MINUTES OF THE MEETING
TAXATION COMMITTEE
MONTANA STATE SENATE

April 13, 1981

The 67th meeting of the committee was called to order at 8:00 a.m. in Room 415 of the State Capitol Building, Chairman Pat Goodover presiding.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 609:

"AN ACT TO PROVIDE A GRADUATED SCHEDULE FOR THE TAX RATE APPLICABLE TO IMPROVEMENTS ON REAL PROPERTY FOR NEW AND EXPANDING MANUFACTURING INDUSTRY; PROVIDING FOR LOCAL GOVERNMENT APPROVAL; AMENDING SECTION 15-6-134, MCA; PROVIDING AN EFFECTIVE DATE."

Senator McCallum took over the chair while Senator Goodover, District 22 Great Falls, presented the bill.

GOODOVER: The basic part of the bill is the new section starting on page 3 where there are definitions for new or expanding manufacturing industries and then new or expanding assessments. In the first 5 years improvements to property shall be taxed at 50% of taxable value. Each year thereafter the tax will be increased by 10% until the full taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of its taxable value. In order for a taxpayer to receive the tax benefits, the governing body of the affected county or the incorporated city or town must have approved by resolution the use of the schedule provided for in subsection 1 for its respective jurisdiction. The electors may end the tax benefits by majority vote at a general election, but the tax benefits may not be denied an industrial facility that previously received the benefits. The taxpayer must apply to the county assessor on a form provided by the DOR for the tax treatment allowed under subsection 1. The application by the taxpayer must first be approved by the governing body of the appropriate local taxing jurisdiction, and the governing body must indicate in its approval that the property of the applicant qualifies.

This is another effort to provide incentive for people to either begin or expand their operations in Montana to provide additional jobs, adding to the tax and economic base of the community.

PROPONENTS: John Lopach, Economic Growth Council of Great Falls; Forrest Boles, President Montana Chamber of Commerce; and Dave Goss, Billings Area Chamber of Commerce.

HAGER: Do you know if a construction permit is required anywhere in the county?

GRIBBLE: In 1979 the legislature made it possible for local jurisdictions to adopt a building code outside the counties. They stipulated if the counties didn't adopt the State building code the state would take over.

CRIPPEN: It refers to new or expanding industry. One of the problems this committee had with another bill from the House was this type of incentive, while great to get new businesses in, could very well place an undue economic burden on existing industry or business that has weathered the cycles and then is forced to compete with a new industry as far as property taxes are concerned. Have you any comments on that?

BOLES: It is always a question. As you might suppose, a good businessman recognizes the more activity he has in the area he will get his share of that piece of the action. A good example of that attitude is when the Outlaw Inn in Kalispell was built.

CRIPPEN: This pertains to manufacturing industry. What about a business that is employing new people?

BOLES: There is one other law that applies for an increase in the number of employees. If you increase by 30% you will get a tax credit.

LOPACH: This is to give an incentive to those who export products, making it possible for more retail businesses and service businesses to have customers. We probably amended this as manufacturing enterprise for that reason.

ELLIOTT: You are a member of the Economic Growth Council of Great Falls. What is the makeup?

LOPACH: It is a local development association which has 25 or so dues paying members. It is made up of city and county officials, and business and union interests in the Great Falls area. The purpose is to expand tax base in the area.

ELIOTT: You have made quite a few studies as to what induces people to come into an area?

LOPACH: Yes. I have looked over our area and the state to determine what Montana has.

ELIOTT: Taxes are rated quite low on the schedule. Is there a situation where taxes are inching up?

LOPACH: Our taxes average 86% of the national value. Tax abatements for an industry moving into a new area are fairly low. They have to look at labor pool, labor costs, costs of building, costs of land.

ECK: As far as procedure goes. It appears this would enable the county to make a decision on each case coming in. When a manufacturing plant gets to the point of applying for a permit,

they make a decision on that particular plant?

GOODOVER: County makes if it is in the county; city if in the city.

ECK: It appears if you are going to allow the electors to cancel that power of the county, it might be well to have hearings. I think they would take care of the problem of a manufacturing plant that would come in and maybe unfairly compete with an existing plant.

GOODOVER: My experience in working with city and county people in the 22 years in Great Falls and 10 years prior in Missoula, they are careful about how they come out with a resolution. They will set the date for a hearing to make sure they are headed in the right direction. There is always a good possibility of repercussions from the population if you don't do that.

ELLIOTT: I would like an explanation between what the law is on the books now and this bill.

LOPACH: There is an existing Montana code 15-6-135 which provides 73% reduction for property taxes for 3 years for industrial property. This law does not apply to industries located in Montana more than 3 years and therefore does not allow us to offer tax abatement to existing industries that are expanding. This law requires a DOR hearing whenever an industry will employ more than 100 people to determine whether there will be adverse impact on the community. The problem the industrial developer has is that he would like to offer a straight tax incentive to manufacturers who would like to locate there. We don't want to tell them they have to go through a DOR hearing to determine that we have an impact.

CRIPPEN: Have you compared HB 835 with the new provisions of 834? When you refer to the local taxing jurisdiction are you dealing with school taxes?

GOODOVER: This applies to the city or the county district. This is a beginning point, again to try and get something started on the books to give incentive to people because of the economy. If it gets one person to start a trend, it could snowball and do some good. The purpose is to get something to show we are interested in offering incentives for people trying to get a job. I would move that we concur in HB 609.

CRIPPEN: I have a problem with the jurisdiction definition.

NORMAN: I move that we continue with the hearing and act on the consideration of the bill later. The motion carried.

The hearing was closed on HB 609.

CONSIDERATION OF HOUSE BILL 834:

"AN ACT TO EXEMPT CERTAIN CAPITAL GAINS AND DIVIDEND INCOME FROM PERSONAL INCOME TAX OR CORPORATE TAX FOR INVESTMENTS IN SMALL BUSINESS INVESTMENT COMPANIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Senator Pat Goodover, District 22, Great Falls, co-sponsor of HB 834, said in its original form the bill was to provide tax credits for investment in small business. Montana has had only one that got off the ground--in Missoula years ago. SBIC availability in Montana now is limited. Originally it was wanted to set up regional areas. Now it allows an exemption for certain capital gains and dividend income from personal income tax or corporate tax for investment in small investment companies. The only benefit anyone gets now, as the bill is amended, is that capital gains are exempted. It doesn't give the incentive the original bill did. SBIC starting now will not make money to provide capital gains or dividends for quite a few years. Great Falls is in a position where they would like to get things started. Comments about SBIC potential will be from John Lopach.

PROPONENTS:

John Lopach, Economic Growth Council, Great Falls, said HB 834 is an effort to give to the communities in Montana, if they choose the right to create some economic development, tools that will allow them to expand their economic base. He presented copies of the Small Business Act to the committee, Attachments #1 and #2.

As individuals start up their businesses they lose their net worth because of development and marketing expenses. In my time with state government I have worked with the Governor's office and with small manufacturers through the state. The No. 1 cause of their being unable to expand is the lack of equity. Small business is organized to make available 20% of organizing capital to any one small business. In addition to the net worth of the business this allows them to attract loans from commercial banks. In Great Falls we would like to establish SBIC with 3/4 million, perhaps as high as 2.5 million dollars, by using the base from Anaconda to offer the businesses in the city an incentive. That will enable us to take advantage of the federal financing bank to issue debentures in the public market and bring back in another 3 or 4 million dollars to be used to augment the borrowing base in manufacturing companies. We had asked for legislation to consider a 50% tax credit. That was amended in House Taxation to back-end benefits, forgiveness of capital gains tax, and dividend income tax for investors and small companies.

Forrest Boles, Montana Chamber of Commerce; Dave Goss, Billings Area Chamber of Commerce; and Dennis Burr, Montana Taxpayers Association.

There were no opponents. Questions were called from the committee.

B. BROWN: On the fiscal note it indicates perhaps as much as 5.5 million dollars. I am curious to know whether amendments affect that note.

NORDTVEDT: That fiscal note is cancelled. If SBIC's are successful the state loses a tax revenue from the profits but those would be more than offset by a tax gain from successful business if they got started.

SEVERSON: Where you have taken out tax credit and only have capital gains. It looks like you need help on the front-end.

GOODOVER: They amended it to take out tax credits. It really doesn't have the advantages the original bill had.

ELLIOTT: What's the credit that was taken out?

GOODOVER: 50%. There were no further questions and Senator Goodover closed. This bill is to look at another avenue of providing some benefit to people in Montana who have money to invest in a small business corporation. It is venture capital on their part. They could get quicker rates elsewhere, but there are people who would like to invest in businesses.

The chair was turned back to Senator Goodover.

CONSIDERATION OF HOUSE BILL 835:

> "AN ACT TO GENERALLY CLARIFY AND REVISE THE LOCAL OPTION MOTOR FUEL TAX; ALLOWING THE DEPARTMENT OF REVENUE TO COLLECT THE TAX; ESTABLISHING FILING PROCEDURES FOR DISTRIBUTORS; ESTABLISHING PENALTY AND INTEREST FOR DELINQUENT TAX, ENFORCEMENT PROCEDURES, AND A STATUTE OF LIMITATIONS; AMENDING SECTIONS 7-14-301 THROUGH 7-14-304, MCA."

Representative O'Hara said last session the legislature gave authority to local governments to collect a 2% tax to be used to improve local roads. This hasn't been used because there is no way to collect the tax. This bill attempts to let the state collect the tax and the local government would pay them for the administrative cost of collection. One percent of the tax collected would go to the distributor for his cost.

PROPONENTS: Dan Mizner, Montana League of Cities and Towns; and John Clark, DOR.

OPPONENTS: John Brannbeck, Montana Intermountain Oil Marketers Association. The law on the books now is unworkable. Our Association worked with the last legislature and told them at that time we would be willing to work to iron out difficulties.

This leads to my testimony now. I would like to address my comments to HB 499 and 835 and, at the same time, Attachment #3, suggested amendments. He introduced Tex Pate, Doug Alexander, and Howard Wheatley and said they all would be happy to answer any questions the committee might have.

NORMAN: What's the position of your organization on including diesel fuel in the bill?

MIZNER: The original bill was the 1% tax. The intent was not to come back and ask for that in this bill. On the other pieces of legislation we will be testifying for the increases that cover diesel. We didn't think that it was a problem to do it with this one at this time. HB 499 is the bill. Fifteen percent of the people voting in the last election have to vote on this one.

McCALLUM: What's the difference? An initiative can be set up by 15% of the people voting but it doesn't say anything about an election. Can 15% impose this 1 or 2 percent per gallon of gas?

MANLEY: On page 3, where it says "revenue derived." Revenue derived from excess tax must be apportioned among the counties and municipalities. How will this work? On length of miles, number of people...?

MIZNER: On the cars registered inside and outside the city limits.

ECK: Under an initiative it is my understanding 15% present a petition to the governing body or refer it to the voters. Maybe this is flawed. What we might want is a referendum.

McCALLUM: I have no objection to them getting 1%, but the 15% bothers me.

HEALY: Billings and Yellowstone County had an election about raising gas tax about a year ago.

MIZNER: They started out to have one. The initiative was on the ballot. Mr. Stephen and I met with them and they called it off.

HEALY: On the handout from IOMA, if the communities actually impose this tax (refer to No. 5 and 6 on handout). In my county what will stop people from going to Walkerville to buy their gas?

GOODOVER: It would have to be a county election.

MANLEY: Has anybody figured out what this 1% would be for you people to keep the records for the state? What does that amount to?

SEVERSON: We have talked about auto fee bills. One of the things they have talked about is uniform fee so that everyone pays the same. Aren't you doing just the opposite here?

HAGER: With the cost of driving today, I doubt they will drive to another county to fill up.

CRIPPEN: Some of these objections I can understand, others I do not.

CLARK: I haven't had a chance to look at the amendments.

HEALY: Would you define a local government as county or city government?

GOODOVER: It could be city-wide or county-wide. In your particular case it would include everything except Walkerville.

CLARK: I don't think that would make a difference. It doesn't matter whether a municipality had its own government or not.

MANLEY: In the existing law that doesn't work, the city imposed this on themselves without it being in the county?

MIZNER: It has to be county-wide and the initiative has to be county-wide and the distribution is part to the county and part to the city.

MANLEY: It's qualified electors, not automobile drivers?

ANS: Yes.

CRIPPEN: When the taxation committee was considering this, had you had these objections this gentleman provided?

O'HARA: No. They did present objections but not these specific objections. It is my understanding that they were going to come to Senate Taxation and try to work it out.

BRANNBECK: We verbally listed our objections. We were under the impression the House was going to form a subcommittee to work it out equitably. That subcommittee was never formed.

O'HARA: Representative Mel Williams did head up a subcommittee for this bill. They couldn't come up with any better way of doing it. The local governments do need this. If you need to change it so it looks better, that's fine with me. I hope you pass this bill.

The hearing was closed for HB 835.

CONSIDERATION OF HOUSE BILL 499:

"AN ACT TO INCREASE THE GASOLINE LICENSE TAX, THE TAX ON DIESEL FUEL AND VOLATILE LIQUIDS, AND THE TAX ON SPECIAL

FUELS BY 3 CENTS AND TO REPEAL THE TEMPORARY ADDITIONAL TAX OF 1 CENT; AMENDING SECTIONS 15-70-204 AND 15-70-321, MCA; AND REPEALING CHAPTER 632, LAWS OF 1979; AND PROVIDING AN EFFECTIVE DATE."

Representative Oberg cited the many instances of dissatisfaction with the roads in the state, saying this bill is a good faith effort to help. By taxing the users we still are far short in getting money to fix the highways. Fuel tax revenues have increased about 50%; costs for maintenance by 200%. Because we divert the gas tax money to other places, this further cuts us down. Deferred maintenance is the most expensive maintenance we have. Secondary and bridge repair funds are going to be severely curtailed by Reagan block-grant cuts. I originally started with 2%. As the majority party amended the bill, it calls for 2% this year and 2% next year. On diesel it is 2% this year and 3% next year. I would like to see the Highway Patrol taken out of here. This bill has caused much controversy. The bill was sent here so that the Senate could do some work on it.

PROPONENTS: Larry Huss, Montana Automobile Association. It is necessary to find some other funding for the highway building process. We would like to see a long-time collection of funds so that we can build more roads. We think the user tax is no longer adequate.

Ben Havdahl, Montana Motor Carriers Association. It is our feeling that 8 million dollars proposed in 868 is not enough. We are not tied to the financial district law which we support wholeheartedly. One other point about 499, in looking at the projected figures and revenue in light of the budget the highway has proposed, using their numbers we come up with a figure at the end of 1983 that would have a cash reserve balance of between 28 and 31 million dollars. I would like to suggest this committee impose a uniform fee for fuels. We don't see any reason why the price differential should be there, and would like to see 2 cents on gas and 2 on diesel.

MIKE RICE: The transportation industry is a disaster. We have lost most of our rails, most of our air. Truckers are not staying around. We will be losing federal funds. We have to do something to save our rural communities. Less than half the communities in Montana have a rail system. The interstate system serves the U.S. mainly to go through Montana. We don't have any transportation plan in the State of Montana. Under our financial district planning situation, it is likely we will build roads that do not go anywhere. A cost benefit analysis has never been done.

By using 499 and 868 we could do something about this. I just don't like saying our highways are going to heck. HB868 does create a permanent reconstruction fund. We don't match funds--it's strictly for major reconstruction. It won't go into administration. If we combine 499 and 868 we have an

opportunity to finance a first-class construction project according to each individual county's needs. The Highway Department is proposing fund balances from 28 to 31 million dollars. HB 868 has an amendment in it to use 8 million dollars, still leaving much money in the highway account. With restrictions of putting a significant portion, 20 million dollars, into a reconstruction trust fund, we will support it.

