

HOUSE BILL NO. 901

INTRODUCED BY BARDANOUE, B. BROWN, CRIPPEN, KENNEDY,
SVRCEK, HARPER, BRADLEY, KIMBERLEY, PAVLOVICH, MERCER,
MAZUREK, VAN VALKENBURG, WILLIAMS, JACOBSON, HALLIGAN

IN THE HOUSE

FEBRUARY 16, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 13, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
MARCH 14, 1991	PRINTING REPORT.
MARCH 16, 1991	ON MOTION, CONSIDERATION PASSED.
MARCH 18, 1991	ON MOTION, CONSIDERATION PASSED.
MARCH 19, 1991	SECOND READING, DO PASS.
MARCH 20, 1991	ENGROSSING REPORT.
MARCH 21, 1991	THIRD READING, PASSED. AYES, 96; NOES, 2.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 22, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
APRIL 5, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 8, 1991	SECOND READING, CONCURRED IN.
APRIL 9, 1991	THIRD READING, CONCURRED IN. AYES, 45; NOES, 0.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 11, 1991

RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 12, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

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HOUSE BILL NO. *901*
Jordan
Kenedy *Hagan* *Budley* *Kimberley* *Carlson*

INTRODUCED BY
A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS UNDER THE ACT; PROVIDING FOR RECAPTURE OF TAX CREDITS UNDER THE ACT; PROVIDING FOR A LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT INFORMATION; PROVIDING FOR DECERTIFICATION FOR NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN INVESTMENT SCHEDULE AND HAVING 70 PERCENT OF THE INVESTMENT IN A QUALIFIED INVESTMENT; PROVIDING THE DEPARTMENT OF COMMERCE WITH THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT; AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-8-104, MCA, is amended to read:

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

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apply:

~~{1}--"Board"--means-the-board-of-investments-provided-for in-2-15-1888-~~

{2}(1) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

{3}(2) "Certified Montana capital company" means:

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

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

(3) "Department" means the department of commerce.

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

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project, and is:

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

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

(A) manufacturing;



- 1 (B) agricultural, fishery, or forestry production and
2 processing;
- 3 (C) mineral production and processing, except for
4 conventional oil and gas exploration;
- 5 (D) recognized nonfossil forms of energy generation as
6 defined in 15-32-102;
- 7 (E) transportation;
- 8 (F) research and development of products or processes
9 associated with any of the activities enumerated in (A)
10 through (E) above;
- 11 (G) wholesale or retail distribution activities for
12 which products produced in Montana comprise 50% or more of
13 the gross sales receipts;
- 14 (H) any activity conducted in the state for which 50%
15 or more of the gross receipts are derived from the sale of
16 products or services outside Montana; and
- 17 (I) tourism; and
- 18 (ii) the business is a small business as defined in
19 rules adopted by the board department; or
- 20 (b) a debt or equity financing of a business outside
21 Montana if such investment is likely to produce a qualified
22 investment in Montana, as long as such investment does not
23 exceed 25% of the capital base of the capital company.
- 24 (6) "Qualified Montana capital company" means a
25 certified Montana capital company that has been designated a

1 qualified capital company under the provisions of 90-8-202
2 so that investors in the company may receive the tax credits
3 authorized in 90-8-202."

4 **Section 2.** Section 90-8-105, MCA, is amended to read:

5 **"90-8-105. Rulemaking.** The board department may adopt
6 rules to implement the provisions of this chapter."

7 **Section 3.** Section 90-8-201, MCA, is amended to read:

8 **"90-8-201. Certification of Montana capital companies.**
9 (1) From time to time the board department shall certify
10 Montana capital companies. A company seeking to be certified
11 as a Montana capital company must make written application
12 to the board department on forms provided by the board
13 department. The application must contain the information
14 required by 90-8-204 and such other information as the board
15 department requires. The application and certificate must
16 specify the level of capitalization that the company expects
17 to qualify for the tax credits provided for in 90-8-202.

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

21 (a) making investment capital available to businesses
22 in Montana; and

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

1 investment in Montana.

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

6 (4) Certification is a prerequisite to and must be
7 completed before seeking designation as a qualified capital
8 company."

9 **Section 4.** Section 90-8-202, MCA, is amended to read:

10 "90-8-202. Designation of qualified Montana capital
11 companies -- tax credit. (1) The board department shall
12 designate as qualified Montana capital companies those
13 certified companies that have been privately capitalized at
14 a minimum level of \$200,000. A certified company seeking
15 designation as a qualified Montana capital company must make
16 written application to the board department on forms
17 provided by the board department. The application must
18 contain the information required by 90-8-204 and such other
19 information as the board department requires.

20 (2) (a) The total amount of tax credits authorized for
21 a single qualified company may not exceed \$1,500,000. In the
22 event the capitalization of the company is later increased,
23 the company may apply for authorization of additional tax
24 credits within the foregoing limitation.

25 (b) The total credits authorized for all companies may

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

14 (3) The credits shall be allocated to qualified
15 companies in the order that completed applications for
16 designation as qualified capital companies are received by
17 the board department, and the board department shall certify
18 to each such company its appropriate allocation.

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

1 company.

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

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

22 (a) If the sum of the amount of credit for the current
23 taxable year plus the amount of credit, if any, carried
24 forward from a previous taxable year exceeds the taxpayer's
25 tax liability for the current taxable year, the excess must

1 be carried back as a credit to the 3 preceding taxable years
2 and, if the full credit remains unused, carried forward as a
3 credit to the 15 succeeding taxable years.

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

8 (7) The tax credit provided for in this section is
9 available only to those taxpayers who invest in a qualified
10 Montana capital company within 4 years of July 1, 1987.

11 (8) An individual, small business corporation,
12 partnership, or corporate taxpayer who obtains the tax
13 credit allowed under subsection (5) may not obtain credits
14 in excess of the \$150,000 limit contained in subsection (5)
15 by making investments as more than one entity. A partner or
16 shareholder in a small business corporation may not obtain
17 more than \$150,000 in credits as an individual and as the
18 partnership or small business corporation. A corporate
19 taxpayer that obtains the maximum \$150,000 credit may not
20 obtain additional credits through investments by wholly
21 owned subsidiaries or affiliates."

22 **Section 5.** Section 90-8-203, MCA, is amended to read:

23 **"90-8-203. No recapture -- unqualified investments. If**
24 **(1) Except as provided in subsection (2), if the amount**
25 **invested by a taxpayer in a qualified Montana capital**

1 company is not used by the company for qualified investments
 2 as provided in 90-8-301, the taxpayer is not subject to a
 3 recapture provision for any tax credit claimed by him but
 4 the company is subject to the penalty provided for in
 5 90-8-301(3).

6 (2) If the amount invested by a taxpayer for which tax
 7 credits were claimed is never risked by the capital company
 8 for qualified investments as provided in 90-8-301, the tax
 9 credit received for that amount of the investment returned
 10 to the investor or subsequent entities having an interest in
 11 that investment is subject to recapture by the department of
 12 revenue from the taxpayer claiming the tax credit."

13 **Section 6.** Section 90-8-301, MCA, is amended to read:

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

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

1 credits filed after its initial designation as a qualified
 2 Montana capital company, at least 30% of its capital base
 3 raised through investments for which tax credits were taken
 4 within 3 years of the date on which the board department
 5 approves the amended application;

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

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

1 within 5 years of the date on which the board department
2 approves the unended application.

