 technology development (second stage), SMALL BUSINESS  
 4 incubators, community development block grant programs, AND  
 5 PROJECTS EMERGING FROM ECONOMIC DEVELOPMENT PROGRAMS OF  
 6 MONTANA CERTIFIED COMMUNITIES with the objective of  
 7 providing significant investment opportunities in an area  
 8 where economic development capital is limited, and projects  
 9 emerging from economic development programs of Montana  
 10 certified communities; AND

11 (C) CONSIDER INVESTMENT OPPORTUNITIES ORIGINATING IN  
 12 ANY MONTANA COUNTY; AND

13 (D) ADOPT INVESTMENT GUIDELINES THAT ENSURE THAT UP TO  
 14 NOT LESS THAN 10% OF ITS AVAILABLE CAPITAL IS INVESTED IN  
 15 COUNTIES WITH POPULATIONS OF 20,000 OR LESS."

16 Section 5. Section 90-8-202, MCA, is amended to read:  
 17 "90-8-202. Designation of qualified Montana capital  
 18 companies -- designation of qualified Montana small business  
 19 investment capital company -- tax credit. (1) The board  
 20 shall designate as:

21 (a) qualified Montana capital companies those certified  
 22 companies that have been privately capitalized at a minimum  
 23 level of \$200,000; or

24 (b) the qualified ~~CERTIFIED~~ QUALIFIED Montana small  
 25 business investment capital company a THE CERTIFIED MONTANA

1 SMALL BUSINESS INVESTMENT CAPITAL company that ONCE IT has  
2 been privately capitalized at a minimum level of \$500,000.

3 (2) A certified company seeking designation as a  
4 qualified Montana capital company or as the qualified  
5 Montana small business investment capital company must make  
6 written application to the board on forms provided by the  
7 board. The application must contain the information required  
8 by 90-8-204 and such other information as that the board  
9 requires.

10 {2}{3} (a) The total amount of tax credits authorized  
11 for a single qualified capital company or the qualified  
12 Montana small business investment capital company may not  
13 exceed \$1,500,000, except that the qualified Montana small  
14 business investment capital company must receive all  
15 remaining tax credits under this section available as of  
16 January 1, 1991. In the event the capitalization of the a  
17 qualified capital company is later increased, the company  
18 may apply for authorization of additional tax credits within  
19 the foregoing limitation.

20 (b) The total credits authorized for all companies may  
21 not exceed a total of \$1 million prior to June 30, 1985. The  
22 total credits authorized for all companies between July 1,  
23 1985, and June 30, 1987, may not exceed \$1 million plus any  
24 portion of the \$1 million available for authorization before  
25 June 30, 1985, that is allocated to qualified companies. The

1 total credits authorized for all companies between July 1,  
2 1987, and June 30, 1989, may not exceed \$3 million plus any  
3 portion of the credits available for authorization before  
4 June 30, 1987, that is allocated to qualified companies. The  
5 total credits authorized for all companies between July 1,  
6 1989, and June 30, 1991, may not exceed \$3 million plus any  
7 portion of the credits available for authorization before  
8 June 30, 1989, that is allocated to qualified companies.

9 {3}{4} (a) The Before January 1, 1991, credits shall  
10 must be allocated to qualified companies in the order that  
11 completed applications for designation as qualified capital  
12 companies are received by the board, and the board shall  
13 certify to each such company its appropriate allocation.

14 (b) All tax credits allowed under subsection (3) that  
15 are not allocated as of January 1, 1991, must be allocated  
16 to the qualified Montana small business investment capital  
17 company, and the board shall certify the allocation to the  
18 company.

19 (C) IF THE LEGISLATURE PROVIDES ADDITIONAL TAX CREDITS  
20 UNDER THIS CHAPTER AFTER JUNE 30, 1991, OR IF TAX CREDITS  
21 BECOME AVAILABLE BY REVERSION TO THE BOARD BY A CAPITAL  
22 COMPANY OR BY THE QUALIFIED MONTANA SMALL BUSINESS  
23 INVESTMENT CAPITAL COMPANY, THOSE ADDITIONAL OR REVERTED TAX  
24 CREDITS MAY MUST BE ALLOCATED BY THE BOARD TO QUALIFIED  
25 CAPITAL COMPANIES OR TO THE QUALIFIED MONTANA SMALL BUSINESS

1 INVESTMENT CAPITAL COMPANY IN ACCORDANCE WITH THIS CHAPTER  
 2 AND THE RULES OF THE BOARD.

3 ~~(4)~~(5) Investors in a qualified Montana capital company  
 4 or in the qualified Montana small business investment  
 5 capital company are entitled to the tax credits provided for  
 6 in subsection ~~(5)~~ (6). Funds invested in a certified company  
 7 prior to designation as a qualified Montana capital company  
 8 or as the qualified Montana small business investment  
 9 capital company may, at the discretion of the investor, be  
 10 placed in an escrow account in a Montana financial  
 11 institution pending designation of the company as a  
 12 qualified Montana capital company or as the qualified  
 13 Montana small business investment capital company.