Tex Pate, IOMA: We would like to concur with what has been said before. We think the increase is a little large. We think a 31-million-dollar surplus is too large and think the whole department should be examined carefully. Most jobbers complain about the waste that is seen in the section houses.

Bill Olsen, Manager of the Montana Contractors Association: Two years from now our whole concept has changed. As Mike Rice pointed out, the interstate is not so beneficial as the primary and secondary sections.

DAN MIZNER: I would like to change direction on this bill--an amendment for consideration. Everything you have heard about what's happening in the counties has been happening in the cities.

Six and one-half million dollars divided between county and the cities. That money today was buying 6.5 million dollars worth of roads leading to your places. Today it's buying 3 million dollars worth of construction, and in 1983 it will be buying about 1 million worth of construction. We think this bill could be looked at seriously to add another 6 1/2 million to local government for construction of county roads and city streets, not local government. If you don't do something, the only other way local government has to go is with an increase in taxes. The only thing the county or city governments can do is raise for inflation. On line 19, add 1% and earmark the 6 million dollars.

ECK: Dorothy Eck, District 39. I campaigned last year saying I would favor an increase in the gasoline tax. They don't like taxes but do like good streets, roads, and highways. I don't think we are going to get any substantial outcries if we enact an increase in taxes.

JOHN BRANNBECK: We support the bill with our amendment, and we like Dan Mizner's amendments.

MANLEY: I would like to go on record as an opponent to this bill. I believe there is a House-Senate resolution to study the highway department or their operation and it seems a bad way would be to put good money after bad.

ELLIOTT: As a consumer in one corner of the state, not on the main transportation line, saying we will charge accord-

ing to use of the product, it might not be quite as palatable as the other districts.

HUSS: I think a reality of the program under 868 is you will view it up until the 1983 session. It is a pilot program. The Department of Highways will pick an area and get it down under a cheaper mile limit. They can come back in 1983 and ask for revenues more than a users tax.

MANLEY: Can a continental truck pass through without buying gas? Why would a trucker make an effort not to buy in Montana?

HAVDAHL: Montana is a very big state and it's not all that likely a trucker could get all the way through without buying fuel. However, using a prorated mileage chart for use within the states, it doesn't have an impact as to where they buy the fuel.

RICE: We do this all the time. Fuel can be purchased cheaper in many different places. Fuel out of Canada is much cheaper. People who originate or terminate on the peripheral states will have bulk fuel.

CRIPPEN: Reference to HB 868--does it set up a plan? The bill isn't out of the House yet.

GOODOVER: Alternate sources of funds and have legislators bite the bullet. Why did the House amend out coal tax funds? We are talking about not touching that coal tax money.

OBERG: It was late in the session. Our committee was reluctant to do it.

McCALLUM: We passed the additional 1% gallon gas tax. I didn't follow up on how it was spent. I see an article where Mons Tiegen said he did not support a tax. How was it used?

HUSS: To fund the other half of the Highway Patrol cost.

McCALLUM: O'Hara's bill has additional points. Any objection to putting this together with 499? Would 835 together with 499 be a good combination?

OBERG: Representative O'Hara's bill doesn't ask for any money. He is just clarifying the present law.

CRIPPEN: What do you think about this?

BURR: We appeared in opposition to the bill in House committee, because the Taxpayer's Association was upset at using tax money to fund the Highway Patrol. The gas tax portion of funding the patrol has been cut in half. Think the overall need for taxpayers is construction funds for fixing the highways.

OCHSNER: We are talking about fuel-tax collection in both Montana statutes. That procedure is set out in the mileage report.

HAVDAHL: The procedure for collecting taxes is as I have described. If a trucker doesn't report, he doesn't pay the tax. What I am talking about is normal procedure.

The hearing was closed on HB 499. Representative Oberg said if we don't do anything we are facing deficit spending. If you can go home to your people and justify that, then you can go ahead.

DISPOSITION OF HB 609:

Senator McCallum moved HB 609 BE CONCURRED IN.

Someone asked about districts. John Clark said there is a conflict problem between the jurisdictions. It does affect tax base one way or another.

NORMAN: Suppose the city didn't want to give a tax break to a particular outfit coming into the city. What would keep them from going into the county?

CLARK: If the city didn't want to grant this, could the city come in and grant it? I am not sure if there is something in there that would say that couldn't be done.

GOODOVER: The bill says: "In order for a taxpayer to receive the tax benefits described in subsection (1), the governing body of the affected county or the incorporated city or town must have approved by resolution the use of the schedule provided in subsection (1) for its respective jurisdiction."

BURR: If a county wants to offer this type of tax break, the county will adopt a resolution. If a city wants to, the city will adopt a resolution. Then anyone who qualifies under that resolution will get the break. But the county will only be granting it in its relation to county taxes. City taxes are levied by the city.

CRIPPEN: The tax increment affects all taxes.

BURR: That is different. A tax increment district is designed differently than this.

ELLIOTT: I would like to make a substitute motion that would require that the improvement be $100,000 or more. This is to eliminate bookkeeping on a $5,000 improvement. I would ask Cort to look at the language on that.

ALLEN: We were asked to look up the definition of a synfuel plant. Synfuel plant would qualify here.

NORMAN: There was much discussion about the 15% to get this

before the council. Was that resolved?

TOWE: I question the mechanics. When it says each year thereafter it will be increased 10%. Is that 10 percentage points, or is that 10% of $50,000?

McCALLUM: It was meant that it would get to 100% in ten years.

TOWE: Ten percent of the taxable valuation each year. I would move the amendment.

Motion on the amendment passed.

ELLIOTT: What I want to achieve is to provide that the governing body may end the tax benefits by its majority. I want the wording "previously received" changed to "qualified for". Strike "electors" and put "governing body".

S. BROWN: We are entitled to meet for 90 days. It's at this point in the game we start doing stupid things. I don't see why we can't have one more meeting tomorrow and take up the bills we heard Saturday. I don't think we ought to rush through these things.

The discussion was ended on HB 609.

DISPOSITION OF HOUSE BILL 718:

McCALLUM: I would move that it BE CONCURRED IN, as amended.

TOWE: You have limited the application of this bill to those local government units.

CORT: Page 7, line 7, of the gray bill "any of" could be inserted.

TOWE: If you limit so that you don't have the full 63 districts eligible, then you have eliminated someone who is vitally interested.

ECK: When we went through this we went through for clarification. My problem is that I can look at this section where definitions are and see a small mine that maybe only employs 20 people and yet if those 20 move into a local community, they will be covered and that small mine will have to go through this entire process. I don't know that that was the intent. Input into the drafting was by the large operators.

TOWE: Page 7 of the gray bill: "or other special districts that provide" you can change the meaning by saying "any of". Then the question is what have you really intended?

GOODOVER: The intent was for front-end impacts. Those are guaranteed in writing, worked out with the local development organization, so that it does not have to be accepted unless

the developer agrees to whatever they want. I have seen you amend bills previously just to confuse them so that you have a foot in the door.

ECK: I would move the amendment, line 7, adding "any of" and after services change "enumerated" to "referred to." This makes it clear it is all services included in the catchall. If you include all of them you have the problem of it being too hard.

ELLIOTT: One point in the hearing was that we probably recognize we don't have a perfect bill. For example, on page 13, line 1, they talk about sewage water treatment. Does that include bringing it to the households or not? I think it is important we get this started and two years from now if there are points we need to get down we will.

GOODOVER: The companies agreed there probably wouldn't be that much mining in the next two years. But they agreed to pay all impact funds for those they have agreed to and that they have contracted.

TOWE: You have stated that the board is allocated for the Department of Commerce and won't take effect until July 1. You need something in there to handle that. I would like to know what your intent was on page 7 when you limited application of the bill substantially saying that now it would only apply to a mineral development that will employ at least 100 people. Now you have limited it to 99 people in the mine, 560 in the concentrator, and 1,000 in the refinery, with no law to affect them.

GOODOVER: We are putting in a front-end impact to protect governing bodies and 2 years down the line we can address and cover those areas.

TOWE: How is it your plan? To have the company do the planning?

GOODOVER: It is in concert with the companies. We again discussed that issue. They can either accept or deny.

TOWE: If the board doesn't go along, the local people will be able to take it to court and the companies can't mine until they are done.

ELLIOTT: I would move we amend Department of Commerce instead of DCA.

The former amendment proposed for line 7, page 7, inserting "any of" and following services" to strike "enumerated" and add "referred to". These amendments carried by a 7-6 roll call vote.

ECK: I think part B of the definition "large-scale mineral

development" should be worked on so that a small mine won't trigger the 15%.

MANLEY: The small miners sat here and testified for this bill. They were willing to come into it.

TOWE: There are other problems not addressed in your amendments. The pre-payment of taxes.

GOODOVER: It is subject to amendment 2 years from now.

TOWE: What you have done with that formula is you have provided the mining company will pre-pay the tax and the local governments will pay it back. I suspect the companies know it is unworkable and that they would like to see us pass this bill and they will have effectively blocked all hard-rock mining. I can make this bill workable very simply and easily. I would like to make a recommendation to this committee. I would like to pass consideration on this until I present amendments at the next meeting.

GOODOVER: Let's pass the bill in its present form, and let Senator Towe....

S. BROWN: I think out of fairness to all of us I want to see something go on the books. I have amendments that I wanted to present this morning.

MANLEY: My personal opinion is that we should pass this bill out--it will go back to the House in a conference committee.

S. BROWN: I have amendments, page 7, line 11. I move "or associated facility." What kind of impact would that create?

BENNETT: The construction phase. There are probably 200 people involved. Now there are about 105.

S. BROWN: We asked this question at the hearing. Someone indicated they thought this impact would be covered.

BENNETT: You are talking about associated facilities. SB 718 addresses the mining and construction phase.

GOODOVER: There were discussions on all these things in the subcommittee.

S. BROWN: I wasn't privy to those discussions. I am willing to wait for 24 hours to show the amendments that I have.

MANLEY: I would like to make a motion. Our tempers are getting short. I think we had better fold this up and come back tomorrow morning.

S. BROWN: I have one on the annual update of the plan and how a local government fares when they disagree with the plan.

I wanted to put in a provision if they disagreed with the plan they could get their attorney costs paid.

I vote to pass consideration.

It was voted to pass consideration.

The meeting was adjourned at 10:30 a.m.

Pat M. Goodover

PAT M. GOODOVER, Chairman

ROLL CALL

TAXATION COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date 4/13/81

NAME	PRESENT	ABSENT	EXCUSED
Goodover, Pat M., Chairman	✓		
McCallum, George, Vice	✓		
Brown, Bob	✓		
Brown, Steve	✓		
Crippen, Bruce D.	✓		
Eck, Dorothy	✓		
Elliott, Roger H.	✓		
Hager, Tom	✓		
Healy, John E. "Jack"	✓		
Manley, John E.	✓		
Norman, Bill	✓		
Ochsner, J. Donald	✓		
Severson, Elmer D.	✓		
Towe, Thomas E.	✓	late	

Each day attach to minutes.

SENATE Taxation COMMITTEE

House BILLS 499, 609, 834, 835

VISITORS' REGISTER

DATE Apr. 13, 198

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
John Bergenbeck	Mont Power Energy Serv	499 835	✓	✓
Jack Fate	Mont. I.C.M.A.	499 835	✓	✓
Jon Hernandez	Mont. I.C.M.A.	499 835	✓	✓
Frank Magone	Mont Taxpayers Assn	499 835	✓	
Joe Ross	Billings Chamber	609 834	✓	
F H Bales	Montana Chamber	609 834	✓ ✓	
Howard Whatley	Mont I.C.M.A.	499 835	✓	✓
Ben Havdahl	MT Motor Carriers	499	✓	
Mike Rice	Trego Systems, Inc Rice Truck Lines	499	✓	
Lorrie Klose	Mont Cons. Assoc	499	✓	
S. H. Olson	Mont. Contractors	499	✓	
Marianne Prewett	Stillwater PGM & Self	718	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

Attachment #1

NATIONAL ASSOCIATION OF SMALL BUSINESS INVESTMENT COMPANIES

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THE SMALL BUSINESS INVESTMENT COMPANY PROGRAM

What is An SBIC?

A Small Business Investment Company is a privately-organized, privately-capitalized and privately-managed source of venture capital for new and growing independent businesses. SBICs are licensed by the Small Business Administration, and comply with broad investment criteria established by the Small Business Investment Act of 1958 and subsequent SBA regulations. In return for providing equity capital, long-term loans, and management assistance exclusively to new and small businesses, SBICs are permitted to borrow funds from the Federal government at an interest rate slightly above the cost of money to the Federal Treasury.

Similar to SBICs are MESBICs, or Minority Enterprise Small Business Investment Companies. MESBICs utilize the SBIC format to help socially or economically disadvantaged entrepreneurs. Today, there are about 300 SBICs and 100 MESBICs with total assets of about $1.5 billion.

Why do we need SBICs?

To understand the significance of the SBIC program, one must be aware of the role of small business in our society. We are a nation of small businesses. Independent firms comprise 97% of all unincorporated and incorporated businesses in the U.S. They generate 53% of all business receipts ($3.3 trillion) and account for 43% of total GNP. Small firms are also the greatest job creators. Department of Labor statistics indicate that of nine million new jobs created between 1969 and 1976, not one was in the largest 1,000 corporations in the country. Six million of these jobs were created by small business and the remaining three million were in various levels of government. In addition, small businesses are innovators. Our economic progress depends upon innovation, and over half of all inventions and innovations introduced into industry since World War II originated in small companies. A National Science Foundation study of the period between 1953 and 1973 concluded that small firms produced 4 times as many innovations per R&D dollar as medium-sized firms, and 24 times as many as the largest firms.

The current economic crisis has many roots, but it is widely agreed that Federal policies which have rewarded consumption rather than savings and investment have contributed to our high rate of inflation and declining productivity. High taxes and excessive government regulation have made it difficult for businesses to accumulate capital to invest in new equipment and ideas. As a result, research and development has decreased, fewer innovations have been incorporated into our industrial systems, and our level of productivity has actually declined in recent years. An article which appeared in the Wall Street Journal noted that while the standard of living in America remains higher than that of any other industrialized country, our levels of capital formation and investment are much lower than those of West Germany, Japan and France. The article concluded that "in the long run, a country's rate of capital formation will largely determine its standard of living."

Heavy tax burdens and regulatory impediments affect the entire business community, but small firms are impacted disproportionately because of their heavy reliance on internally generated funds. Traditional sources of financing, such as banks and public equity markets, have become increasingly inaccessible to small firms in the past decade. The special problems of independent concerns were highlighted during the White House Conference on Small Business, convened in January, 1980. During the conference, over 1,600 delegates submitted 15 priority recommendations for changes in federal policy. It is not surprising that 5 of these were in the area of capital formation. Some small business owners complained that without adequate capital they could be forced to merge with larger corporations or to go out of business altogether. Others said that they would have to seek financing from sources outside of the U.S., underscoring the serious problem of foreign acquisition of small U.S. high technology firms. (A June 14, 1979 report of the Senate Small Business Committee listed a number of high-tech companies in fields such as data processing, advanced electronics, and vehicle and telecommunications electronics in which a controlling or near controlling interest had been acquired by foreign investors).

The venture capital industry has grown and developed in response to the serious need for capital assistance to small firms. Venture capitalists generally seek small firms with better than average growth potential and provide long term loans, equity financing and substantial management assistance. They take a minority ownership position in the company and hope to be rewarded for their risks with capital gains. The Congress, in 1958, realized the importance of establishing an institutional, ongoing source of venture capital. It passed the Small Business Investment Act of 1958 and the SBIC program was created.