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

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

18 (4) The department of revenue may grant an extension of
19 time in which to make qualified investments pursuant to
20 subsection (1) upon application by a capital company showing
21 reasonable cause for an extension.

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

25 (6) An existing profitable business may be financed by

1 tax credit funds to the extent that the funds are used for
2 expansion of the business. Only that portion of the
3 financing used for the expansion of the business may be
4 included in meeting the investment percentage criteria
5 outlined in this section."

6 **Section 7.** Section 90-8-303, MCA, is amended to read:

7 "90-8-303. Conflict of interest. (1) ~~{a}-The-members-of~~
8 ~~the-board,-the-commissioner-of-financial-institutions,-or--a~~
9 ~~bank--examiner--may--not-have-a-monetary-interest-in-or-be-a~~
10 ~~borrower-from-any-Montana-capital-company,-either--directly~~
11 ~~or-indirectly-~~

12 ~~{b}-These--restrictions--do--not--prohibit--the--board,~~
13 ~~acting--as--a--whole,-from-purchasing-debentures-issued-by-a~~
14 ~~Montana-capital-company. A capital company may not invest in~~
15 any business venture in which the combined ownership of the
16 business venture for all investors in the capital company
17 exceeds 49% at the time of the investment decision.

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

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

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

1 capital companies."

2 **Section 9.** Section 90-8-312, MCA, is amended to read:

3 **"90-8-312. Investment reporting and recordkeeping.** (1)
4 Each qualified Montana capital company shall report to the
5 board department on a quarterly basis:

6 (a) the name of each investor in the qualified Montana
7 capital company who has applied for a tax credit;

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

9 (c) the amount of the tax credit allowed to the
10 investor and the date on which the investment was made; and

11 (d) any other information determined by the department.

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

15 (3) The board department shall provide each investor in
16 a qualified Montana capital company with a certificate
17 authorizing the tax credit, and the certificate shall be
18 submitted with each tax return requesting a credit under
19 90-8-202.

20 (4) Each qualified Montana capital company shall report
21 to the board department on a quarterly basis all qualified
22 investments that the company has made. The board department
23 shall share the information with the department of revenue,
24 in order that the provisions of 90-8-301 may be complied
25 with.

1 (5) Each qualified Montana capital company shall report
2 to the department all proposed investments for which tax
3 credits will be claimed. The department shall determine
4 whether the proposed investment is qualified under this
5 chapter before the investment is made."

6 **Section 10.** Section 90-8-313, MCA, is amended to read:

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

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

25 (3) The cost of the annual review must be paid by each

1 Montana capital company in accordance with reasonable fees
2 assessed by the department."

3 **Section 11.** Section 90-8-321, MCA, is amended to read:

4 **"90-8-321. Decertification.** (1) If the examination
5 conducted pursuant to 90-8-313 discloses that a Montana
6 capital company is not in compliance with the provisions of
7 this chapter, the department of-commerce may exercise any of
8 the powers with regard to banks granted in Title 32, chapter
9 1, part 5, and may seize the assets of the company and
10 liquidate it. In the event of liquidation of the assets, any
11 penalty imposed pursuant to 90-8-301 shall be included in
12 the claims to be paid.

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

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

1 to act under it.

2 (4) A Montana capital company may apply to the
3 department for decertification.

4 (5) The department has the power to decertify any
5 capital company not in compliance with this chapter.

6 (6) The department shall decertify a capital company
7 once the capital company has met the investment schedule
8 outlined in 90-8-301 and over 70% of the capital base of the
9 capital company has been invested in qualified investments."

10 **NEW SECTION. Section 12. Fees.** The department may
11 charge fees commensurate with costs for the administration
12 of this chapter.

13 **NEW SECTION. Section 13. Codification instruction.**
14 [Section 12] is intended to be codified as an integral part
15 of Title 90, chapter 8, and the provisions of Title 90,
16 chapter 8, apply to [section 12].

17 **NEW SECTION. Section 14. Effective date.** [This act] is
18 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0901, as introduced.DESCRIPTION OF PROPOSED LEGISLATION:


An act to generally revise the Montana Capital Company Act; transferring administration of the act to the Department of Commerce; expanding the definition of qualified investment; limiting tax credits under the act; providing for recapture of tax credits under the act; providing for a limitation on investments to promote diligence in investment decisions; providing the department with proposed investment information; providing for decertification upon meeting an investment schedule and having 70% of the investment in a qualified investment; providing the Department of Commerce with the authority to charge fees for administration of the act; amending existing statutes; and providing an immediate effective date.

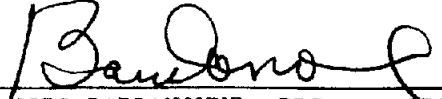
ASSUMPTIONS:

1. The department will need a 1.00 FTE program specialist at grade 16/step 2 to administer the act. No FTE were hired by the Board of Investments or the Financial Institutions Division under the original act and current staff resources in those programs will continue to perform their other assigned duties.
2. Bank examiners currently charge approximately \$10,000 per year for the examination of existing capital companies.

FISCAL IMPACT:Department of Commerce:

<u>Expenditures:</u>	<u>FY 92</u>			<u>FY 93</u>		
	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
FTE	0	1.00	1.00	0	1.00	1.00
Personal Services	0	29,285	29,285	0	29,285	29,285
Operating Costs	0	10,100	10,100	0	10,100	10,100
Equipment	0	3,000	3,000	0	0	0
Total	0	42,385	42,385	0	39,385	39,385
<u>Funding:</u>						
State Special Revenue	0	42,385	42,385	0	39,385	39,385
<u>Revenues:</u>						
CDBG Earmarked Special Revenue Fund (02)	0	42,385	42,385	0	39,385	39,385


 ROD SUNDSTED, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning


 FRANCIS BARDANOUE, PRIMARY SPONSOR DATE
 Fiscal Note for HB0901, as introduced **HB 901**

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 901

INTRODUCED BY BARDANOUVE, B. BROWN, CRIPPEN, KENNEDY, SVRCEK, HARPER, BRADLEY, KIMBERLEY, PAVLOVICH, MERCER, MAZUREK, VAN VALKENBURG, WILLIAMS, JACOBSON, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS UNDER THE ACT; PROVIDING FOR RECAPTURE OF TAX CREDITS UNDER THE ACT THAT INVESTORS ARE SUBJECT TO THE PENALTY FOR FAILURE TO MAKE QUALIFIED INVESTMENTS; PROVIDING FOR A LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT INFORMATION; PROVIDING FOR DECERTIFICATION FOR NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN INVESTMENT SCHEDULE AND, HAVING 70 PERCENT OF THE INVESTMENT IN A QUALIFIED INVESTMENT, AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION; PROVIDING THE DEPARTMENT OF COMMERCE WITH THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT; AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-8-104, MCA, is amended to read:

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

~~(1) "Board" means the board of investments provided for in 2-15-1800.~~

(1) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

(2) "Certified Montana capital company" means:

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

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

(3) "Department" means the department of commerce.