14 ~~(5)~~(6) Subject to the provisions of subsections ~~(2)~~ (3)  
 15 and ~~(8)~~ (9), an individual, small business corporation,  
 16 partnership, trust, decedent's estate, or corporate taxpayer  
 17 that makes a capital investment in a qualified Montana  
 18 capital company or the qualified Montana small business  
 19 investment capital company is entitled to a tax credit equal  
 20 to 50% of the investment, up to a maximum credit of \$150,000  
 21 per taxpayer, except that, as applied to the QUALIFIED small  
 22 business investment capital company, the maximum tax credit  
 23 is \$250,000 per taxpayer AND THE TAX CREDIT LIMITATION  
 24 RELATING TO A CAPITAL INVESTMENT IN THE QUALIFIED MONTANA  
 25 SMALL BUSINESS INVESTMENT CAPITAL COMPANY MUST BE IN

1 ADDITION TO ANY OTHER TAX CREDIT LIMITATION IN THIS SECTION.

2 The credit may be taken against the tax liability imposed on  
 3 the investor pursuant to Title 15, chapter 30, 31, or 35.  
 4 The credit for investments by a small business corporation  
 5 electing to be taxed under 15-31-202 or a partnership may be  
 6 claimed by the small business corporation shareholders or  
 7 the partners.

8 ~~(6)~~(7) The tax credit allowed under subsection ~~(5)~~ (6)  
 9 is to be credited against the taxpayer's income tax  
 10 liability or coal severance tax liability for the taxable  
 11 year in which the investment in a qualified Montana capital  
 12 company or the qualified Montana small business investment  
 13 capital company is made. If the amount of the tax credit  
 14 exceeds the taxpayer's tax liability for the taxable year,  
 15 the amount of the credit which exceeds the tax liability may  
 16 be carried back or carried forward in the following manner:

17 (a) If the sum of the amount of credit for the current  
 18 taxable year plus the amount of credit, if any, carried  
 19 forward from a previous taxable year exceeds the taxpayer's  
 20 tax liability for the current taxable year, the excess must  
 21 be carried back as a credit to the 3 preceding taxable years  
 22 and, if the full credit remains unused, carried forward as a  
 23 credit to the 15 succeeding taxable years.

24 (b) The amount of unused credit must be used to offset  
 25 the entire tax liability of each of the 18 taxable years,



1 beginning with the earliest and commencing to the next  
2 succeeding year until the credit is exhausted.

3 ~~†7†~~(8) The tax credit provided for in this section is  
4 available only to those taxpayers who invest in a qualified  
5 Montana capital company within 4 years of July 1, 1987, or  
6 in the qualified Montana small business investment capital  
7 company within 4 years of July 1, 1991.

8 ~~†8†~~(9) (a) An individual, small business corporation,  
9 partnership, or corporate taxpayer who obtains the tax  
10 credit allowed under subsection ~~†5†~~ (6) may not obtain  
11 credits in excess of the ~~†150,000-limit~~ limits contained in  
12 subsection ~~†5†~~ (6) by making investments as more than one  
13 entity.

14 (b) A partner or shareholder in a small business  
15 corporation may not obtain more than \$150,000, or not more  
16 than \$250,000 in the case of a-partner-or-shareholder-in the  
17 qualified Montana small business investment capital company,  
18 in credits as an individual and as the partnership or small  
19 business corporation. A corporate taxpayer that obtains the  
20 maximum ~~†150,000---~~ credit credits allowed under this  
21 subsection (9)(b) may not obtain additional credits through  
22 investments by wholly owned subsidiaries or affiliates. An  
23 individual, small business corporation, partnership, or  
24 corporate taxpayer who obtains the tax credit allowed under  
25 subsection (6) may not claim deduction under the provisions

1 of Title 15, chapter 30 or 31, for donation of stock in the  
2 qualified Montana small business investment capital  
3 company."

4 **Section 6.** Section 90-8-203, MCA, is amended to read:

5 "90-8-203. No recapture -- unqualified investments. If  
6 the amount invested by a taxpayer in a qualified Montana  
7 capital company or in the qualified Montana small business  
8 investment capital company is not used by the company for  
9 qualified investments as provided in 90-8-301, the taxpayer  
10 is not subject to a recapture provision for any tax credit  
11 claimed by him but the company is subject to the penalty  
12 provided for in 90-8-301~~†3†~~(4)."