How successful has the program been?

In its 21 year history, the SBIC program has been extremely successful, providing over $3 billion to 40,000 small companies. The National Association of Small Business Investment Companies recently authorized the consulting firm of Arthur D. Little, Inc. to conduct a survey of the economic progress of the companies in which SBICs have invested over the years. Questionnaires were sent to active members of the program, and the data contained in the responses were processed by the accounting firm of Deloitte, Haskins and Sells.

The result of the study were truly impressive. According to key economic impact measures, SBIC-financed companies outperformed other small businesses by a factor of more than 10-1 (see chart). In the area of employment, the figures showed that a permanent job has been created for each $4,000 of SBIC investment (in constrast to $25,000 that the government must spend annually to create and maintain a single job). The Federal government has profited from the increased tax revenues generated by SBIC protfolio companies, which are from 150% to nearly 400% as great as those paid by all other small firms. 91% of the growth of these companies has been the result of internal growth, rather than mergers and acquisitions. In addition to the benefits directly attributable to SBIC money, SBIC financing in many cases has enabled the small firm to qualify for additional senior debt, such as bank lending.

Probably no other Federally created project represents as successful a partnership between public and private sectors as does the SBIC program. SBICs are permitted to take advantage of government leverage to provide more financial assistance to promising companies, but every penny of private capital is at risk before the government is exposed to any loss. Since 1958 the government loss on the SBIC program has been less than $30 million -- an average of $1.5 million per year. Added to the cost of administration, which is about $1 million annually, the SBIC program costs the American taxpayers approximately $2.5 million each year. When considered in light of the tremendous benefits which accrue to the economy as a result of SBIC activity, this is a phenomenally small expense. In 1979 alone, more than 1,670 small concerns received $280 million from SBICs, and the numbers are growing each year.

How can the program be improved?

SBICs can only fulfill their mandate if an environment exists which is conducive to the welfare of small business. It has been established that small business is the most innovative, job-creative segment of the economy, but in order for it to survive, it must have an adequate supply of venture capital. The 1978 tax bill which reduced the capital gains tax from 49% to 28% has been a tremendous boost to the venture capital industry, and is responsible for a steady increase in the amount of funds committed to private investors since 1978. However, other steps must be taken to encourage venture investment in independent concerns. NASBIC supports a capital gains rollover treatment, which would permit the deferral of taxes on the proceeds of successful investments which are reinvested in other independent enterprises; liberalized corporate tax rates; more rapid capital cost recovery methods and the reinstitution of restricted stock options. It also advocates further liberalization of SEC rules which lessen the ability of small firms to raise capital, and a legislative exemption for publicly-owned SBICs and venture capital firms from the Investment Company Act of 1940. Finally, NASBIC supports all of the recommendations issued by the delegates to the White House Conference on Small Business, particularly those designed to facilitate capital formation.

A COMPARISON OF THE GROWTH OF SBIC PORTFOLIO COMPANIES WITH THE GROWTH OF ALL SMALL COMPANIES*

Year of Initial Financing:	PRE-1972		1972-1975		1976-1977	
	SBIC PORTFOLIO COMPANIES	ALL SMALL COMPANIES**	SBIC PORTFOLIO COMPANIES	ALL SMALL COMPANIES**	SBIC PORTFOLIO COMPANIES	ALL SMALL COMPANIES**
Employment	384%	29%	155%	19%	48%	8%
Sales	896	76	386	27	81	16
Profits	1,165	144	553	25	52	53
Assets	694	48	188	24	92	13
Federal Corporate Taxes	739	135	652	63	85	57

*For SBIC's, growth rates are measured from the year prior to SBIC financing to the most recent fiscal year. For small companies in general, the comparison is from 1970, 1973 and 1976, to 1978.

**For financial measures, manufacturing corporations with less than $5 million in assets. For employment, all corporations with less than 100 employees. Percentages for employment and taxes for all small companies for 1978 were estimated based on historical data.

Source: Federal Trade Commission, Quarterly Report of Manufacturing Corporations, U.S. Bureau of the Census, County Business Patterns and Arthur D. Little, Inc., estimates.

SUMMARY OF SECURITIES LAWS APPLICABLE TO SBICs AND PORTFOLIO COMPANIES

1. Small Offerings

Sec. 3(b) of the Securities Act of 1933 authorizes the SEC to exempt from the registration requirements of the Act certain small offerings. Pursuant to this authority, Regulation E provides a short form registration statement for SBICs issuing securities for not more than $500,000 and Regulation A provides a similar procedure for other issuers up to $1,500,000.

Rule 242, also promulgated pursuant to Section 3(b) of the Securities Act of 1933, authorizes private sales of securities to be made to "accredited" investors provided that the amount offered does not exceed $2 million in any six-month period. An "accredited investor" is any person purchasing $100,000 or more worth of securities or any of a number of institutions listed in the Rule, including SBICs.

2. Private Offerings

Section 4(2) of the 1933 Act exempts from the registration requirements "transactions by an issuer not involving any public offering." Rule 146, construing Sec. 4(2), permits the sale of securities without registration provided generally that: (1) there are not more than thirty-five purchasers; (2) all purchasers are "sophisticated investors" or have professional investment advice; (3) the investors are able to bear the economic risk of the investment; and (4) the investor has access to all information that would normally be required to be included in a registration statement filed by the issuer.

3. Sales of Restricted Securities

Any security acquired other than pursuant to full registration is a "restricted security" and generally cannot be sold except pursuant to Rule 144 under the 1933 Act. Rule 144 provides generally that a restricted security can be sold only after it has been held for a minimum of two years and there is adequate public information available with respect to the issuer. Satisfying those conditions, the sales of such restricted securities are limited in any three-month period to the greater of 1% of the outstanding securities of the same class or the average weekly trading volume over the preceding four weeks prior to the sale. Furthermore, all resale restrictions are lifted after a three-year holding period for stocks traded on a national exchange or listed on NASDAQ; or after a four-year period for securities of reporting companies not so traded provided that the securities are held by a non-affiliate of the issuer.

4. Intrastate Exemption

Sec. 3(11) of the 1933 Act exempts from the registration requirements "any security which is a part of an issue offered and sold only to persons resident within a single State or Territory, where the issuer of said security is a person resident and doing business" within such State or Territory. Rule 147 construes Sec. 3(11) and permits limited resales to persons outside the state of the issuer. This exemption is not available to an SBIC or to any other issuer subject to the Investment Company Act of 1940.

5. Limited Offerings

Rule 240 under the 1933 Act permits an issuer to sell up to $100,000 of its securities in any twelve-month period without registration under the Act provided: (1) there is no advertising or general solicitation; (2) no commission or other compensation is paid in connection with sales; and (3) the aggregate sales price of all such sales does not exceed $100,000 in any twelve-month period. Note: Rule 240 is not available to "an investcompany registered or required to be registered under the Investment Company Act of 1940."

6. Transactions with Affiliates

Section 17 of the 1940 Act prohibits transactions with affiliates except where the Commission issues an exemptive order after finding that the proposed transaction is reasonable and fair and consistent with the purposes of the Act, principally the protection of investors. "Affiliate" is defined to mean any officer, director, partner or any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of a registered investment company or any company in which the registered investment company has a 5% interest. Rule 17a-6 under the 1940 Act exempts SBICs from the exemptive order proceedings provided generally that no affiliated person of the registered SBIC has a private financial interest in the transaction. Rule 17d-1(d)(3) likewise exempts transactions by a registered SBIC and an affiliated bank provided periodic reports are filed on their joint financings of portfolio companies.

7. Capital Structure

Section 18(a)(1) of the 1940 Act provides that a registered investment company shall have an asset coverage of 300% on debt. Section 18(k) of the Act exempts SBICs from this debt-asset coverage requirement provided such debt "shall be held or guaranteed by the Small Business Administration." In addition, Section 18(a)(2) of the 1940 Act provides that a registered investment company having more than one class of stock must have 200% asset coverage on any second class of stock such as preferred. SBICs are not exempt from this requirement.

8. Definition of Investment Company

Section 3(a) of the 1940 Act defines an investment company generally to be any issuer engaged in the business of investing and which owns investment securities having a value exceeding 40% of the value of such issuer's total assets. Section 3(c)(1) excepts from the foregoing definition any issuer whose outstanding securities "are beneficially owned by not more than 100 persons and which is not making and does not presently propose to make a public offering of its securities. . . ." Where a corporation owns 10% or more of the outstanding voting securities of the issuer, then the number of shareholders of that corporation is included in the calculation of the "100 persons. . .", but Rule 3c-2 under the 1940 Act provides that where there is a corporate shareholder in an SBIC, the corporation will be treated as only one shareholder (even if it owns more than 10% of the stock of the SBIC) provided that the value of all securities of SBICs owned by such corporation does not exceed 5% of the value of its total assets.

SUMMARY OF SPECIAL TAX PROVISIONS APPLICABLE TO SBICS AND SHAREHOLDERS

1. Losses of Shareholders
Shareholders of SBICs are permitted to take an unlimited ordinary loss deduction on losses pursuant to sale, exchange or worthlessness of their stock in an SBIC. (Sec. 1242 IRC)

2. Gains and Losses on Investments
Gains and losses on sales of investments evidenced by debt instruments are treated as ordinary gains and losses. Gains and losses on sales of stock in portfolio companies are treated as capital gains and losses, subject to the rules pertaining to holding periods. But a loss on stock received pursuant to the conversion privilege of a convertible debenture is entitled to unlimited ordinary loss treatment (Secs. 582(c) and 1243 IRC).

3. Loss Reserves of SBICs
SBIC bad debt loss reserves on investments in small concerns must generally be based on the individual loss experience of the SBIC. SBICs in existence less than ten years are permitted to use an SBIC industry loss experience average (Sec. 586 IRC).

4. Dividends Received by SBICs
SBICs are allowed a deduction of 100% on dividends received from portfolio small business concerns, rather than the 85% dividends received deduction allowed corporate taxpayers generally (Sec. 243 (a)(2) IRC).

5. Regulated Investment Company Treatment
SBICs which are registered under the Investment Company Act of 1940 can, like mutual funds and other investment companies, "pass-through" (i.e., avoid payment of corporate income tax) their income to shareholders, subject to certain conditions.

The principal requirements are diversification; derivation of at least 90% of the company's gross income from dividends, interest, and gains from the sale or other disposition of stock or securities; and distribution to stockholders of not less than 90% of net income, excluding capital gains (Sec. 851(b) and (c)(8) IRC).

6. Personal Holding Company
SBICs are excepted from the definition of a personal holding company provided no shareholder in the SBIC owns 5% or more of a portfolio concern directly or indirectly (Sec. 542(c)(8) IRC).

7. SBIC Carryback of Net Operating Losses
SBICs are permitted to carry back net operating losses for ten years instead of three years (Sec. 172(b)(1)(F) IRC).

8. Accumulated Earnings Tax
The IRS has by regulation exempted SBICs from the surtax on accumulated earnings, provided the SBIC is in compliance with the Small Business Investment Act and regulations thereunder and is actively engaged in providing financing to small business concerns (Reg. 1.533-1(d)).

(over)

9. Pricing Options and Warrants
Where an SBIC and a borrower agree in writing in advance of a financing that the interest rate on the financing without options or warrants would have been not more than 1% per annum greater than the rate on the financing coupled with options or warrants, then IRS will accept such agreed assumed rate of interest and limit original issue discount treatment to this amount (T.D. 6984, 12-23-68; Reg. 1.1232-3(b)(2)(ii)).

Attachment 2

95th Congress
1st Session

COMMITTEE PRINT

SMALL BUSINESS INVESTMENT ACT OF 1958

AS AMENDED

COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
NINETY-FIFTH CONGRESS

FIRST SESSION

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SMALL BUSINESS INVESTMENT ACT OF 1958

(Public Law 699,[1] as amended)

TITLE I—SHORT TITLE, STATEMENT OF POLICY, AND DEFINITIONS

SEC. 101. This Act * * * may be cited as the "Small Business Investment Act of 1958".

STATEMENT OF POLICY

Small Business Investment Act of 1958. 15 U.S.C. 661.

SEC. 102. It is declared to be the policy of the Congress and the purpose of this Act to improve and stimulate the national economy in general and the small-business segment thereof in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply: *Provided, however*, That this policy shall be carried out in such manner as to insure the maximum participation of private financing sources.

It is the intention of the Congress that the provisions of this Act shall be so administered that any financial assistance provided hereunder shall not result in a substantial increase of unemployment in any area of the country.

DEFINITIONS

Definitions. 15 U.S.C. 662.

SEC. 103. As used in this Act—

(1) the term "Administration" means the Small Business Administration;

(2) the term "Administrator" means the Administrator of the Small Business Administration;

(3) the terms "small business investment company", "company", and "licensee" mean a company approved by the Administration to operate under the provisions of this Act and issued a license as provided in section 301; [2]

(4) the term "State" includes the several States, the Territories and possessions of the United States,

[1] Approved August 21, 1958.

[2] This language substituted by section 2(1) of PL 87-341, the Small Business Investmen Act Amendments of 1961, approved October 3, 1961. (75 Stat. 752).

the Commonwealth of Puerto Rico, and the District of Columbia; [3]

(5) the term "small-business concern" shall have the same meaning as in the Small Business Act;

(6) the term "development companies" means enterprises incorporated under State law with the authority to promote and assist the growth and development of small-business concerns in the areas covered by their operations;

(7) the term "license" means a license issued by the Administration as provided in section 301; [4] and

rticles."

(8) the term "articles" means articles of incorporation for an incorporated body and means the functional equivalent or other similar documents specified by the Administrator for other business entities.[5]

TITLE II—SMALL BUSINESS INVESTMENT DIVISION OF THE SMALL BUSINESS ADMINISTRATION [6]

U.S.C. 671.

ESTABLISHMENT OF SMALL BUSINESS INVESTMENT DIVISION

SEC. 201. There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other Associate Administrators of the Small Business Administration.[7]

TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

ORGANIZATION OF SMALL BUSINESS INVESTMENT COMPANIES

U.S.C. 681.

SEC. 301. (a) A small business investment company shall be an incorporated body or a limited partnership [8] organized and chartered or otherwise existing [9] under State law solely for the purpose of performing the functions and conducting the activities contemplated under this title, which has succession for a period of not less than thirty years unless sooner dissolved by its shareholders or partners [10] and possesses the powers reasonably necessary to perform such functions and conduct such activities. The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administration.[11]

Articles.

(b) The articles of any small business investment company shall specify in general terms the objects for which the company is formed, the name assumed by such company, the area or areas in which its operations are to be carried on, the place where its principal office is to be located, and the amount and classes of its shares of capital stock. Such articles may contain any other provisions not inconsistent with this Act that the company may see fit to adopt for the regulation of its business and the conduct of its affairs. Such articles and any amendments thereto adopted from time to time shall be subject to the approval of the Administration.

Consideration by SBA.

(c) The articles and amendments thereto shall be forwarded to the Administration for consideration and approval or disapproval. In determining whether to approve such a company's articles and permit it to operate under the provisions of this Act, the Administration shall give due regard, among other things, to the need and availability for the financing of small business concerns in the geographic area in which the proposed company is to commence business, the general business reputation and character of the proposed owners and management of the company, and the probability of successful operations of such company including adequate profitability and financial soundness. After consideration of all relevant factors, if it approves the company's articles, the Administration may in its discretion approve the company to operate under the provisions of this Act and issue the company a license for such operation.[12]

(d) Notwithstanding any other provision of this Act, a small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social

[3] Amended by section 3 of PL 86–502, the Small Business Investment Act Amendments of 60, approved June 11, 1960 (74 Stat. 196), to reflect admission of Alaska and Hawaii the Union.