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

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project, and is:



1 (a) a debt or equity financing of a Montana business
 2 that meets both of the following criteria:
 3 (i) the business is engaged in one or more of the
 4 following activities:
 5 (A) manufacturing;
 6 (B) agricultural, fishery, or forestry production and
 7 processing;
 8 (C) mineral production and processing, except for
 9 conventional oil and gas exploration;
 10 (D) recognized nonfossil forms of energy generation as
 11 defined in 15-32-102;
 12 (E) transportation;
 13 (F) research and development of products or processes
 14 associated with any of the activities enumerated in (A)
 15 through (E) above;
 16 (G) wholesale or retail distribution activities for
 17 which products produced in Montana comprise 50% or more of
 18 the gross sales receipts;
 19 (H) any activity conducted in the state for which 50%
 20 or more of the gross receipts are derived from the sale of
 21 products or services outside Montana; and
 22 (I) tourism; and
 23 (ii) the business is a small business as defined in
 24 rules adopted by the board department; or
 25 (b) a debt or equity financing of a business outside

1 Montana if such investment is likely to produce a qualified
 2 investment in Montana, as long as such investment does not
 3 exceed 25% of the capital base of the capital company; OR
 4 (C) A DEBT OR EQUITY FINANCING OF AN ACQUISITION OF A
 5 NON-MONTANA BUSINESS THAT WILL BE RELOCATED IN MONTANA.
 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 **Section 2.** Section 90-8-105, MCA, is amended to read:
 12 **"90-8-105. Rulemaking.** The board department may adopt
 13 rules to implement the provisions of this chapter."
 14 **Section 3.** Section 90-8-201, MCA, is amended to read:
 15 **"90-8-201. Certification of Montana capital companies.**
 16 (1) From time to time the board department shall certify
 17 Montana capital companies. A company seeking to be certified
 18 as a Montana capital company must make written application
 19 to the board department on forms provided by the board
 20 department. The application must contain the information
 21 required by 90-8-204 and such other information as the board
 22 department requires. The application and certificate must
 23 specify the level of capitalization that the company expects
 24 to qualify for the tax credits provided for in 90-8-202.
 25 (2) The application must show that the applicant's

1 purpose is to increase the general economic welfare of the
 2 state of Montana by:

3 (a) making investment capital available to businesses
 4 in Montana; and

5 (b) allowing for investment of up to 25% of its capital
 6 base in businesses outside Montana if there is a substantial
 7 likelihood that such investment will produce a qualified
 8 investment in Montana.

9 (3) Certifiable applicants include but are not limited
 10 to local and community development corporations, small
 11 business administration 503 corporations, and small business
 12 investment companies.

13 (4) Certification is a prerequisite to and must be
 14 completed before seeking designation as a qualified capital
 15 company."

16 **Section 4.** Section 90-8-202, MCA, is amended to read:

17 "90-8-202. Designation of qualified Montana capital
 18 companies -- tax credit. (1) The board department shall
 19 designate as qualified Montana capital companies those
 20 certified companies that have been privately capitalized at
 21 a minimum level of \$200,000. A certified company seeking
 22 designation as a qualified Montana capital company must make
 23 written application to the board department on forms
 24 provided by the board department. The application must
 25 contain the information required by 90-8-204 and such other

1 information as the board department requires.

2 (2) (a) The total amount of tax credits authorized for
 3 a single qualified company may not exceed \$1,500,000. In the
 4 event the capitalization of the company is later increased,
 5 the company may apply for authorization of additional tax
 6 credits within the foregoing limitation.

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

21 (3) The credits shall be allocated to qualified
 22 companies in the order that completed applications for
 23 designation as qualified capital companies are received by
 24 the board department, and the board department shall certify
 25 to each such company its appropriate allocation.

1 (4) Investors in a qualified Montana capital company
 2 are entitled to the tax credits provided for in subsection
 3 (5). Funds invested in a certified company prior to
 4 designation as a qualified Montana capital company may, at
 5 the discretion of the investor, be placed in an escrow
 6 account in a Montana financial institution pending
 7 designation of the company as a qualified Montana capital
 8 company.

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

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

1 taxpayer's tax liability for the taxable year, the amount of
 2 the credit which exceeds the tax liability may be carried
 3 back or carried forward in the following manner:

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

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

15 (7) The tax credit provided for in this section is
 16 available only to those taxpayers who invest in a qualified
 17 Montana capital company within 4 years of July 1, 1987.

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

1 taxpayer that obtains the maximum \$150,000 credit may not
 2 obtain additional credits through investments by wholly
 3 owned subsidiaries or affiliates."

4 **Section 5.** Section 90-8-203, MCA, is amended to read:

5 "90-8-203. No recapture -- unqualified investments. If
 6 ~~if~~ Except as provided in subsection (2) if IF the amount
 7 invested by a taxpayer in a qualified Montana capital
 8 company is not used by the company for qualified investments
 9 as provided in 90-8-301, the taxpayer is not subject to a
 10 recapture provision for any tax credit claimed by him but
 11 the company INVESTOR is subject to the penalty provided for
 12 in 90-8-301(3).

13 ~~(2) If the amount invested by a taxpayer for which tax~~
 14 ~~credits were claimed is never risked by the capital company~~
 15 ~~for qualified investments as provided in 90-8-301, the tax~~
 16 ~~credit received for that amount of the investment returned~~
 17 ~~to the investor or subsequent entities having an interest in~~
 18 ~~that investment is subject to recapture by the department of~~
 19 ~~revenue from the taxpayer claiming the tax credit."~~

20 **Section 6.** 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 department and, in
 6 the case of capital raised by a qualified Montana capital
 7 company under an amended application for additional tax
 8 credits filed after its initial designation as a qualified
 9 Montana capital company, at least 30% of its capital base
 10 raised through investments for which tax credits were taken
 11 within 3 years of the date on which the board department
 12 approves the amended 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 department and, in
 17 the case of capital raised by a qualified Montana capital
 18 company under an amended application for additional tax
 19 credits filed after its initial designation as a qualified
 20 Montana capital company, at least 50% of its capital base
 21 raised through investments for which tax credits were taken
 22 within 4 years of the date on which the board department
 23 approves the amended 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 department and, in
 3 the case of capital raised by a qualified Montana capital
 4 company under an amended application for additional tax
 5 credits filed after its initial designation as a qualified
 6 Montana capital company, at least 70% of its capital base
 7 raised through investments for which tax credits were taken
 8 within 5 years of the date on which the board department
 9 approves the amended application.

10 (2) Following each annual examination, the commissioner
 11 of--financial--institutions department shall notify the
 12 department of revenue of any companies that are not in
 13 compliance with this section.

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

1 (4) The department of revenue may grant an extension of
 2 time in which to make qualified investments pursuant to
 3 subsection (1) upon application by a capital company showing
 4 reasonable cause for an extension.

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

8 (6) AN A CAPITAL COMPANY MAY INVEST TAX CREDIT FUNDS IN
 9 AN existing profitable business may--be--financed-by-tax
 10 credit-funds-to-the-extent-that-the--funds--are ONLY IF A
 11 SUBSTANTIAL PORTION OF THE INVESTMENT IS TO BE used for
 12 expansion of the business. Only--that--portion--of--the
 13 financing--used--for--the--expansion--of--the--business--may--be
 14 included-in-meeting THE DEPARTMENT MAY LIMIT THE AMOUNT OF
 15 THE INVESTMENT TO BE COUNTED TOWARD the investment
 16 percentage criteria outlined SET FORTH in this section TO
 17 THE AMOUNT TO BE USED FOR THE EXPANSION OF THE BUSINESS."