13 **Section 7.** Section 90-8-204, MCA, is amended to read:

14 "90-8-204. Application requirements. A company applying  
15 to become either a certified or qualified Montana capital  
16 company or the certified or qualified Montana small business  
17 investment capital company shall include in its application  
18 evidence that it has disclosed or will disclose to all  
19 investors the following:

20 (1) the condition that a tax credit is not available  
21 for investment in a company until the company has been  
22 designated a qualified Montana capital company or the  
23 qualified Montana small business investment capital company  
24 and the investor has received a certificate approving the  
25 credit from the board;

1 (2) the condition that a tax credit will not be made  
 2 available until the a qualified capital company raises at  
 3 least \$200,000 in capital, and has been designated a  
 4 qualified capital company, or the qualified Montana small  
 5 business investment capital company raises at least \$500,000  
 6 in capital before July 1, 1995, and has been designated the  
 7 qualified Montana small business investment capital company  
 8 and the limits on tax credits that may be authorized; and

9 (3) the fact that the state of Montana is not liable  
 10 for damages in accordance with 90-8-205."

11 **Section 8.** Section 90-8-205, MCA, is amended to read:

12 **"90-8-205. State liability disclaimed.** The state of  
 13 Montana may not be held liable for any damages to an  
 14 investor in a Montana:

15 (1) capital company that fails to become designated as  
 16 a certified or qualified Montana capital company; or

17 (2) small business investment capital company that  
 18 fails to become designated as a certified or qualified  
 19 Montana small business investment capital company."

20 **Section 9.** Section 90-8-301, MCA, is amended to read:

21 **"90-8-301. Qualified investments -- penalty --**  
 22 **extension permissible.** (1) A qualified Montana capital  
 23 company receiving investments for which a taxpayer has  
 24 applied and received a tax credit must use its capital base  
 25 to make qualified investments according to the following

1 schedule:

2 (a) at least 30% of its capital base raised through  
 3 investments for which tax credits were taken within 3 years  
 4 of the date on which the certified company was designated as  
 5 a qualified capital company by the board and, in the case of  
 6 capital raised by a qualified Montana capital company under  
 7 an amended application for additional tax credits filed  
 8 after its initial designation as a qualified Montana capital  
 9 company, at least 30% of its capital base raised through  
 10 investments for which tax credits were taken within 3 years  
 11 of the date on which the board approves the amended  
 12 application;

13 (b) at least 50% of its capital base raised through  
 14 investments for which tax credits were taken within 4 years  
 15 of the date on which the certified company was designated as  
 16 a qualified capital company by the board and, in the case of  
 17 capital raised by a qualified Montana capital company under  
 18 an amended application for additional tax credits filed  
 19 after its initial designation as a qualified Montana capital  
 20 company, at least 50% of its capital base raised through  
 21 investments for which tax credits were taken within 4 years  
 22 of the date on which the board approves the amended  
 23 application; and

24 (c) at least 70% of its capital base raised through  
 25 investments for which tax credits were taken within 5 years

1 of the date on which the certified company was designated as  
 2 a qualified capital company by the board and, in the case of  
 3 capital raised by a qualified Montana capital company under  
 4 an amended application for additional tax credits filed  
 5 after its initial designation as a qualified Montana capital  
 6 company, at least 70% of its capital base raised through  
 7 investments for which tax credits were taken within 5 years  
 8 of the date on which the board approves the amended  
 9 application.

10 (2) The qualified Montana small business investment  
 11 capital company receiving investments for which a taxpayer  
 12 has applied and received a tax credit must use its capital  
 13 base to make qualified investments according to the  
 14 following schedule:

15 (a) of its capital base raised through investments for  
 16 which tax credits were taken:

17 (i) 30% within 3 years of the date on which the  
 18 certified company was designated as the qualified Montana  
 19 small business investment capital company by the board or  
 20 within 3 years of its designation as a small business  
 21 investment corporation by the small business administration,  
 22 whichever is later;

23 (ii) 50% within 4 years of the date on which the  
 24 certified company was designated as the qualified Montana  
 25 small business investment capital company by the board or

1 within 4 years after its designation as a small business  
 2 investment corporation by the small business administration,  
 3 whichever is later; and

4 (iii) 70% within 5 years of the date on which the  
 5 certified company was designated as the qualified Montana  
 6 small business investment capital company by the board or  
 7 within 5 years after its designation as a small business  
 8 investment corporation by the small business administration,  
 9 whichever is later; and OR

10 (b) of its capital base, in the case of capital raised  
 11 through a loan from the small business administration  
 12 pursuant to 13 CFR 107, as provided under this chapter  
 13 EXCEPT AS PROVIDED IN SUBSECTION (2)(A).