[4] This language inserted by section 2(2) of PL 87–341, the Small Business Investment t Amendments of 1961, approved October 3, 1961. (75 Stat. 752).

[5] This language inserted by section 106(a) of PL 94–305, approved June 4, 1976. (90 at. 663).

[6] Funds for functions under this Act authorized in the Small Business Act, as amended.

[7] Amended by section 2 of PL 89–779, the Small Business Investment Act Amendments 1966, approved November 6, 1966 (80 Stat. 1359), to provide that the Division be headed an Associate Administrator in lieu of a Deputy Administrator; to delete the provisions ating that the powers of the Administrator under the Act be exercised through the Small siness Investment Division; and to transfer the administrative and penal provisions to ew section 308(f).

[8] The phrase "or a limited partnership" added by section 106(b)(1) of PL 94–305, proved June 4, 1976. (90 Stat. 663).

[9] The phrase "or otherwise existing" added by section 106(b)(2) of PL 94–305, approved ne 4, 1976. (90 Stat. 663).

[10] "Or partners" added by section 106(b)(3) of PL 94–305, approved June 4, 1976. (90 Stat. 663).

[11] Amended by section 11(a) of PL 87–341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 756).

[12] New language in second and third sentences substituted by section 11(b)(1) and (2) of PL 87–341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 756). Previous sections 301(d) and 301(e) struck out by section 11(b)(3) of PL 87–341. The business reputation of owners and management and the probability of successful operations, including adequate profitability and financial soundness, were added as criteria for approval by section 202 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 269).

or economic disadvantages may be organized and chartered under State business or nonprofit corporation statutes, and may be licensed by the Administration to operate under the provisions of this Act.[13]

CAPITAL REQUIREMENTS [14]

15 U.S.C. 682.

SEC. 302. (a) Each company authorized to operate under this Act shall have a combined private paid-in capital and paid-in surplus [15] in an amount (1) not less than $150,000, and (2) adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles.[16]

Participation by banks.

(b) Notwithstanding the provisions of section 6(a)(1) of the Bank Holding Company Act of 1956,[17] shares of stock in small business investment companies shall be eligible for purchase by national banks, and shall be eligible for purchase by other member banks of the Federal Reserve System and nonmember insured banks to the extent permitted under applicable State law; except that in no event may any such bank acquire shares in any small business investment company if, upon the making of that acquisition, the aggregate amount of shares in small business investment companies then held by the bank would exceed 5 percent of its capital and surplus.[18]

(c) The aggregate amount of shares in any such company or companies which may be owned or controlled by any stockholder, or by any group or class of stockholders, may be limited by the Administration.

BORROWING POWER

15 U.S.C. 683.

SEC. 303. (a) Each small business investment company shall have authority to borrow money and to issue its debenture bonds, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administration may prescribe.

Borrowing power.

(b) To encourage the formation and growth of small business investment companies the Administration is authorized (but only to the extent that the necessary funds are not available to said company from private sources on reasonable terms) when authorized in appropriation Acts, to purchase, or to guarantee the timely payment of all principal and interest as scheduled on, debentures issued by such companies. Such purchases or guarantees may be made by the Administration on such terms and conditions as it deems appropriate, pursuant to regulations issued by the Administration. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection. Debentures purchased or guaranteed by the Administration under this subsection shall be subordinate to any other debenture bonds, promissory notes, or other debts and obligations of such companies, unless the Administration in its exercise of reasonable investment prudence and in considering the financial soundness of such company determines otherwise. Such debentures may be issued for a term of not to exceed fifteen years and shall bear interest at a rate not less than a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities on such debentures, adjusted to the nearest one-eighth of 1 per centum, plus such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes. The debentures shall also contain such other terms as the Administration may fix, and shall be subject to the following restrictions and limitations:

Debentures.

(1) The total amount of debentures purchased or guaranteed and outstanding at any one time from a company which does not qualify under the terms of paragraph (2) of this subsection, shall not exceed 300 percent of the combined private [19] paid-in capital and paid-in surplus [20] of such company. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000.[21]

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[13] Added by section 2(b) of PL 92-595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

[14] Heading amended by section 203(b) of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 269).

[15] Section 742 of the Economic Opportunity Act of 1964, as amended provides that funds granted under Title VII which are invested, directly or indirectly, in a SBIC shall be included as private paid-in capital and paid-in surplus.

[16] Section 302(a) substantially rewritten by section 203(a) of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 269), to reflect transfer of SBIC authority to sell subordinated debentures to SBA to section 303(b).

[17] Reference to the Bank Holding Company Act added by section 5 of PL 86-502, the Small Business Investment Act Amendments of 1960, approved June 11, 1960 (74 Stat. 196), to allow a bank subsidiary of a holding company to invest in an SBIC subsidiary of the same holding company. Section 6 of the Bank Holding Company Act was repealed by section 9 of PL 89-485, approved July 1, 1966. (80 Stat. 240).

[18] The maximum amount of shares a bank may hold in SBICs, formerly set at 2 percent of capital and surplus by section 3(b) of PL 87-341, the Small Business Investment Act Amendments of 1961, (75 Stat. 752) and at 5 percent but not to exceed 49 percent of any class of voting shares by section 204 of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 270), is now limited only by the 5 percent provision under section 107 of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[19] The word "private" added by section 2(c)(1) of PL 92-595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

[20] Section 742 of the Economic Opportunity Act of 1964, as amended provides that funds granted under Title VII which are invested, directly or indirectly, in a SBIC shall be included as paid-in capital and paid-in surplus.

[21] $15,000,000 substituted for $7,500,000 by section 2(c)(2) of PL 92-595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314). "300" percent substituted for "200" percent, and "$35,000,000" substituted for "$15,000,000" by sections 104(a)(1) and (2) of PL 94-305, approved June 4, 1976. (90 Stat. 663).

(2) The total amount of debentures which may be purchased or guaranteed and outstanding at any one time from a company not complying with section 301(d) of this Act, which has investments or legal commitments of 65 per centum or more of its total funds available for investment in small business concerns invested or committed in venture capital, and which has combined private paid-in capital and paid-in surplus of $500,000 or more shall not exceed 400 per centum of its combined private paid-in capital and paid-in surplus. In no event shall the debentures of any such company purchased or guaranteed and outstanding under this paragraph exceed $35,000,000. Such additional purchases or guarantees which the Administration makes under this paragraph shall contain conditions to insure appropriate maintenance by the company receiving such assistance of the described ratio during the period in which debentures under this paragraph are outstanding.[22]

(3) Outstanding amounts of financial assistance provided to a company by the Administration prior to the effective date of the Small Business Investment Act Amendments of 1967 shall be deducted from the maximum amount of debentures which the Administration would otherwise be authorized to purchase or guarantee under this subsection.

"Venture capital."

For purposes of this subsection, the term "venture capital" includes such common stock, preferred stock, or other financing with subordination or nonamortization characteristics as the Administration determines to be substantially similar to equity financing.[23]

Preferred securities.

(c)[24] Subject to the following conditions, the Administration is authorized to purchase preferred securities, and to purchase, or to guarantee the timely payment of all principal and interest payments as scheduled, on debentures issued by small business investment companies operating under authority of section 301(d) of this Act. The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee under this subsection.

The Administration may purchase—

(1) shares of nonvoting stock (or other securities having similar characteristics), provided—

(i) dividends are preferred and cumulative to the extent of 3 per centum of par value per annum;

(ii) on liquidation or redemption, the Administration is entitled to the preferred payment of the par value of such securities; and prior to any distribution (other than to the Administration) the Administration may require the preferred payment of the difference between dividends paid thereon and cumulative dividends payable at a rate equal to the interest rate determined pursuant to section 303(b) for debentures with a term of fifteen years, without interest on such difference;

(iii) the purchase price shall be at par value and, in any one sale, $50,000 or more; and

Maximum amounts.

(iv) the amount of such securities purchased and outstanding at any one time shall not exceed (A) from a company having combined private paid-in capital and paid-in surplus of less than $300,000 and licensed on or before October 13, 1971, the amount of combined private paid-in capital and paid-in surplus invested after such date, nor (B) from any company having combined private paid-in capital and paid-in surplus of $300,000 or more but less than $500,000 the amount of its combined private paid-in capital and paid-in surplus in excess of $300,000, nor (C) from any company having combined private paid-in capital and paid-in surplus of $500,000 or more, the amount of its combined private paid-in capital and paid-in surplus.

The Administration may purchase or guarantee—

(2) debentures subordinated pursuant to subsection (b) of this section (other than securities purchased under paragraph (1) of this subsection (c)), provided—

(i) such debentures are issued for a term of not to exceed fifteen years;

(ii) the interest rate is determined pursuant to sections 303(b) and 317: and

Debentures—maximum amounts.

(iii) the amount of debentures purchased or guaranteed and outstanding at any one time pursuant to this paragraph (2) from a company having combined private paid-in capital and paid-in surplus of less than $500,000 shall

[22] Amended by section 2(c)(3) of PL 92–595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972 (86 Stat. 1314) to reduce the minimum capital required from $1 million to $500,000 and to increase from $10 to $20 million the ceiling on outstanding debentures under this paragraph.
"400" per centum substituted for "300" per centum and "$35,000,000" substituted for "$20,000,000" by sections 104(b)(1) and (2) of PL 94–305, approved June 4, 1976. (90 Stat. 663).

[23] Section 205 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 270), substantially recast the authority of SBA to purchase the debentures of SBICs and incorporated within this section 303(b) the debenture purchasing authority formerly set out in section 302(a). As amended, section 303(b) increases the capacity of SBICs to borrow from SBA and provides an even greater borrowing capacity for equity-oriented SBICs. Section 10 of PL 92–213, approved December 22, 1971 (85 Stat. 776) amended this section 303(b) debenture purchase authority of SBA by adding the authority to guarantee the timely payment of principal and interest on such debentures but requiring that the authority to purchase or guarantee be exercisable only when specially authorized in appropriation Acts; and by expressly pledging the full faith and credit of the United States to the payment of such guarantees.

[24] Added by section 2(d) of PL 92–595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

not exceed 300 [25] per centum of its combined private paid-in capital and paid-in surplus less the amount of preferred securities outstanding under paragraph (1) of this subsection, nor from a company having combined private paid-in capital and paid-in surplus of $500,000 or more 400 [26] per centum of its combined private paid-in capital and paid-in surplus less the amount of such preferred securities.

(3) debentures purchased and outstanding pursuant to section 303(b) of this section may be retired simultaneously with the issuance of preferred securities to meet the requirements of subparagraph (2) (iii) of this subsection (c).

(4) the Administration may require, as a condition of the purchase or guarantee of any securities in excess of 300 [27] per centum of the combined private paid-in capital and paid-in surplus of a company, that the company maintains a percentage of its total funds available for investment in small business concerns invested or legally committed in venture capital (as defined in subsection (b) of this section) determined by the Administration to be reasonable and appropriate.

PROVISION OF EQUITY CAPITAL FOR SMALL-BUSINESS CONCERNS [28]

Equity capital. 15 U.S.C. 684.

SEC. 304. (a) It shall be a function of each small business investment company to provide a source of equity capital for incorporated and unincorporated [29] small-business concerns, in such manner and under such terms as the small business investment company may fix in accordance with the regulations of the Administration.

(b) Before any capital is provided to a small-business concern under this section—

(1) the company may require such concern to refinance any or all of its outstanding indebtedness so that the company is the only holder of any evidence of indebtedness of such concern; and

(2) except as provided in regulations issued by the Administration, such concern shall agree that it will not thereafter incur any indebtedness without first securing the approval of the company and giving the company the first opportunity to finance such indebtedness.

(c) [Repealed.] [30]

(d) Equity capital provided to incorporated small-business concerns under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.[31]

LONG-TERM LOANS TO SMALL-BUSINESS CONCERNS

Long-term loans. 15 U.S.C. 685.

SEC. 305. (a) Each company is authorized to make loans, in the manner and subject to the conditions described in this section, to incorporated and unincorporated small-business concerns in order to provide such concerns with funds needed for sound financing, growth, modernization, and expansion.

Form of loan—direct, participation or guarantee.

(b) Loans made under this section may be made directly or in cooperation with other lenders, incorporated or unincorporated, through agreements to participate on an immediate or deferred basis.[32]

Conditions of loan.

(c) The maximum rate of interest for the company's share of any loan made under this section shall be determined by the Administration.

(d) Any loan made under this section shall have a maturity not exceeding twenty years.

(e) Any loan made under this section shall be of such sound value, or so secured, as reasonably to assure repayment.

(f) Any company which has made a loan to a small-business concern under this section is authorized to extend the maturity of or renew such loan for additional periods, not exceeding ten years, if the company finds that such extension or renewal will aid in the orderly liquidation of such loan.

AGGREGATE LIMITATIONS

Assistance; limitations. 15 U.S.C. 686.

SEC. 306. (a) Without the approval of the Administration, the aggregate amount of obligations and securities acquired and for which commitments may be issued by any small business investment company under the provisions of this Act for any single enterprise shall not ex-

[25] "300" per centum substituted for "200" per centum by section 104(c)(2) of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[26] "400" per centum substituted for "300" per centum by section 104(c)(1) of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[27] "300" per centum substituted for "200" per centum by section 104(c)(2) of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[28] Prior to its amendment by section 6 of PL 86-502, the Small Business Investment Act Amendments of 1960, approved June 11, 1960 (74 Stat. 196), section 304 authorized SBICs to furnish equity capital only through the purchase of convertible debentures.

[29] The words "and unincorporated" added by section 2(c) of PL 92-595, the Small Business [illegible]tment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

[30] Section 206 of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 271), repealed section 304(c) which gave to companies receiving equity financing from an SBIC an option to purchase stock in the SBIC.

[31] This section added by section 5 of PL 87-341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 752).

[32] This sentence amended by section 6 of PL 87-341, the Small Business Investment Act Amendments of 1960, approved October 3, 1961 (75 Stat. 753), to substitute "other lenders, incorporated or unincorporated" for "other lending institutions." The sentence "In agreements to participate in loans on a deferred basis under this subsection, the participation by the company shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.", was repealed by section 105 of PL 94-305, approved June 4, 1976. (90 Stat. 663).

ceed 20 percent of the combined private [33] paid-in capital and paid-in surplus of such company.[34]

(b) [Repealed.[35] The subsection is set out below to provide a clearer understanding of this entire section.]

[(b) For the purpose of this section, the combined paid-in capital and paid-in surplus of any company licensed prior to January 1, 1968, shall consist of (1) the paid-in capital and paid-in surplus of such company and (2) the following portions of the funds outstanding from the Administration through the issuance of subordinated debentures as of the effective date of the Small Business Investment Act Amendments of 1967, or on January 1 of each of the following calendar years, whichever is less: (A) 100 percent, during 1968; (B) 75 percent, during 1969; (C) 50 percent, during 1970; (D) 25 percent, during 1971; and (E) zero, during 1972 and thereafter.]

(c) With respect to obligations or securities acquired prior to the effective date of the Small Business Investment Act Amendments of 1967, and with respect to legally binding commitments issued prior to such date, the provisions of this section as in effect immediately prior to such effective date shall continue to apply.[36]

EXEMPTIONS [37]

SEC. 307. (a) Section 3 of the Securities Act of 1933, as amended (15 U.S.C. 77c), is hereby amended by inserting at the end thereof the following new subsection (c):

Exemptions by the Securities and Exchange Commission.