18 **Section 7.** Section 90-8-303, MCA, is amended to read:
 19 "90-8-303. Conflict of interest. (1) ~~(a) The members of~~
 20 ~~the--board, the commissioner of financial institutions, or a~~
 21 ~~bank examiner may not have a monetary interest in or be a~~
 22 ~~borrower--from--any Montana capital company, either directly~~
 23 ~~or indirectly.~~
 24 ~~(b) These restrictions do not prohibit the board,~~
 25 ~~acting as a whole, from purchasing debentures issued by a~~

1 ~~Montana-capital-company-~~ A capital company may not invest in
 2 any business venture in which the combined ownership of the
 3 business venture for all investors in the capital company
 4 exceeds 49% at the time of the investment decision.

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

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

10 "90-8-311. **Legislative review and oversight.** The board
 11 department shall report on an annual basis to the revenue
 12 oversight committee of the legislature concerning Montana
 13 capital companies."

14 **Section 9.** Section 90-8-312, MCA, is amended to read:

15 "90-8-312. **Investment reporting and recordkeeping.** (1)
 16 Each qualified Montana capital company shall report to the
 17 board department on a quarterly basis:

18 (a) the name of each investor in the qualified Montana
 19 capital company who has applied for a tax credit;

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

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

23 (d) any other information determined by the department.

24 (2) The board department shall provide the information
 25 contained in subsection (1) to the department of revenue on

1 a quarterly basis.

2 (3) The board department shall provide each investor in
 3 a qualified Montana capital company with a certificate
 4 authorizing the tax credit, and the certificate shall be
 5 submitted with each tax return requesting a credit under
 6 90-8-202.

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

13 (5) Each qualified Montana capital company shall report
 14 to the department all proposed investments for which tax
 15 credits will be claimed. The TO BE MADE FROM ITS CAPITAL
 16 BASE. THE CAPITAL COMPANY MAY NOT MAKE THE PROPOSED
 17 INVESTMENT UNLESS THE department shall-determine DETERMINES,
 18 WITHIN 10 DAYS OF SUBMISSION OF A REPORT SATISFACTORY TO THE
 19 DEPARTMENT, whether THAT the proposed investment is
 20 qualified under this chapter before-the-investment-is-made."

21 **Section 10.** Section 90-8-313, MCA, is amended to read:

22 "90-8-313. **Examination.** (1) At least once a year the
 23 ~~bank-examiners-of~~ the department of-commerce shall examine
 24 the books and affairs of each Montana capital company. The
 25 examination must address the methods of operation and

1 conduct of the business of the Montana capital company to
 2 determine if the company is abiding by the purposes of this
 3 chapter and that the funds received by the company have been
 4 invested within the time limits required for a qualified
 5 Montana capital company in 90-8-301.

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

15 (3) The cost of the annual review must be paid by each
 16 Montana capital company in accordance with reasonable fees
 17 assessed by the department."

18 **Section 11.** Section 90-8-321, MCA, is amended to read:

19 "90-8-321. Decertification. (1) If the examination
 20 conducted pursuant to 90-8-313 discloses that a Montana
 21 capital company is not in compliance with the provisions of
 22 this chapter, the department of-commerce may exercise any of
 23 the powers with regard to banks granted in Title 32, chapter
 24 1, part 5, and may seize the assets of the company and
 25 liquidate it. In the event of liquidation of the assets, any

1 penalty imposed pursuant to 90-8-301 shall be included in
 2 the claims to be paid.

3 (2) If in the discretion of the department of-commerce
 4 the action allowed under subsection (1) is not required to
 5 protect the company's investors, the department may place
 6 the company on notice that it will lose its certification as
 7 a Montana capital company within a specified period of time
 8 if the company does not come into compliance with the
 9 provisions of this chapter. The department shall
 10 automatically decertify a Montana capital company that is
 11 assessed a penalty under 90-8-301(3).

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

17 (4) A Montana capital company may apply to the
 18 department for decertification.

19 (5) The department has the power to decertify any
 20 capital company not in compliance with this chapter.

21 (6) The department shall decertify a capital company
 22 once the capital company has met the investment schedule
 23 outlined in 90-8-301 and over 70% of the capital base of the
 24 capital company has been invested in qualified investments
 25 AND AFTER AT LEAST 5 YEARS HAVE ELAPSED SINCE THE DATE THE

1 CAPITAL COMPANY WAS QUALIFIED."

2 NEW SECTION. Section 12. Fees. The department may
3 charge fees commensurate with costs for the administration
4 of this chapter. FEES FOR THE ADMINISTRATION OF THIS CHAPTER
5 MUST BE ASSESSED TO EACH QUALIFIED MONTANA CAPITAL COMPANY
6 IN A RATIO PROPORTIONATE TO THE TAX CREDITS ALLOCATED TO THE
7 CAPITAL COMPANY DIVIDED BY THE TOTAL TAX CREDITS ALLOCATED
8 TO ALL QUALIFIED MONTANA CAPITAL COMPANIES.

9 NEW SECTION. Section 13. Codification instruction.
10 [Section 12] is intended to be codified as an integral part
11 of Title 90, chapter 8, and the provisions of Title 90,
12 chapter 8, apply to [section 12].

13 NEW SECTION. Section 14. Effective date. [This act] is
14 effective on passage and approval.

-End-

1 HOUSE BILL NO. 901

2 INTRODUCED BY BARDANOUE, B. BROWN, CRIPPEN, KENNEDY,

3 SVRCEK, HARPER, BRADLEY, KIMBERLEY, PAVLOVICH, MERCER,

4 MAZUREK, VAN VALKENBURG, WILLIAMS, JACOBSON, HALLIGAN

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE

7 MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF

8 THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE

9 DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS

10 UNDER THE ACT; PROVIDING FOR RECAPTURE OF TAX CREDITS UNDER

11 THE ACT THAT INVESTORS ARE SUBJECT TO THE PENALTY FOR

12 FAILURE TO MAKE QUALIFIED INVESTMENTS; PROVIDING FOR A

13 LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT

14 DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT

15 INFORMATION; PROVIDING FOR DECERTIFICATION FOR

16 NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN

17 INVESTMENT SCHEDULE AND, HAVING 70 PERCENT OF THE INVESTMENT

18 IN A QUALIFIED INVESTMENT, AND HAVING BEEN A QUALIFIED

19 MONTANA CAPITAL COMPANY FOR AT LEAST 5 YEARS FROM THE DATE

20 OF QUALIFICATION; PROVIDING THE DEPARTMENT OF COMMERCE WITH

21 THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT;

22 AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202,

23 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313,

24 AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE

25 DATE."

1

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

3 Section 1. Section 90-8-104, MCA, is amended to read:

4 "90-8-104. Definitions. As used in this chapter, unless

5 the context requires otherwise, the following definitions

6 apply:

7 ~~{1}--"Board"--means--the--board--of--investments--provided--for~~

8 ~~in--2--15--1000;~~

9 {2}{1} "Capital base" means equity capital raised by a

10 certified Montana capital company for which tax credits were

11 claimed under this chapter.

12 {3}{2} "Certified Montana capital company" means:

13 (a) a development credit corporation created pursuant

14 to Title 32, chapter 4; or

15 (b) a profit or nonprofit entity organized and existing

16 under the laws of Montana, created for the purpose of making

17 venture or risk capital available for qualified investments

18 and that has been certified by the board department.

19 {3} "Department" means the department of commerce.

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

21 located or principally based within Montana.