14 ~~(2)~~(3) Following each annual examination, the  
 15 commissioner of financial institutions shall notify the  
 16 department of revenue of any companies that are not in  
 17 compliance with this section.

18 ~~(3)~~(4) A qualified Montana capital company that fails  
 19 to make qualified investments pursuant to subsection (1) or  
 20 the qualified Montana small business investment capital  
 21 company that fails to make qualified investments pursuant to  
 22 subsection (2) shall pay to the department of revenue a  
 23 penalty equal to all of the tax credits allowed to the  
 24 taxpayers investing in that company during that time period,  
 25 with interest at 1% a month from the date the tax credits

1 were certified as allocated to the qualified Montana capital  
 2 company or to the qualified Montana small business  
 3 investment capital company. The department of revenue may  
 4 abate the penalty if the capital company or the Montana  
 5 small business investment capital company establishes  
 6 reasonable cause for the failure to make qualified  
 7 investments pursuant to subsection (1) or (2) and if the  
 8 failure was not due to neglect on the part of the company.

9 †4) (5) The department of revenue may grant an extension  
 10 of time in which to make qualified investments pursuant to  
 11 subsection (1) or (2) upon application by a capital company  
 12 or the Montana small business investment capital company  
 13 showing reasonable cause for an extension.

14 †5) (6) The department of revenue shall deposit any  
 15 amount received under this subsection to the credit of the  
 16 state general fund."

17 **Section 10.** Section 90-8-302, MCA, is amended to read:

18 "90-8-302. Restriction on investment. In addition to  
 19 the requirements of 90-8-301, no more than 50% of the equity  
 20 raised by a Montana capital company or by the Montana small  
 21 business investment capital company may be invested in any  
 22 one business, and no more than 25% of the total funds raised  
 23 for which tax credits were claimed pursuant to the  
 24 investment credit provisions of this chapter may be invested  
 25 in any one business."

1 **Section 11.** Section 90-8-303, MCA, is amended to read:

2 "90-8-303. Conflict of interest. (1) (a) The members of  
 3 the board, the commissioner of financial institutions, or a  
 4 bank examiner may not have a monetary interest in or be a  
 5 borrower from any a Montana capital company or from the  
 6 Montana small business investment capital company, either  
 7 directly or indirectly.

8 (b) These restrictions do not prohibit the board,  
 9 acting as a whole, from purchasing debentures issued by a  
 10 Montana capital company or by the Montana small business  
 11 investment capital company.

12 (2) A member of the investment committee of a Montana  
 13 capital company or of the Montana small business investment  
 14 capital company who has an interest in a venture that comes  
 15 before the committee for a vote shall disclose such the  
 16 interest and abstain from voting on investment in the  
 17 venture."

18 **Section 12.** Section 90-8-304, MCA, is amended to read:

19 "90-8-304. Application of securities law. In lieu of  
 20 registration under Title 30, chapter 10, a certified Montana  
 21 capital company or the certified Montana small business  
 22 investment capital company may file all disclosure  
 23 documents, along with a consent to service of process, with  
 24 the state securities commissioner. The commissioner may not  
 25 charge a fee for such the filing."

1 **Section 13.** Section 90-8-305, MCA, is amended to read:

2 **"90-8-305. Sale of debentures.** (1) A qualified Montana  
3 capital company or the qualified Montana small business  
4 investment capital company is authorized to issue and sell  
5 debentures to the in-state investment fund established in  
6 17-6-306.

7 (2) Proceeds received by a qualified Montana capital  
8 company or by the qualified Montana small business  
9 investment capital company from the sale of debentures  
10 authorized in subsection (1) must be invested in accordance  
11 with the provisions of 90-8-301, except that the time  
12 periods for making qualified investments must be calculated  
13 from the date the company sells the debentures to the  
14 in-state investment fund."

15 **Section 14.** Section 90-8-311, MCA, is amended to read:

16 **"90-8-311. Legislative review and oversight.** The board  
17 shall report on an annual basis to the revenue oversight  
18 committee of the legislature concerning Montana capital  
19 companies and the Montana small business investment capital  
20 company."