"(c) The Commission may from time to time by its ditions as may be prescribed therein, add to the securities rules and regulations and subject to such terms and conexempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors."

(b) Section 304 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd) is hereby amended by adding the following subsection (e):

"(e) The Commission may from time to time by its rules and regulations, and subject to such terms and conditions as may be prescribed herein, add to the securities exempted as provided in this section any class of securities issued by a small business investment company under the Small Business Investment Act of 1958 if it finds, having regard to the purposes of that Act, that the enforcement of this Act with respect to such securities is not necessary in the public interest and for the protection of investors."

(c) Section 18 of the Investment Company Act of 1940 (15 U.S.C. 80a–18) is amended by adding at the end thereof the following:

"(k) the provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958." [38]

MISCELLANEOUS

SEC. 308. (a) Wherever practicable the operations of a small business investment company, including the generation of business, may be undertaken in cooperation with banks or other investors or lenders, incorporated or unincorporated, and any servicing or initial investigation required for loans or acquisitions of securities by the company under the provisions of this Act may be handled through such banks or other investors or lenders on a fee basis. Any small business investment company may receive fees for services rendered to such banks and other investors and lenders.[39]

Cooperation with banks or other investors. 15 U.S.C. 687.

Fees.

(b) Each small business investment company may make use, wherever practicable, of the advisory services of the Federal Reserve System and of the Department of Commerce which are available for and useful to industrial and commercial businesses, and may provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services. Any Federal Reserve bank is authorized to act as a depository or fiscal agent for any company operating under the provisions of this Act.[40] Such companies may invest funds not reasonably needed for their current operations in direct obligations of, or obligations guaranteed as to principal and interest by, the United States, or in insured savings accounts (up to the amount of the insurance) in any institution the amounts of which are

Advisory services.

Investment of funds.

[33] The word "private" added by section 2(f) of PL 92–595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

[34] By basing the limitation on "paid-in capital and paid-in surplus" instead of "combined capital and surplus" and adding sections 306(b) and 306(c), section 207 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 271), in effect reduced the limitation for SBICs having subordinated debenture funds and made the change effective on a sliding scale for SBICs already in operation.

[35] Repealed by section 2(f) of PL 92–595, the Small Business Investment Act Amendments of 1972, approved October 27, 1972. (86 Stat. 1314).

[36] Added by section 207 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 271).

[37] The Act provides a specific exemption from the Investment Company Act of 1940 for SBICs, releasing them from a 3-to-1 asset coverage requirement in connection with borrowings. The SBA may prescribe limitations on borrowing by SBICs.

[38] See further amendment, section 319 of the Small Business Investment Act.

[39] Section 308(a) amended by section 8 of PL 87–341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961 (75 Stat. 753), to substitute "investors or lenders, incorporated or unincorporated" for "financial institutions."

[40] The last seven words of this sentence added by section 11(c) of PL 87–341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. 75 Stat. 756).

insured by the Federal Savings and Loan Insurance Corporation.[41]

Regulations.

(c) The Administration is authorized to prescribe regulations governing the operations of small business investment companies, and to carry out the provisions of this Act, in accordance with the purposes of this Act.[42]

Noncompliance.

(d) Should any small business investment company violate or fail to comply with any of the provisions of this Act or of regulations prescribed hereunder, all of its rights, privileges, and franchises derived therefrom may thereby be forfeited. Before any such company shall be declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this Act shall be determined and adjudged by a court of the United States of competent jurisdiction in a suit brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States, in which the principal office of such company is located. Any such suit shall be brought by the United States at the instance of the Administration or the Attorney General.

(e) Nothing in this Act or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligations entered into, or stocks issued, or commitments made, by any company operating under the provisions of this Act.[43]

15 U.S.C. 631. [et seq.]. 15 U.S.C. 642. 15 U.S.C. 645.

(f) In the performance of, and with respect to the functions, powers, and duties vested by this Act, the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act, and the provisions of sections 13 and 16 of that Act, insofar as applicable, are extended to the functions of the Administrator and the Administration under this Act.[44]

Annual report, contents. 15 U.S.C. 639.

(g)(1) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, a full and detailed account of its operations under this Act. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year.[45]

(2)[46] In its annual report for the year ending December 31, 1967, and in each succeeding annual report made pursuant to section 10(a) of the Small Business Act, the Administration shall include full and detailed accounts relative to the following matters:

(A) The Administration's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies to replace Government financing of such companies.

(B) The Administration's plans to insure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns including steps taken to accomplish same.

(C) Steps taken by the Administration to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to insure compliance with statutory and regulatory standards relating thereto.

(D) An accounting by the Bureau of the Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of said expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies.

(E) An accounting by the Treasury Department with respect to tax revenues accruing to the Government from business concerns, incorporated and unincorporated, specifying the source of such revenues by concerns falling above and below the small business size standards applicable to small business investment companies.

(F) An accounting by the Treasury Department with respect to both tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers.

(G) Recommendations of the Treasury Department with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage the use of their financing facilities by eligible small business concerns.

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[41] The last sentence revised by section 5 of PL 88–273, the Small Business Investment Act Amendments of 1963, approved February 28, 1964 (78 Stat. 147), to permit deposits of idle SBIC funds in insured savings accounts.

[42] The provisions relating to examinations and reports by SBICs were deleted from this section by section 3(*l*) and added as a new section 310(b) by section 5(2) of PL 89–779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1359, 1360).

[43] The last seven words added by section 11(d) of PL 87–341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 756). The same section also struck out the previous sections 308(e) and (f) and redesignated this section (formerly (g)) as (e). The former sections 308(e) and (f) were rewritten and expanded by section 9 of PL 87–341 and designated as sections 309, 310, and 311.

[44] Section 308(f) added by section 3 of PL 89–779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (80 Stat. 1359), and contains the provision transferred from section 201.

[45] Section 308(g) added by section 3(2) of PL 89–779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (80 Stat. 1359), and redesignated as section 308(g)(1) by section 210 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 271).

[46] Section 308(g)(2) added by section 210 of PL 90–104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 271).

(H) A report from the Securities and Exchange Commission enumerating actions undertaken by that agency to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch.

(I) A report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns to the securities markets.

(J) Actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of the Investment Company Act of 1940 and to facilitate the election to be taxed as regulated investment companies pursuant to section 851 of the Internal Revenue Code of 1954.

15 U.S.C. 80a–1 *et seq.*
26 U.S.C. 851.

Small business investment companies, interest charges, limitation.
15 U.S.C. 631 note.

(h) (1) In order to facilitate the orderly and necessary flow of long-term loans and equity funds to small business concerns, as defined in the Small Business Act, if the maximum interest rate permitted by the Small Business Administration exceeds the rate a small business investment company would be permitted to charge in the absence of this subsection, such small business investment company may in the case of business loans in the amount of $25,000 or more, notwithstanding any State constitution or statute, which is hereby preempted for the purposes of this section, take, receive, reserve, and charge on any such loan, interest at a rate of not more than 5 per centum in excess of the discount rate on ninety-day commercial paper in effect at the Federal Reserve bank in the Federal Reserve district where the small business investment company is located.

Interest overcharge, forfeiture.

(2) If the rate prescribed in paragraph (1) exceeds the rate such small business investment company would be permitted to charge in the absence of this subsection, and such State fixed rate is thereby preempted by the rate described in paragraph (1), the taking, receiving, reserving or charging a greater rate than is allowed by paragraph (1), when knowingly done, shall be deemed a forfeiture of the entire interest which the loan carries with it, or which has been agreed to be paid thereon. If such greater rate of interest has been paid, the person who paid it may recover, in a civil action commenced in a court of appropriate jurisdiction not later than two years after the date of such payment, an amount equal to twice the amount of interest paid from the small business investment company taking or receiving such interest.[47]

Interest payment recovery.

REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS [48]

SEC. 309.[49] (a) A license may be revoked or suspended by the Administration— 15 U.S.C. 687a.

(1) for false statements knowingly made in any written statement required under this title, or under any regulation issued under this title by the Administration;

(2) If any written statement required under this title, or under any regulation issued under this title by the Administrator, fails to state a material fact necessary in order to make the statement not misleading in the light of the circumstances under which the statement was made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this Act;

(4) for willful or repeated violation of or willful or repeated failure to observe, any rule or regulation of the Administration authorized by this Act; or

(5) for violation of, or failure to observe, any cease and desist order issued by the Administration under this section.

(b) Where a licensee or any other person has not complied with any provision of this Act, or of any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such Act or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with the Act and the regu-

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[47] Section 308(h) added by section 204 of PL 93–501, approved October 29, 1974 (88 Stat 1557). Section 205 of such Act provides "If any provision of this title or the application of such provision to any person or circumstance shall be held invalid, the remainder of th title and the application of such provision to any person or circumstance other than tha as to which it is held invalid shall not be affected thereby." Section 206 of such Ac provides "The amendments made by this title shall apply to any loan made in any Stat after the date of enactment of this title, but prior to the earlier of July 1, 1977, or the dat (after the date of enactment of this title) on which the State enacts a provision of la which prohibits the charging of interest at the rates provided in the amendments mad by this title."

[48] Heading and sections 309(a), (b), (c), (e), and (f) amended by section 4 of PL 89–77 the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (8 Stat. 1359), to reflect license revocation authority granted to SBA; delete limitation grounds for suspension of license for false or misleading statements made for purpose obtaining a license; and to authorize issuance and enforcement of cease and desist orde against individuals as well as licensees.

[49] Section 309 added by section 9 of PL 87–341, the Small Business Investment Ac Amendments of 1961, approved October 3, 1961, (75 Stat. 753). Previous section 309 wa repealed by section 11(e) of PL 87–341.

lations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order.

(c) Before revoking or suspending a license pursuant to subsection (a), or issuing a cease and desist order pursuant to subsection (b), the Administration shall serve upon the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued. Any such order to show cause shall contain a statement of the matters of fact and law asserted by the Administration and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before the Administration at a time and place stated in the order. If after hearing, or a waiver thereof, the Administration determines on the record that an order revoking or suspending the license or a cease and desist order should issue, it shall promptly issue such order, which shall include a statement of the findings of the Administration and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the licensee and any other person involved.

(d) The Administration may require by subpena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to the hearing from any place in the United States. Witnesses summoned before the Administration shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the Administration, or any party to a proceeding before the Administration, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents.

Petition.

(e) An order issued by the Administration under this section shall be final and conclusive unless within thirty days after the service thereof the licensee, or other person against whom an order is issued,[50] appeals to the United States court of appeals for the circuit in which such licensee has its principal place of business by filing with the clerk of such court a petition praying that the Administration's order be set aside or modified in the manner stated in the petition. After the expiration of such thirty days, a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition theretofore. The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administration, and the Administration shall thereupon certify and file in the court a transcript of the record upon which the order complained of was entered. If before such record is filed the Administration amends or sets aside its order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administration. The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administration, but the court of appeals in its discretion may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way. The court may affirm, modify, or set aside the order of the Administration. If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administration to reopen the hearing for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Administration may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file its modified or new findings and the amendments, if any, of its order, with the record of such additional evidence. No objection to an order of the Administration shall be considered by the court unless such objection was urged before the Administration or, if it was not so urged, unless there were reasonable grounds for failure to do so. The judgment and decree of the court affirming, modifying, or setting aside any such order of the Administration shall be subject only to review by the Supreme Court of the United States upon certification or certiorari as provided in section 1254 of title 28, United States Code.

Enforcement.

(f) If any licensee or other person against which or against whom an order is issued under this section fails to obey the order, the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order and shall file a transcript of the record upon which the order complained of was entered. Upon the filing of the application the court shall cause notice thereof to be served on the licensee or other person. The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for applications to set aside or modify orders. The proceedings in such cases shall be made a preferred cause and shall be expedited in every way.[51]

[50] Section 4(e) of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (80 Stat. 1360), added the clause "or other person against whom an order is issued."

[51] Amended by section 4(f) of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (80 Stat. 1360), to provide for enforcement of cease and desist orders against individuals as well as against licensees.

EXAMINATIONS AND INVESTIGATIONS [52]

15 U.S.C. 687b.

SEC. 310.[53] (a) The Administration may make such investigations as it deems necessary to determine whether a licensee, or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpena issued to, any person, including a licensee, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found.

Investigations.

Examinations.

(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Each such company shall be examined at least once each year, except that the Administrator may waive examination in the case of a company whose operations have been suspended by reason of the fact that the company is involved in litigation or is in receivership.[54] Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements.[55]

[52] Section heading amended by section 5 of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1360).

[53] Section 310 added by section 9 of PL 87-341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 755).

[54] Sentence added by section 208 of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967. (81 Stat. 271).

INJUNCTIONS AND OTHER ORDERS

15 U.S.C. 687c.

SEC. 311.[56] (a) Whenever, in the judgment of the Administration, a licensee or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or of any rule or regulation under this Act, or of any order issued under this Act, the Administration may make application to the proper district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, rule, regulation, or order, and such courts shall have jurisdiction of such actions and, upon a showing by the Administration that such licensee or other person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. The proceedings in such a case shall be made a preferred cause and shall be expedited in every way.

(b) In any such proceeding the court as a court of equity may, to such extent as it deems necessary, take exclusive jurisdiction of the licensee or licensees and the assets thereof, wherever located; and the court shall have jurisdiction in any such proceeding to appoint a trustee or receiver to hold or administer under the direction of the court the assets so possessed.

(c)[57] The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved.

CONFLICTS OF INTEREST

15 U.S.C. 687d.

SEC. 312. For the purpose of controlling conflicts of interests which may be detrimental to small business concerns, to small business investment companies, to the

[55] Section 5(2) of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966 (80 Stat. 1360), redesignated section 310 as section 310(a) and also added section 310(b). The provisions relating to examinations and reports were previously in section 308(c).

[56] Section 9 of PL 87-341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961 (75 Stat. 755), added section 311(a) formerly substantially contained in section 308(e), and section 311(b) authorizing the appointment of a trustee or receiver.

[57] Section 311(c) added by section 6 of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1360).

shareholders or partners of either, or to the purposes of this Act, the Administration shall adopt regulations to govern transactions with any officer, director, shareholder, or partner of any small business investment company, or with any person or concern, in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, or partner of (1) any small business investment company, or (2) any person or concern with an interest, direct or indirect, financial or otherwise, in any small business investment company. Such regulations shall include appropriate requirements for public disclosure (including disclosure in the locality most directly affected by the transaction) necessary to the purposes of this section.[58]

REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS OF LICENSEES [59]

15 U.S.C. 687e.

SEC. 313. (a) The Administration may serve upon any director or officer of a licensee a written notice of its intention to remove him from office whenever, in the opinion of the Administration, such director or officer—

(1) has willfully and knowingly committed any substantial violation of—

(A) this Act,

(B) any regulation issued under this Act, or

(C) a cease-and-desist order which has become final, or

(2) has willfully and knowingly committed or engaged in any act, omission, or practice which constitutes a substantial breach of his fiduciary duty as such director or officer,

and that such violation or such breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer.

(b) In respect to any director or officer referred to in subsection (a), the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d), shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

(c) A notice of intention to remove a director or officer, as provided in subsection (a), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforcible except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

(d) Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b), such director or officer may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or officer under subsection (a), and such court shall have jurisdiction to stay such suspension and/or prohibition.

(e) Whenever any director or officer of a licensee is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition s[illegible] re-

[58] Section 312 added by section 6 of PL 88–273, the Small Business Investment Act Amendments of 1963, approved February 28, 1964. (78 Stat. 147). The words "or partner" and "or partners" added by sections 106(f)(1) and (2) of PL 94–305, approved June 4, 1976. (90 Stat. 663).