22 (5) "Qualified investment" means an investment that

23 does not violate any of the provisions of this chapter, does

24 not displace other sources of equity or debt financing that

25 are available to the project, and is:

1 (a) a debt or equity financing of a Montana business
 2 that meets both of the following criteria:
 3 (i) the business is engaged in one or more of the
 4 following activities:
 5 (A) manufacturing;
 6 (B) agricultural, fishery, or forestry production and
 7 processing;
 8 (C) mineral production and processing, except for
 9 conventional oil and gas exploration;
 10 (D) recognized nonfossil forms of energy generation as
 11 defined in 15-32-102;
 12 (E) transportation;
 13 (F) research and development of products or processes
 14 associated with any of the activities enumerated in (A)
 15 through (E) above;
 16 (G) wholesale or retail distribution activities for
 17 which products produced in Montana comprise 50% or more of
 18 the gross sales receipts;
 19 (H) any activity conducted in the state for which 50%
 20 or more of the gross receipts are derived from the sale of
 21 products or services outside Montana; and
 22 (I) tourism; and
 23 (ii) the business is a small business as defined in
 24 rules adopted by the board department; or
 25 (b) a debt or equity financing of a business outside

1 Montana if such investment is likely to produce a qualified
 2 investment in Montana, as long as such investment does not
 3 exceed 25% of the capital base of the capital company; OR
 4 (C) A DEBT OR EQUITY FINANCING OF AN ACQUISITION OF A
 5 NON-MONTANA BUSINESS THAT WILL BE RELOCATED IN MONTANA.
 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 **Section 2.** Section 90-8-105, MCA, is amended to read:

12 **"90-8-105. Rulemaking.** The board department may adopt
 13 rules to implement the provisions of this chapter."

14 **Section 3.** Section 90-8-201, MCA, is amended to read:

15 **"90-8-201. Certification of Montana capital companies.**

16 (1) From time to time the board department shall certify
 17 Montana capital companies. A company seeking to be certified
 18 as a Montana capital company must make written application
 19 to the board department on forms provided by the board
 20 department. The application must contain the information
 21 required by 90-8-204 and such other information as the board
 22 department requires. The application and certificate must
 23 specify the level of capitalization that the company expects
 24 to qualify for the tax credits provided for in 90-8-202.

25 (2) The application must show that the applicant's

1 purpose is to increase the general economic welfare of the
2 state of Montana by:

3 (a) making investment capital available to businesses
4 in Montana; and

5 (b) allowing for investment of up to 25% of its capital
6 base in businesses outside Montana if there is a substantial
7 likelihood that such investment will produce a qualified
8 investment in Montana.

9 (3) Certifiable applicants include but are not limited
10 to local and community development corporations, small
11 business administration 503 corporations, and small business
12 investment companies.

13 (4) Certification is a prerequisite to and must be
14 completed before seeking designation as a qualified capital
15 company."

16 **Section 4.** Section 90-8-202, MCA, is amended to read:

17 ***90-8-202. Designation of qualified Montana capital**
18 **companies -- tax credit.** (1) The board department shall
19 designate as qualified Montana capital companies those
20 certified companies that have been privately capitalized at
21 a minimum level of \$200,000. A certified company seeking
22 designation as a qualified Montana capital company must make
23 written application to the board department on forms
24 provided by the board department. The application must
25 contain the information required by 90-8-204 and such other

1 information as the board department requires.

2 (2) (a) The total amount of tax credits authorized for
3 a single qualified company may not exceed \$1,500,000. In the
4 event the capitalization of the company is later increased,
5 the company may apply for authorization of additional tax
6 credits within the foregoing limitation.

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

21 (3) The credits shall be allocated to qualified
22 companies in the order that completed applications for
23 designation as qualified capital companies are received by
24 the board department, and the board department shall certify
25 to each such company its appropriate allocation.

1 (4) Investors in a qualified Montana capital company
 2 are entitled to the tax credits provided for in subsection
 3 (5). Funds invested in a certified company prior to
 4 designation as a qualified Montana capital company may, at
 5 the discretion of the investor, be placed in an escrow
 6 account in a Montana financial institution pending
 7 designation of the company as a qualified Montana capital
 8 company.

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

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

1 taxpayer's tax liability for the taxable year, the amount of
 2 the credit which exceeds the tax liability may be carried
 3 back or carried forward in the following manner:

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

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

15 (7) The tax credit provided for in this section is
 16 available only to those taxpayers who invest in a qualified
 17 Montana capital company within 4 years of July 1, 1987.

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

1 taxpayer that obtains the maximum \$150,000 credit may not
 2 obtain additional credits through investments by wholly
 3 owned subsidiaries or affiliates."

4 **Section 5.** Section 90-8-203, MCA, is amended to read:

5 "90-8-203. No recapture -- unqualified investments. ~~if~~
 6 ~~(f) Except as provided in subsection (2), if~~ IF the amount
 7 invested by a taxpayer in a qualified Montana capital
 8 company is not used by the company for qualified investments
 9 as provided in 90-8-301, the taxpayer is not subject to a
 10 recapture provision for any tax credit claimed by him but
 11 the company INVESTOR is subject to the penalty provided for
 12 in 90-8-301(3).

13 ~~{2}--if--the--amount--invested--by--a--taxpayer--for--which--tax~~
 14 ~~credits--were--claimed--is--never--risked--by--the--capital--company~~
 15 ~~for--qualified--investments--as--provided--in--90-8-301;--the--tax~~
 16 ~~credit--received--for--that--amount--of--the--investment--returned~~
 17 ~~to--the--investor--or--subsequent--entities--having--an--interest--in~~
 18 ~~that--investment--is--subject--to--recapture--by--the--department--of~~
 19 ~~revenue--from--the--taxpayer--claiming--the--tax--credit;."~~

20 **Section 6.** 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 department and, in
 6 the case of capital raised by a qualified Montana capital
 7 company under an amended application for additional tax
 8 credits filed after its initial designation as a qualified
 9 Montana capital company, at least 30% of its capital base
 10 raised through investments for which tax credits were taken
 11 within 3 years of the date on which the board department
 12 approves the amended 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 department and, in
 17 the case of capital raised by a qualified Montana capital
 18 company under an amended application for additional tax
 19 credits filed after its initial designation as a qualified
 20 Montana capital company, at least 50% of its capital base
 21 raised through investments for which tax credits were taken
 22 within 4 years of the date on which the board department
 23 approves the amended 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 department and, in
 3 the case of capital raised by a qualified Montana capital
 4 company under an amended application for additional tax
 5 credits filed after its initial designation as a qualified
 6 Montana capital company, at least 70% of its capital base
 7 raised through investments for which tax credits were taken
 8 within 5 years of the date on which the board department
 9 approves the amended application.

10 (2) Following each annual examination, the commissioner
 11 ~~of--financial--institutions~~ department shall notify the
 12 department of revenue of any companies that are not in
 13 compliance with this section.

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

1 (4) The department of revenue may grant an extension of
 2 time in which to make qualified investments pursuant to
 3 subsection (1) upon application by a capital company showing
 4 reasonable cause for an extension.