21 **Section 15.** Section 90-8-312, MCA, is amended to read:

22 **"90-8-312. Investment reporting and recordkeeping.** (1)  
23 Each qualified Montana capital company and each qualified  
24 Montana small business investment capital company shall  
25 report to the board on a quarterly basis:

1 (a) the name of each investor in the qualified Montana  
2 capital company or in the qualified Montana small business  
3 investment capital company who has applied for a tax credit;

4 (b) the amount of each investor's investment; and

5 (c) the amount of the tax credit allowed to the  
6 investor and the date on which the investment was made.

7 (2) The board shall provide the information contained  
8 in subsection (1) to the department of revenue on a  
9 quarterly basis.

10 (3) The board shall provide each investor in a  
11 qualified Montana capital company and each investor in the  
12 qualified Montana small business investment capital company  
13 with a certificate authorizing the tax credit, and the  
14 certificate ~~shall~~ must be submitted with each tax return  
15 requesting a credit under 90-8-202.

16 (4) Each qualified Montana capital company and the  
17 qualified Montana small business investment capital company  
18 shall report to the board on a quarterly basis all qualified  
19 investments that the company has made. The board shall share  
20 the information with the department of revenue, in order  
21 that the provisions of 90-8-301 may be complied with."

22 **Section 16.** Section 90-8-313, MCA, is amended to read:

23 **"90-8-313. Examination.** (1) At least once a year the  
24 bank examiners of the department of commerce shall examine  
25 the books and affairs of each Montana capital company and of

1 each THE QUALIFIED Montana small business investment capital  
 2 company. The examination must address the methods of  
 3 operation and conduct of the business of the Montana capital  
 4 company or of the Montana small business investment capital  
 5 company to determine if the company is abiding by the  
 6 purposes of this chapter and that the funds received by the  
 7 company have been invested within the time limits required  
 8 for a qualified Montana capital company or for the qualified  
 9 Montana small business investment capital company in  
 10 90-8-301.

11 (2) The department of commerce may examine under oath  
 12 any of the officers, directors, agents, employees, or  
 13 investors of a Montana capital company regarding the affairs  
 14 and business of the company. The department of commerce may  
 15 issue subpoenas and administer oaths. Refusal to obey such a  
 16 subpoena may at once be reported to the district court of  
 17 the district in which the company is located, and the court  
 18 shall enforce obedience to the subpoena in the manner  
 19 provided by law.

20 (3) The cost of the annual review must be paid by each  
 21 Montana capital company or by the Montana small business  
 22 investment capital company in accordance with reasonable  
 23 fees assessed by the department."

24 **Section 17.** Section 90-8-321, MCA, is amended to read:  
 25 "90-8-321. Decertification. (1) If the examination

1 conducted pursuant to 90-8-313 discloses that a Montana  
 2 capital company or the Montana small business investment  
 3 capital company is not in compliance with the provisions of  
 4 this chapter, the department of commerce may exercise any of  
 5 the powers with regard to banks granted in Title 32, chapter  
 6 1, part 5, and may seize the assets of the company and  
 7 liquidate it. In the event of liquidation of the assets, any  
 8 penalty imposed pursuant to 90-8-301 ~~shall~~ must be included  
 9 in the claims to be paid.

10 (2) If in the discretion of the department of commerce  
 11 the action allowed under subsection (1) is not required to  
 12 protect the company's investors, the department may place  
 13 the company on notice that it will lose its certification as  
 14 a Montana capital company or as the Montana small business  
 15 investment capital company within a specified period of time  
 16 if the company does not come into compliance with the  
 17 provisions of this chapter. The department shall  
 18 automatically decertify a Montana capital company or the  
 19 Montana small business investment capital company that is  
 20 assessed a penalty under 90-8-301~~(3)~~(4).

21 (3) As long as the department acts in good faith, the  
 22 department and its employees and agents may not be held  
 23 civilly or criminally liable or liable upon their official  
 24 bonds for action taken under this section or for any failure  
 25 to act under it.

1       (4) A Montana capital company or the Montana small  
2 business investment capital company may apply to the  
3 department for decertification."

4       NEW SECTION. Section 18. Saving clause. [This act]  
5 does not affect rights and duties that matured, penalties  
6 that were incurred, or proceedings that were begun before  
7 [the effective date of this act].

8       NEW SECTION. Section 19. Severability. If a part of  
9 [this act] is invalid, all valid parts that are severable  
10 from the invalid part remain in effect. If a part of [this  
11 act] is invalid in one or more of its applications, the part  
12 remains in effect in all valid applications that are  
13 severable from the invalid applications.

14       NEW SECTION. Section 20. Retroactive applicability.  
15 [This act] applies retroactively, within the meaning of  
16 1-2-109, to events occurring after December 31, 1990.

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

-End-