[59] Section 313 added by section 7 of PL 89–779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1361).

main in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b).

Hearing and judicial review.

(f) (1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the licensee is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice, and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in chapter 7 of title 5 of the United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY [60]

SEC. 314. (a) Wherever a licensee violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation. 15 U.S.C. 68

(b) It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

(c) Except with the written consent of the Administration, it shall be unlawful—

(1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if—

(A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

[60] Section 314 added by section 7 of PL 89-779, the Small Business Investment Amendments of 1966, approved November 6, 1966. (80 Stat. 1363).

(B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if—

(A) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or

(B) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

PENALTIES AND FORFEITURES [61]

15 U.S.C. 687g.

SEC. 315. (a) Except as provided in subsection (b) of this section, a licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 310(b) of this Act, shall forfeit and pay to the United States a civil penalty of not more than $100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

(b) The Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of subsection (a) of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation.

JURISDICTION AND SERVICE OF PROCESS [62]

15 U.S.C. 687h.

SEC. 316. Any suit or action brought under section 308, 309, 311, 313, or 315 by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this Act, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

[61] Section 315 added by section 7 of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1364).

[62] Section 316 added by section 7 of PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1364).

Interest subsidy. 15 U.S.C. 687

SEC. 317.[63] Notwithstanding section 303(b), the effective rate of interest after October 13, 1971, during the first five years thereafter of the term of any debenture purchased by the Administration from a small business investment company under authority of section 303(c), shall be the greater of 3 per centum or 3 percentage points below the interest rate determined pursuant to section 303(b). The Administration is authorized to apply interest paid to it by such company for the period from October 13, 1971, to the effective date of this section, without interest thereon, to interest payable after such effective date. No company which has received the benefit of this section may make a distribution (other than to the Administration) unless it has first paid to the Administration an amount equal to the difference between the rate of interest payable to the Administration pursuant to the previous sentence, and the rate of interest which would have been payable pursuant to section 303(b).

Joint ownership company benefits. 15 U.S.C. 68

SEC. 318. The Administration is authorized to extend the benefits of sections 303(c) and 317 to any small business investment company operating under authority of section 301(d) of this Act, and which is owned, in whole or in part, by one or more small business investment companies, in accordance with regulations promulgated by the Administration.

Preferred st asset covera requirement exemption. 15 U.S.C. 80a-18(k).

SEC. 319. Section 18 of the Investment Company Act of 1940, as amended (15 U.S.C. 80a-18), is further amended by amending subsection (k) to read as follows:

"(k) The provisions of subparagraphs (A) and (B) of paragraph (1) of subsection (a) of this section shall not apply to investment companies operating under the Small Business Investment Act of 1958, and the provisions of paragraph (2) of said subsection shall not apply to such companies so long as such class of senior security shall be held or guaranteed by the Small Business Administration."

[63] Added by section 2(g) of PL 92-595, the Small Business Investment Act Amendme of 1972, approved October 27, 1972. (86 Stat. 1314).

TITLE IV—GUARANTEES

PART A—LEASE GUARANTEES [64]

AUTHORITY OF THE ADMINISTRATION

Lease Guarantees. 15 U.S.C. 692.

SEC. 401. (a) The Administration may, whenever it determines such action to be necessary or desirable, and upon such terms and conditions as it may prescribe, guarantee the payment of rentals under leases of commercial and industrial property entered into by small business concerns to enable such concerns to obtain such leases.[65] Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) No guarantee shall be issued by the Administration (A) if a guarantee meeting the requirements of the applicant is otherwise available on reasonable terms, and (B) unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the lease.

(2) The Administration shall, to the greatest extent practicable, exercise the powers conferred by this section in cooperation with qualified surety or other companies on a participation basis.

(b) The Administration shall fix a uniform annual fee for its share of any guarantee under this section which shall be payable in advance at such time as may be prescribed by the Administrator. The amount of any such fee shall be determined in accordance with sound actuarial practices and procedures, to the extent practicable, but in no case shall such amount exceed, on the Administration's share of any guarantee made under this part,[66] 2½ per centum per annum of the minimum annual guaranteed rental payable under any guaranteed lease: *Provided*, That the Administration shall fix the lowest fee that experience under the program established hereby has shown to be justified. The Administration may also fix such uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(c) In connection with the guarantee of rentals under any lease pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the minimum guaranteed annual rental required under the lease, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the lease, for application (with accrued interest) toward final payments of rental charges under the lease;

(2) that upon occurrence of a default under the lease, the lessor shall, as a condition precedent to enforcing any claim under the lease guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonably diligent efforts to eliminate or minimize losses, by releasing the commercial or industrial property covered by the lease to another qualified tenant, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the lease will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this part,[67] as the Administrator may in his discretion require.

POWERS

SEC. 402. Without limiting the authority conferred upon the Administrator and the Administration by section 201 [68] of this Act, the Administrator and the Admin- 15 U.S.C. 693. 15 U.S.C. 671. 15 U.S.C. 634.

[64] Original title IV, which provided for the conversion of State chartered investment companies and State development companies into SBICs, was repealed by section 11(f) of PL 87-341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961 (75 Stat. 756), and new Title IV, Lease Guarantees, was added by section 316(a) of PL 89-117, the Housing and Urban Development Act of 1965, approved August 10, 1965, (79 Stat. 482). Title heading amended by section 911(a)(1) of PL 91-609, the Housing and Urban Development Act of 1970, approved December 31, 1970. (84 Stat. 1812).

[65] Section 209 of PL 90-104, the Small Business Investment Act Amendments of 1967, approved October 11, 1967 (81 Stat. 271), extended the lease guarantee program to small business concerns generally by deleting the language which had limited the program to small concerns displaced by federally aided construction or eligible for title IV loans under the Economic Opportunity Act of 1964. (42 U.S.C. 2901 et seq.).

[66] The reference to "this part" inserted in lieu of "this title" by section 911(a)(2) of PL 91-609, the Housing and Urban Development Act of 1970, approved December 31, 1970. (84 Stat. 1812).

[67] The reference to "this part" inserted in lieu of "this title" by section 911(a)(2) of PL 91-609, the Housing and Urban Development Act of 1970, approved December 31, 1970. (84 Stat. 1812).

[68] This authority referred to is to that now contained in section 308(f) as a result of a transfer from former section 201 pursuant to PL 89-779, the Small Business Investment Act Amendments of 1966, approved November 6, 1966. (80 Stat. 1359).

istration shall have, in the performance of and with respect to the functions, powers, and duties conferred by this part, all the authority and be subject to the same conditions prescribed in section 5(b) of the Small Business Act with respect to loans, including the authority to execute subleases, assignments of lease and new leases with any person, firm, organization, or other entity, in order to aid in the liquidation of obligations of the Administration hereunder.

FUND [69]

Lease-guarantee fund. 15 U.S.C. 694.

SEC. 403. There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purposes of section 401. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with section 401, shall be deposited in the fund. All expenses, excluding administrative expenses, pursuant to operations of the Administrator under section 401 shall be paid from the fund.[70]

POLLUTION CONTROL [71]

Definitions. 15 U.S.C. 694–1.

SEC. 404. (a) For purposes of this section, the term—

(1) "pollution control facilities" means such property (both real and personal) as the Administration in its discretion determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat, and such property (both real and personal) as the Administration determines will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

(2) "person" includes corporations, companies, associations, firms, partnerships, societies, joint stock companies, States, territories, and possessions of the United States, or subdivisions of any of the foregoing, and the District of Columbia, as well as individuals.

(3) "qualified contract" means a lease, sublease, loan agreement, installment sales contract, or similar instrument, entered into between a small business concern and any person.

Guarantees.

(b) The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guarantee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property may be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax.

(2) Any such guarantee shall be for the full amount of the payments due under such qualified contract and shall be a full faith and credit obligation of the United States.

(3) No guarantee shall be issued by the Administration unless the Administration determines that there exists a reasonable expectation that the small business concern in behalf of which the guarantee is issued will perform the covenants and conditions of the qualified contract.

Fees.

(c) The Administration shall fix a uniform annual fee for any guarantee issued under this section which shall be payable at such time and under such conditions as may be prescribed by the Administrator. The fee shall be set at an amount which the Administration deems reasonable and necessary and shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. In no case shall such amount exceed 3½ per centum per annum of the minimum annual guaranteed rental payable under any qualified contract guaranteed under this section. The Administration may also fix such

Periodic review.

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[69] Section 403 rewritten by section 911(a)(3) of PL 91–609, the Housing and Urban Development Act of 1970, approved December 31, 1970 (84 Stat. 1812), to increase the amount of the revolving fund and extend its use to the Surety Bond Guarantees under Part B of Title IV; section 403 rewritten by section 6(a) of PL 93–386, the Small Business Amendments of 1974, approved August 23, 1974 (88 Stat. 742), to establish a separate revolving fund to provide capital for Surety Bond Guarantees under Part B of Title IV. The amount authorized for the section 403 fund was previously set at $10 million by section 911(a)(3) of PL 91–609, to be shared by the Surety Bond Program and the Lease Guarantee Program under Part A of Title IV. See section 412 for the Surety Bond Program Revolving Fund. "Section 401" was substituted for "this part" by section 103 of PL 94–305, approved June 4, 1976, (90 Stat. 663).

[70] Section 403 was further rewritten by section 103 of PL 95–89, August 4, 1977: The authorization language was transferred to section 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under the Real Estate Lease Guarantee program; the authority to invest idle funds obtained as fees was also eliminated.

[71] Added by section 102 of PL 94–305, approved June 4, 1976 (90 Stat. 663).

uniform fees for the processing of applications for guarantees under this section as the Administrator determines are reasonable and necessary to pay the administrative expenses that are incurred in connection therewith.

(d) in connection with the guarantee of rentals under any qualified contract pursuant to authority conferred by this section, the Administrator may require, in order to minimize the financial risk assumed under such guarantee—

(1) that the lessee pay an amount, not to exceed one-fourth of the average annual payments for which a guarantee is issued under this section, which shall be held in escrow and shall be available (A) to meet rental charges accruing in any month for which the lessee is in default, or (B) if no default occurs during the term of the qualified contract, for application (with accrued interest) toward final payments of rental charges under the qualified contract;

(2) that upon occurrence of a default under the qualified contract, the lessor shall, as a condition precedent to enforcing any claim under the qualified contract guarantee, utilize the entire period, for which there are funds available in escrow for payment of rentals, in reasonable diligent efforts to eliminate or minimize losses, by releasing the property covered by the qualified contract to another qualified lessee, and no claim shall be made or paid under the guarantee until such effort has been made and such escrow funds have been exhausted;

(3) that any guarantor of the qualified contract will become a successor of the lessor for the purpose of collecting from a lessee in default rentals which are in arrears and with respect to which the lessor has received payment under a guarantee made pursuant to this section; and

(4) such other provisions, not inconsistent with the purposes of this section as the Administrator may in his discretion require.

(e) Any guarantee issued under this section may be assigned with the permission of the Administration by the person to whom the payments under qualified contracts are due.

15 U.S.C. 693. (f) Section 402 shall apply to the administration of this section.

FUND

Fund.
Establishment.
15 U.S.C.
694–2.

SEC. 405. There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitations as a revolving fund for the purpose of section 404. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his o[illegible]ations in connection with section 404 shall be deposi[illegible] in the fund. All expenses and payments, exclusive Administrator under section 404 shall be paid from the fund.[72]

PART B—SURETY BOND GUARANTEES[73]

DEFINITIONS

SEC. 410. As used in this part— 15 U.S.C. 694a.

(1) the term "bid bond" means a bond conditioned upon the bidder on a contract entering into the contract, if he receives the award thereof, and furnishing the prescribed payment bond and performance bond.

(2) the term "payment bond" means a bond conditioned upon the payment by the principal of money to persons under contract with him.

(3) the term "performance bond" means a bond conditioned upon the completion by the principal of a contract in accordance with its terms.

(4) the term "surety" means the person who, (A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee in the event the principal breaches the conditions of the bond, (B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract in the event the principal breaches the conditions of the contract, or (C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment.

(5) the term "obligee" means (A) in the case of a bid bond, the person requesting bids for the performance of a contract, or (B) in the case of a payment bond or performance bond, the person who has contracted with a principal for the completion of the contract and to whom the obligation of the surety runs in the event of a breach by the principal of the conditions of a payment bond or performance bond.

(6) the term "principal" means (A) in the case of a bid bond, a person bidding for the award of a contract, or (B) the person primarily liable to complete a contract for the obligee, or to make payments to other persons in respect of such contract, and for whose performance of his obligation the surety is bound under the terms of a payment or performance bond. A principal may be a prime contractor or a subcontractor.

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[72] Section 405 was rewritten by section 104 of PL 95–89, August 4, 1977: the authorization language was transferred to section 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program; the authority to invest idle funds was ended.

[73] Part B added by section 911(a)(4) of PL 91–609, the Housing and Urban Development Act of 1970, approved December 31, 1970. (84 Stat. 1812).

(7) the term "prime contractor" means the person with whom the obligee has contracted to perform the contract.

(8) the term "subcontractor" means a person who has contracted with a prime contractor or with another subcontractor to perform a contract.

AUTHORITY OF THE ADMINISTRATION

15 U.S.C. 694b. Surety-bond guarantee authority.

SEC. 411. (a) The Administration may, in consultation with the Secretary of Housing and Urban Development and upon such terms and conditions as it may prescribe, guarantee and enter into commitments to guarantee any surety against loss, as hereinafter provided, as the result of the breach of the terms of a bid bond, payment bond, or performance bond by a principal on any contract up to $1,000,000 [74] in amount, subject to the following conditions:

(1) the person who would be the principal of the bond is a small business concern.

(2) the bond is required in order for such person to bid on a contract, or to serve as a prime contractor or subcontractor thereon.

(3) such person is not able to obtain such bond on reasonable terms and conditions without a guarantee under this section.

(4) the Administration determines that there is a reasonable expectation that such person will perform the covenants and conditions of the contract with respect to which the bond is required.

(5) the contract meets requirements established by the Administration for feasibility of successful completion and reasonableness of cost.

(6) the terms and conditions of any bond guaranteed under the authority of this part are reasonable in light of the risks involved and the extent of the surety's participation.

(b) Any contract of guarantee under this section shall obligate the Administration to pay to the surety a sum not to exceed 90 per centum of the loss incurred by the surety in fulfilling the terms of his contract as the result of the breach by the principal of the terms of a bid bond, performance bond, or payment bond.

(c) The Administration shall [75] administer this program on a prudent and economically justifiable basis and shall fix a uniform annual fee which it deems reasonable and necessary for any guarantee issued under this section, to be payable at such time and under such conditions as may be determined by the Administration. Such fee shall be subject to periodic review in order that the lowest fee that experience under the program shows to be justified will be placed into effect. The Administration shall also fix such uniform fees for the processing of applications for guarantees under this section as it determines are reasonable and necessary to pay administrative expenses incurred in connection therewith. Any contract of guarantee under this section shall obligate the surety to pay the Administration such portions of the bond fee as the Administration determines to be reasonable in the light of the relative risks and costs involved. Within 30 days after the date of enactment of this sentence and at monthly intervals thereafter, the Administration shall publish the cost of the program to the Administration for the month immediately preceding the date of publication. The Administration shall conduct a study of the program in order to determine what must be done to make the program economically sound. Within one year after the date of enactment of this sentence, the Administration shall transmit a report to Congress containing a detailed statement of the findings and conclusions of the study, together with its recommendations for such legislative and administrative actions as it deems appropriate.[76]

(d) The provisions of section 402 shall apply in the Administration of this section.