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

8 (6) AN A CAPITAL COMPANY MAY INVEST TAX CREDIT FUNDS IN
 9 AN existing profitable business may--be--financed-by-tax
 10 credit-funds-to-the-extent-that-the--funds--are ONLY IF A
 11 SUBSTANTIAL PORTION OF THE INVESTMENT IS TO BE used for
 12 expansion of the business. Only--that--portion--of--the
 13 financing--used--for--the--expansion--of--the--business--may--be
 14 included-in-meeting THE DEPARTMENT MAY LIMIT THE AMOUNT OF
 15 THE INVESTMENT TO BE COUNTED TOWARD the investment
 16 percentage criteria outlined SET FORTH in this section TO
 17 THE AMOUNT TO BE USED FOR THE EXPANSION OF THE BUSINESS."

18 **Section 7.** Section 90-8-303, MCA, is amended to read:

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

24 ~~(b)--These--restrictions--do--not--prohibit--the--board,~~
 25 ~~acting-as-a-whole,-from-purchasing-debentures--issued--by--a~~

1 ~~Montana-capital-company. A capital company may not invest in~~
 2 ~~any business venture in which the combined ownership of the~~
 3 ~~business venture for all investors in the capital company~~
 4 ~~exceeds 49% at the time of the investment decision.~~

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

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

10 "90-8-311. Legislative review and oversight. The board
 11 department shall report on an annual basis to the revenue
 12 oversight committee of the legislature concerning Montana
 13 capital companies."

14 **Section 9.** Section 90-8-312, MCA, is amended to read:

15 "90-8-312. Investment reporting and recordkeeping. (1)
 16 Each qualified Montana capital company shall report to the
 17 board department on a quarterly basis:

18 (a) the name of each investor in the qualified Montana
 19 capital company who has applied for a tax credit;

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

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

23 (d) any other information determined by the department.

24 (2) The board department shall provide the information
 25 contained in subsection (1) to the department of revenue on

1 a quarterly basis.

2 (3) The board department shall provide each investor in
 3 a qualified Montana capital company with a certificate
 4 authorizing the tax credit, and the certificate shall be
 5 submitted with each tax return requesting a credit under
 6 90-8-202.

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

13 (5) Each qualified Montana capital company shall report
 14 to the department all proposed investments for which tax
 15 credits will be claimed. The TO BE MADE FROM ITS CAPITAL
 16 BASE. THE CAPITAL COMPANY MAY NOT MAKE THE PROPOSED
 17 INVESTMENT UNLESS THE department shall-determine DETERMINES,
 18 WITHIN 10 DAYS OF SUBMISSION OF A REPORT SATISFACTORY TO THE
 19 DEPARTMENT, whether THAT the proposed investment is
 20 qualified under this chapter before-the-investment-is-made."

21 **Section 10.** Section 90-8-313, MCA, is amended to read:

22 "90-8-313. Examination. (1) At least once a year the
 23 bank-examiners-of the department of-commerce shall examine
 24 the books and affairs of each Montana capital company. The
 25 examination must address the methods of operation and

1 conduct of the business of the Montana capital company to
2 determine if the company is abiding by the purposes of this
3 chapter and that the funds received by the company have been
4 invested within the time limits required for a qualified
5 Montana capital company in 90-8-301.

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

15 (3) The cost of the annual review must be paid by each
16 Montana capital company in accordance with reasonable fees
17 assessed by the department."

18 **Section 11.** Section 90-8-321, MCA, is amended to read:

19 "90-8-321. Decertification. (1) If the examination
20 conducted pursuant to 90-8-313 discloses that a Montana
21 capital company is not in compliance with the provisions of
22 this chapter, the department of-commerce may exercise any of
23 the powers with regard to banks granted in Title 32, chapter
24 1, part 5, and may seize the assets of the company and
25 liquidate it. In the event of liquidation of the assets, any

1 penalty imposed pursuant to 90-8-301 shall be included in
2 the claims to be paid.

3 (2) If in the discretion of the department of-commerce
4 the action allowed under subsection (1) is not required to
5 protect the company's investors, the department may place
6 the company on notice that it will lose its certification as
7 a Montana capital company within a specified period of time
8 if the company does not come into compliance with the
9 provisions of this chapter. The department shall
10 automatically decertify a Montana capital company that is
11 assessed a penalty under 90-8-301(3).

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

17 (4) A Montana capital company may apply to the
18 department for decertification.

19 (5) The department has the power to decertify any
20 capital company not in compliance with this chapter.

21 (6) The department shall decertify a capital company
22 once the capital company has met the investment schedule
23 outlined in 90-8-301 and over 70% of the capital base of the
24 capital company has been invested in qualified investments
25 AND AFTER AT LEAST 5 YEARS HAVE ELAPSED SINCE THE DATE THE

1 CAPITAL COMPANY WAS QUALIFIED."

2 NEW SECTION. Section 12. Fees. The department may
3 charge fees commensurate with costs for the administration
4 of this chapter. FEES FOR THE ADMINISTRATION OF THIS CHAPTER
5 MUST BE ASSESSED TO EACH QUALIFIED MONTANA CAPITAL COMPANY
6 IN A RATIO PROPORTIONATE TO THE TAX CREDITS ALLOCATED TO THE
7 CAPITAL COMPANY DIVIDED BY THE TOTAL TAX CREDITS ALLOCATED
8 TO ALL QUALIFIED MONTANA CAPITAL COMPANIES.

9 NEW SECTION. Section 13. Codification instruction.
10 [Section 12] is intended to be codified as an integral part
11 of Title 90, chapter 8, and the provisions of Title 90,
12 chapter 8, apply to [section 12].

13 NEW SECTION. Section 14. Effective date. [This act] is
14 effective on passage and approval.

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
April 5, 1991

Page 2 of 2
April 5, 1991

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 901 (third reading copy -- blue), respectfully report that House Bill No. 901 be amended and as so amended be concurred in:

1. Title, line 11.

Strike: "THE"

Insert: "A"

Following: "PENALTY"

Insert: ", UNDER CERTAIN CONDITIONS,"

2. Page 2, line 25.

Following: "Project"

Insert: "unless the department determines that the investment furthers the purposes of this chapter"

3. Page 9, line 5.

Following: "investments"

Insert: "-- penalty"

4. Page 9, line 6.

Following: "~~if~~"

Insert: "(1)"

5. Page 9, line 11.

Strike: "INVESTOR"

Insert: "company"

6. Page 9.

Following: line 19

Insert: "(2) If a capital company does not invest its capital base in accordance with 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distributed funds a penalty in an amount not to exceed the lesser of:

(a) the amount of the tax credit received by the original investor; or

(b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment. Dividends or distributions made in accordance with applicable law may not be included in the amount specified in this subsection (b) unless the capital company has not invested its capital base in accordance with 90-8-301."

7. Page 11, line 14.

Strike: "INVESTORS IN A"

Insert: "A"

8. Page 11, line 22.

Strike: "INVESTORS OR"

9. Page 17.

Following: line 8

Insert: "NEW SECTION. Section 13. Coordination instruction. If House Bill No. 863 is passed and approved and if it contains new language referring to the board, defined as the board of investments, then the code commissioner is instructed to substitute the term "department", defined as the department of commerce, for the term "board" in House Bill No. 863."

Renumber: subsequent sections

Signed: _____

Mike Halligan, Chairman

4-5-91
M. Coord.

SB 4-5 3:40
Sec. of Senate

HOUSE BILL NO. 901

INTRODUCED BY BARDANOUE, B. BROWN, CRIPPEN, KENNEDY,
SVRCEK, HARPER, BRADLEY, KIMBERLEY, PAVLOVICH, MERCER,
MAZUREK, VAN VALKENBURG, WILLIAMS, JACOBSON, HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE MONTANA CAPITAL COMPANY ACT; TRANSFERRING ADMINISTRATION OF THE ACT TO THE DEPARTMENT OF COMMERCE; EXPANDING THE DEFINITION OF QUALIFIED INVESTMENT; LIMITING TAX CREDITS UNDER THE ACT; PROVIDING FOR RECAPTURE OF TAX CREDITS UNDER THE ACT THAT INVESTORS ARE SUBJECT TO THE A PENALTY, UNDER CERTAIN CONDITIONS, FOR FAILURE TO MAKE QUALIFIED INVESTMENTS; PROVIDING FOR A LIMITATION ON INVESTMENTS TO PROMOTE DILIGENCE IN INVESTMENT DECISIONS; PROVIDING THE DEPARTMENT WITH PROPOSED INVESTMENT INFORMATION; PROVIDING FOR DECERTIFICATION FOR NONCOMPLIANCE; PROVIDING FOR DECERTIFICATION UPON MEETING AN INVESTMENT SCHEDULE AND, HAVING 70 PERCENT OF THE INVESTMENT IN A QUALIFIED INVESTMENT, AND HAVING BEEN A QUALIFIED MONTANA CAPITAL COMPANY FOR AT LEAST 5 YEARS FROM THE DATE OF QUALIFICATION; PROVIDING THE DEPARTMENT OF COMMERCE WITH THE AUTHORITY TO CHARGE FEES FOR ADMINISTRATION OF THE ACT; AMENDING SECTIONS 90-8-104, 90-8-105, 90-8-201, 90-8-202, 90-8-203, 90-8-301, 90-8-303, 90-8-311, 90-8-312, 90-8-313, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-8-104, MCA, is amended to read:

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

~~{1}--"Board" means the board of investments provided for in 2-15-1808.~~

{2}(1) "Capital base" means equity capital raised by a certified Montana capital company for which tax credits were claimed under this chapter.

{3}(2) "Certified Montana capital company" means:

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

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

{3} (3) "Department" means the department of commerce.

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

(5) "Qualified investment" means an investment that does not violate any of the provisions of this chapter, does not displace other sources of equity or debt financing that are available to the project UNLESS THE DEPARTMENT

1 DETERMINES THAT THE INVESTMENT FURTHERS THE PURPOSES OF THIS
 2 CHAPTER, and is:
 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 department; 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; OR
 6 (C) A DEBT OR EQUITY FINANCING OF AN ACQUISITION OF A
 7 NON-MONTANA BUSINESS THAT WILL BE RELOCATED IN MONTANA.
 8 (6) "Qualified Montana capital company" means a
 9 certified Montana capital company that has been designated a
 10 qualified capital company under the provisions of 90-8-202
 11 so that investors in the company may receive the tax credits
 12 authorized in 90-8-202."
 13 **Section 2.** Section 90-8-105, MCA, is amended to read:
 14 "90-8-105. Rulemaking. The board department may adopt
 15 rules to implement the provisions of this chapter."
 16 **Section 3.** Section 90-8-201, MCA, is amended to read:
 17 "90-8-201. Certification of Montana capital companies.
 18 (1) From time to time the board department shall certify
 19 Montana capital companies. A company seeking to be certified
 20 as a Montana capital company must make written application
 21 to the board department on forms provided by the board
 22 department. The application must contain the information
 23 required by 90-8-204 and such other information as the board
 24 department requires. The application and certificate must
 25 specify the level of capitalization that the company expects

1 to qualify for the tax credits provided for in 90-8-202.

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

5 (a) making investment capital available to businesses
6 in Montana; and

7 (b) allowing for investment of up to 25% of its capital
8 base in businesses outside Montana if there is a substantial
9 likelihood that such investment will produce a qualified
10 investment in Montana.

11 (3) Certifiable applicants include but are not limited
12 to local and community development corporations, small
13 business administration 503 corporations, and small business
14 investment companies.

15 (4) Certification is a prerequisite to and must be
16 completed before seeking designation as a qualified capital
17 company."

18 **Section 4.** Section 90-8-202, MCA, is amended to read:

19 "90-8-202. Designation of qualified Montana capital
20 companies -- tax credit. (1) The board department shall
21 designate as qualified Montana capital companies those
22 certified companies that have been privately capitalized at
23 a minimum level of \$200,000. A certified company seeking
24 designation as a qualified Montana capital company must make
25 written application to the board department on Forms

1 provided by the board department. The application must
2 contain the information required by 90-8-204 and such other
3 information as the board department requires.

4 (2) (a) The total amount of tax credits authorized for
5 a single qualified company may not exceed \$1,500,000. In the
6 event the capitalization of the company is later increased,
7 the company may apply for authorization of additional tax
8 credits within 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) The credits shall be allocated to qualified
24 companies in the order that completed applications for
25 designation as qualified capital companies are received by

1 the board department, and the board department shall certify
2 to each such company its appropriate allocation.

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

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

23 (6) The tax credit allowed under subsection (5) is to
24 be credited against the taxpayer's income tax liability or
25 coal severance tax liability for the taxable year in which

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

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

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

17 (7) The tax credit provided for in this section is
18 available only to those taxpayers who invest in a qualified
19 Montana capital company within 4 years of July 1, 1987.

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

1 more than \$150,000 in credits as an individual and as the
2 partnership or small business corporation. A corporate
3 taxpayer that obtains the maximum \$150,000 credit may not
4 obtain additional credits through investments by wholly
5 owned subsidiaries or affiliates."

6 **Section 5.** Section 90-8-203, MCA, is amended to read:

7 ***90-8-203.** No recapture -- unqualified investments --
8 ~~PENALTY. If (1) (i) Except as provided in subsection (2), if~~
9 ~~IF~~ the amount invested by a taxpayer in a qualified Montana
10 capital company is not used by the company for qualified
11 investments as provided in 90-8-301, the taxpayer is not
12 subject to a recapture provision for any tax credit claimed
13 by him but the company INVESTOR COMPANY is subject to the
14 penalty provided for in 90-8-301(3).

15 ~~(2) -- if the amount invested by a taxpayer for which tax~~
16 ~~credits were claimed is never risked by the capital company~~
17 ~~for qualified investments as provided in 90-8-301, the tax~~
18 ~~credit received for that amount of the investment returned~~
19 ~~to the investor or subsequent entities having an interest in~~
20 ~~that investment is subject to recapture by the department of~~
21 ~~revenue from the taxpayer claiming the tax credit;~~

22 (2) IF A CAPITAL COMPANY DOES NOT INVEST ITS CAPITAL
23 BASE IN ACCORDANCE WITH 90-8-301 AND HAS PAID OR OTHERWISE
24 DISTRIBUTED FUNDS TO AN INVESTOR OR SUBSEQUENT HOLDER OF THE
25 INVESTMENT, THE DEPARTMENT OF REVENUE MAY RECOVER FROM THE

1 PERSON RECEIVING THE DISTRIBUTED FUNDS A PENALTY IN AN
2 AMOUNT NOT TO EXCEED THE LESSER OF:

3 (A) THE AMOUNT OF THE TAX CREDIT RECEIVED BY THE
4 ORIGINAL INVESTOR; OR

5 (B) THE AMOUNT OF FUNDS PAID OR OTHERWISE DISTRIBUTED
6 TO THE INVESTOR OR THE SUBSEQUENT HOLDER OF THE INVESTMENT.
7 DIVIDENDS OR DISTRIBUTIONS MADE IN ACCORDANCE WITH
8 APPLICABLE LAW MAY NOT BE INCLUDED IN THE AMOUNT SPECIFIED
9 IN THIS SUBSECTION (B) UNLESS THE CAPITAL COMPANY HAS NOT
10 INVESTED ITS CAPITAL BASE IN ACCORDANCE WITH 90-8-301."