FUND [77]

15 U.S.C. 694c. Surety-bond guarantee fund.

SEC. 412. There is hereby created within the Treasury a separate fund for guarantees which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of this part. All amounts received by the Administrator, including any moneys, property, or assets derived by him from his operations in connection with this part, shall be deposited in the fund. All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under this part shall be paid from the fund. Moneys in the fund not needed for the payment of current operating expenses or for the payment of claims arising under this part may be invested in bonds or other obligations of, or bonds or other obligations guaranteed as to principal

[74] "$1,000,000" inserted in lieu of "$500,000" by section 6(a)(3) of PL 93-386, the Small Business Amendments of 1974, approved August 23, 1974. (88 Stat. 742).

[75] The phrase "administer this program on a prudent and economically justifiable basis and shall" added by section 11(a) of PL 93-386, the Small Business Amendments of 1974, approved August 23, 1974. (88 Stat. 742).

[76] Sentences beginning with "Within 30 days after the date of enactment of," added by section 11(b) of PL 93-386, the Small Business Amendments of 1974, approved August 23, 1974. (88 Stat. 742).

[77] Section 412 added by section 6(a)(4) of PL 93-386, the Small Business Amendments of 1974, approved August 23, 1974. (88 Stat. 742). Section 412 was rewritten by section 105 of PL 95-89, August 4, 1977; the authorization language was transferred to section 20 of the Small Business Act; SBA is no longer required to pay interest to the Treasury on appropriated funds to be used to pay claims under this program; the authority to invest idle funds was modified.

and interest by the United States; except that moneys provided as capital for the fund shall not be so invested.[78]

TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

15 U.S.C. 695.

SEC. 501. (a) The Administration is authorized to make loans to State development companies to assist in carrying out the purposes of this Act. Any funds advanced under this subsection shall be in exchange for obligations of the development company which bear interest at such rate, and contain such other terms, as the Administration may fix, and funds may be so advanced without regard to the use and investment by the development company of funds secured by it from other sources.

(b) The total amount of obligations purchased and outstanding at any one time by the Administration under this section from any one State development company shall not exceed the total amount borrowed by it from all other sources. Funds advanced to a State development company under this section shall be treated on an equal basis with those funds borrowed by such company after the date of the enactment of this Act, regardless of source, which have the highest priority, except when this requirement is waived by the Administrator.

15 U.S.C. 696.

SEC. 502. The Administration may, in addition to its authority under section 501, make loans for plant acquisition,[79] construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however*, That the foregoing powers shall be subject to the following restrictions and limitations:

(1) All loans made shall be so secured as reasonably to assure repayment. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

(2) The proceeds of any such loan shall be used solely by such borrower to assist an identifiable small-business concern and for a sound business purpose approved by the Administration.

(3) Loans made by the Administration under this section shall be limited to $500,000 [80] for each such identifiable small-business concern.

(4) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of paid-in capital [81] to be used in each instance as is determined to be reasonable by the Administration.

(5) No loans, including extensions or renewals thereof, shall be made by the Administration for a period or periods exceeding twenty-five years [82] plus such additional period as is estimated may be required to complete construction, conversion, or expansion, but the Administration may extend the maturity of or renew any loan made pursuant to this section beyond the period stated for additional periods, not to exceed ten years, if such extension or renewal will aid in the orderly liquidation of such loan. Any such loan shall bear interest at a rate fixed by the Administration.[83]

TITLE VI—CHANGES IN FEDERAL RESERVE AUTHORITY

[Omitted as no longer current.]

TITLE VII—CRIMINAL PENALTIES

(This title amends the U.S. Code to include certain actions by persons affiliated with or dealing with SBIC's as Federal crimes. The provisions have been amended from time to time to include various agencies. Only the pertinent parts of the affected sections, 18 U.S.C. 212, 213, 216, 657, 1006 and 1014, are set out below for information purposes only.)

§ 212. Offer of loan or gratuity to bank examiner.

Whoever, being an officer, director or employee . . . of any small business investment company, makes or grants any loan or gratuity, to any examiner or assistant examiner who examines or has authority to examine such . . . corporation . . . shall be fined not more than $5,000 or imprisoned not more than one year, or both;

[78] Section 6(b) of PL 93-386, the Small Business Amendments of 1974, approved August 23, 1974 (88 Stat. 742), provides that: "Unexpected balances of capital previously transferred to the fund pursuant to section 403 of the Small Business Investment Act of 1958 (15 U.S.C. 694), as in effect prior to the effective date of this Act, shall be allocated, together with related assets and liabilities, to the funds established by paragraphs (2) and (4) of subsection (a) of this section in such amounts as the Administrator shall determine. In addition, the Administrator is authorized to transfer to the fund established by paragraph (4) of subsection (a) of this section not to exceed $2,000,000 from the fund established under section 4(c)(1)(B) of the Small Business Act: *Provided*, That section 4(c)(6) and the last sentence of section 4(c)(5) shall not apply to any amounts so transferred."

[79] The word "acquisition" added by section 108(a) of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[80] This limitation was raised from "$350,000" to "$500,000" by section 110 of PL 94-305, approved June 4, 1976. (90 Stat. 663).

[81] Section 742 of the Economic Opportunity Act of 1964, as amended provides that funds granted under Title VII which are invested, directly or indirectly in a local development company shall be included as paid-in capital.

[82] This limitation was raised from 10 years to 25 years by section 10(2) of PL 87-341, the Small Business Investment Act Amendments of 1961, approved October 3, 1961. (75 Stat. 756).

[83] Previous limitation on the life of section 502 (June 30, 1961), was repealed by section 26 of PL 87-27, the Area Redevelopment Act approved May 1, 1961. (75 Stat. 63).

and may be fined a further sum equal to the money so loaned or gratuity given.

The provisions of this section and section 218 [84] of this title shall apply to all public examiners and assistant examiners who examine member banks of the Federal Reserve System or insured banks, or National Agricultural Credit Corporations, whether appointed by the Comptroller of the Currency, by the Board of Governors of the Federal Reserve System, by a Federal Reserve Agent, by a Federal Reserve bank or by the Federal Deposit Insurance Corporation, or appointed or elected under the laws of any State; but shall not apply to private examiners or assistant examiners employed only by a clearing-house association or by the directors of a bank.

§ 213. Acceptance of a loan or gratuity by bank examiner.

Whoever, being an examiner . . . of small business investment companies, accepts a loan or gratuity from any . . . corporation . . . or organization examined by him or from any person connected therewith, shall be fined not more than $5,000 or imprisoned not more than one year, or both; and may be fined a further sum equal to the money so loaned or gratuity given, and shall be disqualified from holding office as such examiner . . .

§ 216. Receipt or charge of commissions or gifts for farm loan, land bank, or small business transactions.

Whoever, being an officer, director, attorney or employee of a . . . small business investment company, is a beneficiary of or receives, directly or indirectly, any fee, commission, gift, or other consideration for or in connection with any transaction or business of such association or bank, other than the usual salary or director's fee paid to such officer, director, or employee thereof, and a reasonable fee paid by such association . . . to such officer, director, attorney, or employee for services rendered, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

Whoever causes or procures any . . . small business investment company, to charge or receive any fee, commission, bonus, gift, or other consideration not specifically authorized, shall be fined not more than $5,000 or imprisoned not more than one year, or both.

§ 657. Lending, credit and insurance institutions.

Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, and whoever, being a receiver of any such institution, or agent or employee of the receiver, embezzles, abstracts, purloins or willfully misapplies any moneys, funds, credits, securities or other things of value belonging to such institution, or pledged or otherwise intrusted to its care, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the amount or value embezzled, abstracted, purloined or misapplied does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 1006. Federal credit institution entries, reports and transactions.

Whoever, being an officer, agent or employee of or connected in any capacity with . . . any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

§ 1014. Loan and credit applications generally; renewals and discounts; crop insurance.

Whoever knowingly makes any false statement or report, or willfully overvalues any land, property or security, for the purpose of influencing in any way the action of . . . a small business investment company . . . , upon any application, advance, discount, purchase, purchase agreement, repurchase agreement, commitment, or loan, or any change or extension of any of the same, by renewal, deferment of action or otherwise, or the acceptance, release, or substitution of security therefor, shall be fined not more than $5,000 or imprisoned not more than two years, or both.

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[84] This section was redesignated as section 213 by section 1(d) of PL 87-849, approved October 23, 1962. (76 Stat. 1125).

SBIC TAX PROVISIONS

INTERNAL REVENUE CODE OF 1954

as amended

(Title 26 of the United States Code)

* * * * *

SEC. 172. NET OPERATING LOSS DEDUCTION.

(a) DEDUCTION ALLOWED.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.

(b) NET OPERATING LOSS CARRYBACKS AND CARRYOVERS.—

(1) YEARS TO WHICH LOSS MAY BE CARRIED.—

* * * * *

(F)[1] In the case of a financial institution to which section 585, 586, or 593 applies, a net operating loss for any taxable year beginning after December 31, 1975, shall be a net operating loss carryback to each of the 10 taxable years preceding the taxable year of such loss and shall be a net operating loss carryover to each of the 5 taxable years following the taxable year of such loss.

* * * * *

SEC. 243.[2] DIVIDENDS RECEIVED BY CORPORATIONS.

(a) GENERAL RULE.—In the case of a corporation, there shall be allowed as a deduction an amount equal to the following percentages of the amount received as dividends from a domestic corporation which is subject to taxation under this chapter:

(1) 85 percent, in the case of dividends other than dividends described in paragraph (2) or (3);

(2) 100 percent, in the case of dividends received by a small business investment company operating under the Small Business Investment Act of 1958; and

* * * * *

SEC. 542. DEFINITION OF PERSONAL HOLDING COMPANY.

(a) GENERAL RULE.—For purposes of this subtitle, the term "personal holding company" means any corporation (other than a corporation described in subsection (c)) if—

* * * * *

(c) EXCEPTIONS.—The term "personal holding company" as defined in subsection (a) does not include—

* * * * *

(8)[3] a small business investment company which is licensed by the Small Business Administration and operating under the Small Business Investment Act of 1958 and which is actively engaged in the business of providing funds to small business concerns under that Act. This paragraph shall not apply if any shareholder of the small business investment company owns at any time during the taxable year directly or indirectly (including, in the case of an individual, ownership by the members of his family as defined in section 544(a)(2)) a 5 per centum or more proprietary interest in a small business concern to which funds are provided by the investment company or 5 per centum or more in value of the outstanding stock of such concern.

* * * * *

SEC. 582. BAD DEBTS, LOSSES, AND GAINS WITH RESPECT TO SECURITIES HELD BY FINANCIAL INSTITUTIONS.

* * * * *

(c) BOND, ETC., LOSSES AND GAINS OF FINANCIAL INSTITUTIONS.—

(1)[4] GENERAL RULE.—For purposes of this subtitle, in the case of a financial institution to which section 585, 586, or 593 applies, the sale or exchange of a bond, debenture, note, or certificate or other

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[1] Added by section 431(b) of PL 91-172, the Tax Reform Act of 1969, approved December 30, 1969 (83 Stat. 619), and provides loss carryback and carryover benefits to SBICs since they are financial institutions to which section 586 of the Internal Revenue Code applies.

[2] The provision allowing SBICs a deduction of 100 percent of dividends received from a taxable domestic corporation rather than the 85 percent generally allowed corporate taxpayers was added by section 57(b) of PL 85-866, the Technical Amendments Act of 1958, approved September 2, 1958. (72 Stat. 1645). Amendments have been made to this section since the 1958 Act but have not affected the treatment given to SBIC dividends.

[3] Added as paragraph 11 by section 3 of PL 86-376, approved September 23, 1959 (73 Stat. 700), and redesignated as paragraph 8 by section 225(c)(2) of PL 88-272, the Revenue Act of 1964, approved February 26, 1964. (78 Stat. 79). The provision qualifiedly exempts SBICs from the personal holding company surtax.

[4] Amended by section 433(a) of PL 91-172, the Tax Reform Act of 1969, approved December 30, 1969 (83 Stat. 623), and provides ordinary gain and loss treatment to the sale or exchange of certain securities held by SBICs. Section 433(d) makes this provision applicable to taxable years beginning after July 11, 1969, but authorizes SBICs to elect irrevocably whether it shall apply to their taxable years beginning after July 11, 1969 and before July 11, 1974.

evidence of indebtedness shall not be considered a sale or exchange of a capital asset.

* * * * *

SEC. 586.[5] RESERVES FOR LOSSES ON LOANS OF SMALL BUSINESS INVESTMENT COMPANIES, ETC.

(a) INSTITUTIONS TO WHICH SECTION APPLIES.—This section shall apply to the following financial institutions:

(1) any small business investment company operating under the Small Business Investment Act of 1958, and

(2) any business development corporation.

For purposes of this section, the term "business development corporation" means a corporation which was created by or pursuant to an act of a State legislature for purposes of promoting, maintaining, and assisting the economy and industry within such State on a regional or statewide basis by making loans to be used in trades and businesses which would generally not be made by banks (as defined in section 581) within such region or State in the ordinary course of their business (except on the basis of a partial participation), and which is operated primarily for such purposes.

(b) ADDITION TO RESERVES FOR BAD DEBTS.—

(1) GENERAL RULE.—For purposes of section 166 (c), except as provided in paragraph (2) the reasonable addition to the reserve for bad debts of any financial institution to which this section applies shall be an amount determined by the taxpayer which shall not exceed the amount necessary to increase the balance of the reserve for bad debts (at the close of the taxable year) to the greater of—

(A) the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the 5 preceding taxable years (or, with the approval of the Secretary, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such 6 or fewer taxable years, or

(B) the lower of—

(i) the balance of the reserve at the close of the base year, or

(ii) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

For purposes of this subparagraph, the term "base year" means the last taxable year beginning on or before July 11, 1969.

(2) NEW FINANCIAL INSTITUTIONS.—In the case of any taxable year beginning not more than 10 years after the day before the first day on which a financial institution (or any predecessor) was authorized to do business as a financial institution described in subsection (a), the reasonable addition to the reserve for bad debts of such financial institution shall not exceed the larger of the amount determined under paragraph (1) or the amount necessary to increase the balance of the reserve for bad debts at the close of the taxable year to the amount which bears the same ratio (as determined by the Secretary) to loans outstanding at the close of the taxable year as (i) the total bad debts sustained by all institutions described in the applicable paragraph of subsection (a) during the 6 preceding taxable years (adjusted for recoveries of bad debts during such period), bears to (ii) the sum of the loans by all such institutions outstanding at the close of such taxable years.

* * * * *

SEC. 1242.[6] LOSSES ON SMALL BUSINESS INVESTMENT COMPANY STOCK.

If—

(1) a loss is on stock in a small business investment company operating under the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset.

then such loss shall be treated as an ordinary loss. For purposes of section 172 (relating to the net operating loss deduction) any amount of loss treated by reason of this section as an ordinary loss shall be treated as attributable to a trade or business of the taxpayer.

SEC. 1243.[7] LOSS OF SMALL BUSINESS INVESTMENT COMPANY.

In the case of a small business investment company operating under the Small Business Investment Act of 1958, if—

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[5] Added by section 431(a) of PL 91–172, the Tax Reform Act of 1969, approved December 30, 1969 (83 Stat. 618), and made effective by section 431(d) for taxable years beginning after July 11, 1969.

[6] Added by section 57(a) of PL 85–866, the Technical Amendments Act of 1958 proved September 2, 1958. (72 Stat. 1645). Under Internal Revenue Service Income Regulation /1.1242–1(a), ordinary loss deductions are made clearly available to subseq purchasers as well as to original investors in SBIC stock.