11 **Section 6.** 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 department and, in
22 the case of capital raised by a qualified Montana capital
23 company under an amended application for additional tax
24 credits filed after its initial designation as a qualified
25 Montana capital company, at least 30% of its capital base

1 raised through investments for which tax credits were taken
2 within 3 years of the date on which the board department
3 approves the amended 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 department and, in
8 the case of capital raised by a qualified Montana capital
9 company under an amended application for additional tax
10 credits filed after its initial designation as a qualified
11 Montana capital company, at least 50% of its capital base
12 raised through investments for which tax credits were taken
13 within 4 years of the date on which the board department
14 approves the amended 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 department and, in
19 the case of capital raised by a qualified Montana capital
20 company under an amended application for additional tax
21 credits filed after its initial designation as a qualified
22 Montana capital company, at least 70% of its capital base
23 raised through investments for which tax credits were taken
24 within 5 years of the date on which the board department
25 approves the amended application.

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

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

17 (4) The department of revenue may grant an extension of
18 time in which to make qualified investments pursuant to
19 subsection (1) upon application by a capital company showing
20 reasonable cause for an extension.

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

24 (6) An A CAPITAL COMPANY MAY INVEST TAX CREDIT FUNDS IN
25 AN existing profitable business may--be--financed--by--tax

1 ~~credit--funds--to--the--extent--that--the--funds--are~~ ONLY IF A
 2 ~~SUBSTANTIAL PORTION OF THE INVESTMENT IS TO BE~~ used for
 3 ~~expansion of the business. Only--that--portion--of--the~~
 4 ~~financing--used--for--the--expansion--of--the--business--may--be~~
 5 ~~included--in--meeting~~ THE DEPARTMENT MAY LIMIT THE AMOUNT OF
 6 ~~THE INVESTMENT TO BE COUNTED TOWARD~~ the investment
 7 ~~percentage criteria outlined SET FORTH in this section TO~~
 8 ~~THE AMOUNT TO BE USED FOR THE EXPANSION OF THE BUSINESS."~~

9 **Section 7.** Section 90-8-303, MCA, is amended to read:

10 ~~"90-8-303. Conflict of interest. (1) (a) The members of~~
 11 ~~the board, the commissioner of financial institutions, or a~~
 12 ~~bank examiner may not have a monetary interest in or be a~~
 13 ~~borrower from any Montana capital company, either directly~~
 14 ~~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. A capital company may not invest in~~
 18 ~~any business venture in which the combined ownership of the~~
 19 ~~business venture for all investors in the capital company~~
 20 ~~exceeds 49% at the time of the investment decision.~~

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

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

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

5 **Section 9.** Section 90-8-312, MCA, is amended to read:

6 "90-8-312. Investment reporting and recordkeeping. (1)
 7 Each qualified Montana capital company shall report to the
 8 board department on a quarterly basis:

9 (a) the name of each investor in the qualified Montana
 10 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; and

14 (d) any other information determined by the department.

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

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

23 (4) Each qualified Montana capital company shall report
 24 to the board department on a quarterly basis all qualified
 25 investments that the company has made. The board department

1 shall share the information with the department of revenue,
2 in order that the provisions of 90-8-301 may be complied
3 with.

4 (5) Each qualified Montana capital company shall report
5 to the department all proposed investments for which tax
6 credits will be claimed. The TO BE MADE FROM ITS CAPITAL
7 BASE. THE CAPITAL COMPANY MAY NOT MAKE THE PROPOSED
8 INVESTMENT UNLESS THE department shall determine DETERMINES,
9 WITHIN 10 DAYS OF SUBMISSION OF A REPORT SATISFACTORY TO THE
10 DEPARTMENT, whether THAT the proposed investment is
11 qualified under this chapter before the investment is made."

12 **Section 10.** 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. The
16 examination must address the methods of operation and
17 conduct of the business of the Montana capital company to
18 determine if the company is abiding by the purposes of this
19 chapter and that the funds received by the company have been
20 invested within the time limits required for a qualified
21 Montana capital company in 90-8-301.

22 (2) The department of-commerce may examine under oath
23 any of the officers, directors, agents, employees, or
24 investors of a Montana capital company regarding the affairs
25 and business of the company. The department of-commerce may

1 issue subpoenas and administer oaths. Refusal to obey such a
2 subpoena may at once be reported to the district court of
3 the district in which the company is located, and the court
4 shall enforce obedience to the subpoena in the manner
5 provided by law.

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

9 **Section 11.** 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 is not in compliance with the provisions of
13 this chapter, the department of-commerce may exercise any of
14 the powers with regard to banks granted in Title 32, chapter
15 1, part 5, and may seize the assets of the company and
16 liquidate it. In the event of liquidation of the assets, any
17 penalty imposed pursuant to 90-8-301 shall be included in
18 the claims to be paid.

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

1 automatically decertify a Montana capital company that is
2 assessed a penalty under 90-8-301(3).

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 may apply to the
9 department for decertification.

10 (5) The department has the power to decertify any
11 capital company not in compliance with this chapter.

12 (6) The department shall decertify a capital company
13 once the capital company has met the investment schedule
14 outlined in 90-8-301 and over 70% of the capital base of the
15 capital company has been invested in qualified investments
16 AND AFTER AT LEAST 5 YEARS HAVE ELAPSED SINCE THE DATE THE
17 CAPITAL COMPANY WAS QUALIFIED."

18 NEW SECTION. Section 12. Fees. The department may
19 charge fees commensurate with costs for the administration
20 of this chapter. FEES FOR THE ADMINISTRATION OF THIS CHAPTER
21 MUST BE ASSESSED TO EACH QUALIFIED MONTANA CAPITAL COMPANY
22 IN A RATIO PROPORTIONATE TO THE TAX CREDITS ALLOCATED TO THE
23 CAPITAL COMPANY DIVIDED BY THE TOTAL TAX CREDITS ALLOCATED
24 TO ALL QUALIFIED MONTANA CAPITAL COMPANIES.

25 NEW SECTION. SECTION 13. COORDINATION INSTRUCTION. IF

1 HOUSE BILL NO. 863 IS PASSED AND APPROVED AND IF IT CONTAINS
2 NEW LANGUAGE REFERRING TO THE BOARD, DEFINED AS THE BOARD OF
3 INVESTMENTS, THEN THE CODE COMMISSIONER IS INSTRUCTED TO
4 SUBSTITUTE THE TERM "DEPARTMENT", DEFINED AS THE DEPARTMENT
5 OF COMMERCE, FOR THE TERM "BOARD" IN HOUSE BILL NO. 863.

6 NEW SECTION. Section 14. Codification instruction.
7 [Section 12] is intended to be codified as an integral part
8 of Title 90, chapter 8, and the provisions of Title 90,
9 chapter 8, apply to [section 12].

10 NEW SECTION. Section 15. Effective date. [This act] is
11 effective on passage and approval.

-End-