[7] Added by section 57(a) of PL 85–866, the Technical Amendments Act of 1958, appr September 2, 1958. (72 Stat. 1645). Section 304 of the Small Business Investment A 1958 was amended in 1960 to permit SBICs, under SBA regulations, to accept secur other than convertible debentures in exchange for equity capital supplied to small conc However, only stock acquired by exercise of the conversion privilege is specifically cov

(1)[8] a loss is on stock received pursuant to the conversion privilege of convertible debentures acquired pursuant to section 304 of the Small Business Investment Act of 1958, and

(2) such loss would (but for this section) be a loss from the sale or exchange of a capital asset,

then such loss shall be treated as an ordinary loss.

* * * * *

[8] Paragraph (1) amended by section 433(b) of PL 91-172, the Tax Reform Act of 1969, approved December 30, 1969 (83 Stat. 624), to conform to the amendment made to section 582(c) by section 433(a) of PL 91-172, giving ordinary gain and loss treatment to debentures and other evidence of indebtedness. Prior to the change, this section covered the ordinary loss treatment given to both convertible debentures and stock received pursuant thereto.

Information for Amendment for HB 499 Attach. 3

GASOLINE TAX

To provide cities and counties with an increase of $6 million, represented by 1¢ tax on gasoline, and to maintain the same ratio of distribution as it has been for many years, Section 15-70-101(1) (a) and (b) should be changed to read as follows:

Amend Section 15-70-101(1) change $6,500,000 to read $12,500,000

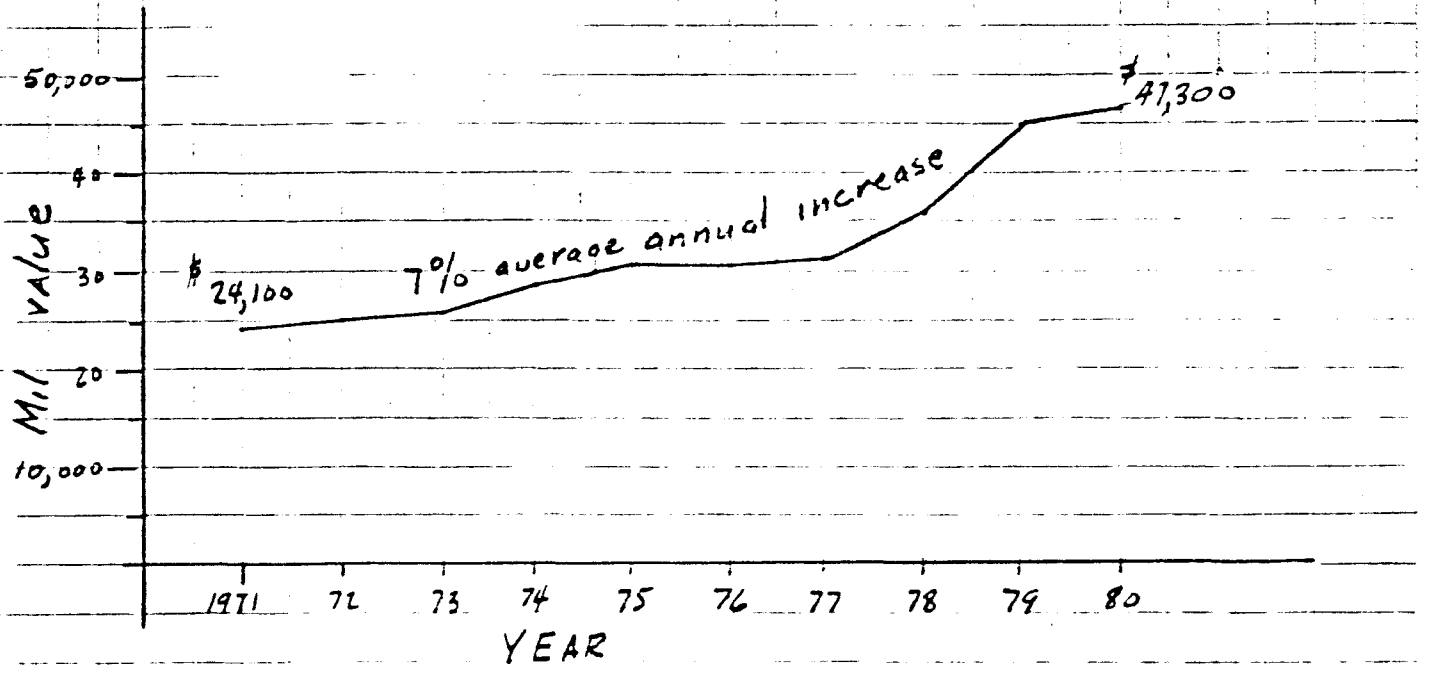
(a) change $2,950,000 to $5,750,000

(b) change $3,550,000 to $6,750,000

Attach. 3

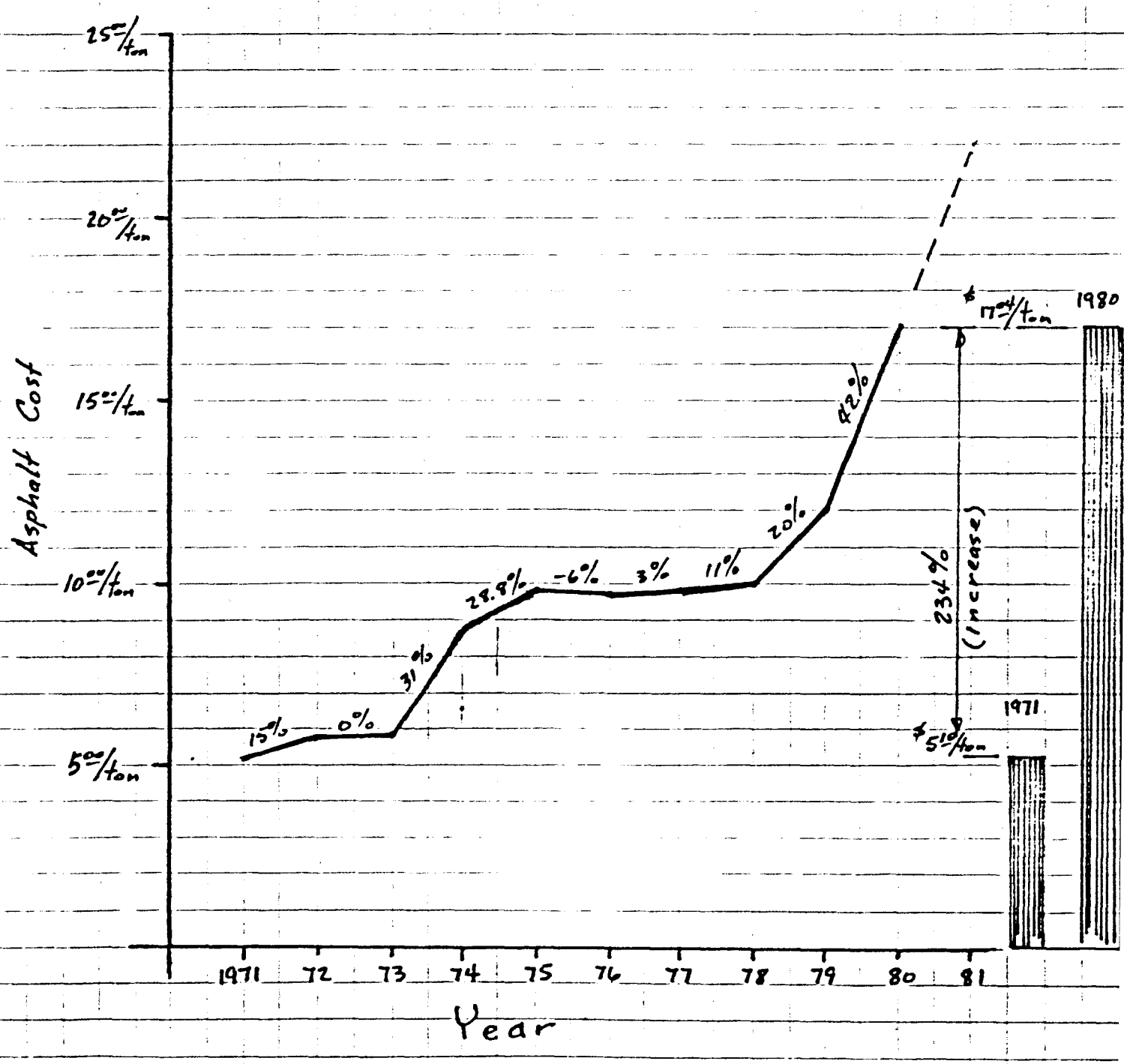
Data for HB 499

PROJECT MILL VALUE DATE Jan 9 1981

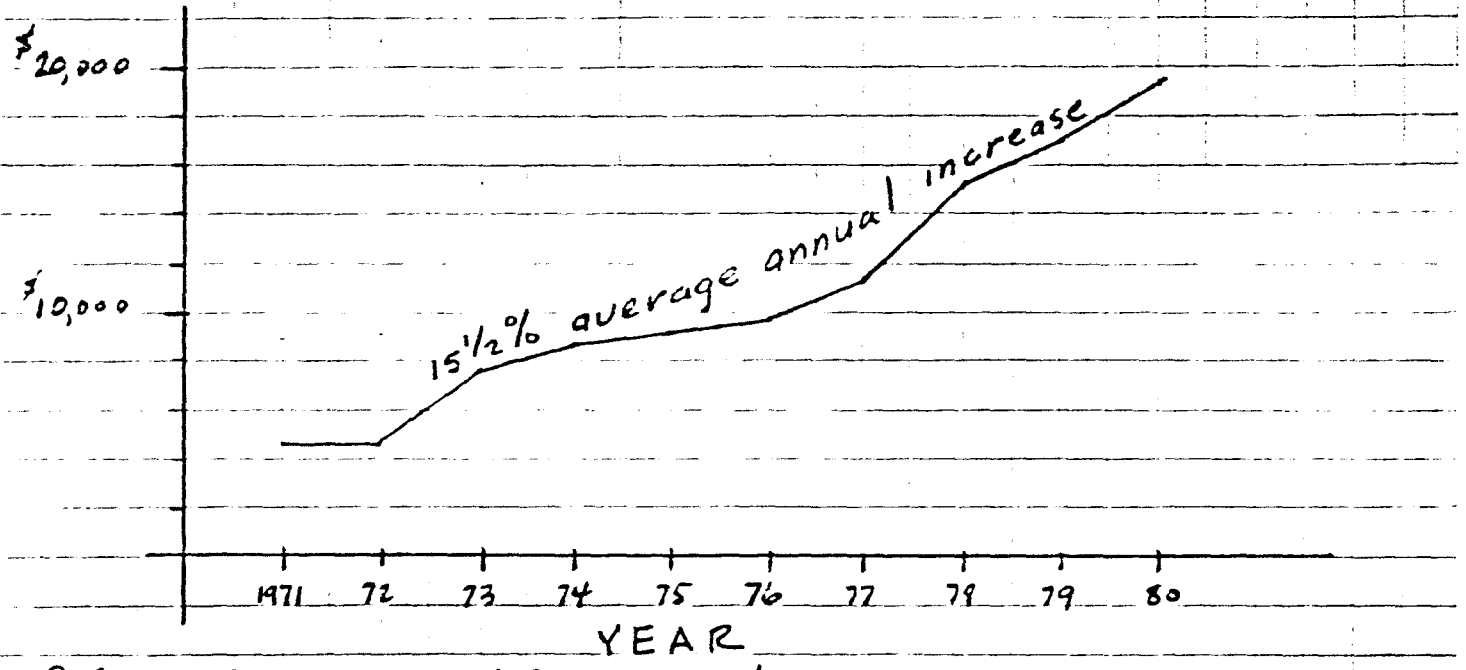


MILL VALUE - MISSOULA

PROJECT Asphalt Cost Per Ton DATE Jan 9, 1981

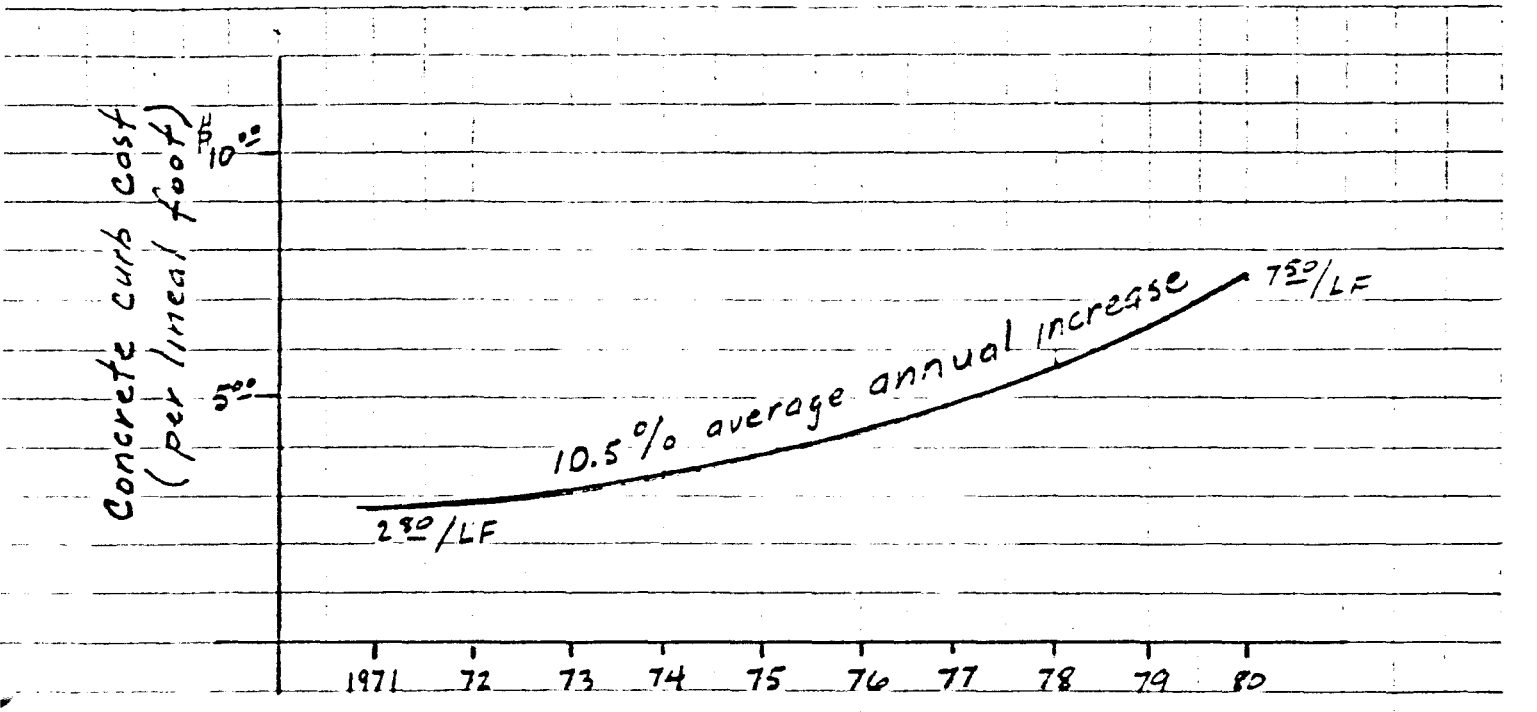


JECT Utility Cost - Street Dept. DATE Jan 9, 1981



STREET DEPT. UTILITIES' COST

JECT CONCRETE CURBS AND STREET COSTS DATE Jan 9, 1981



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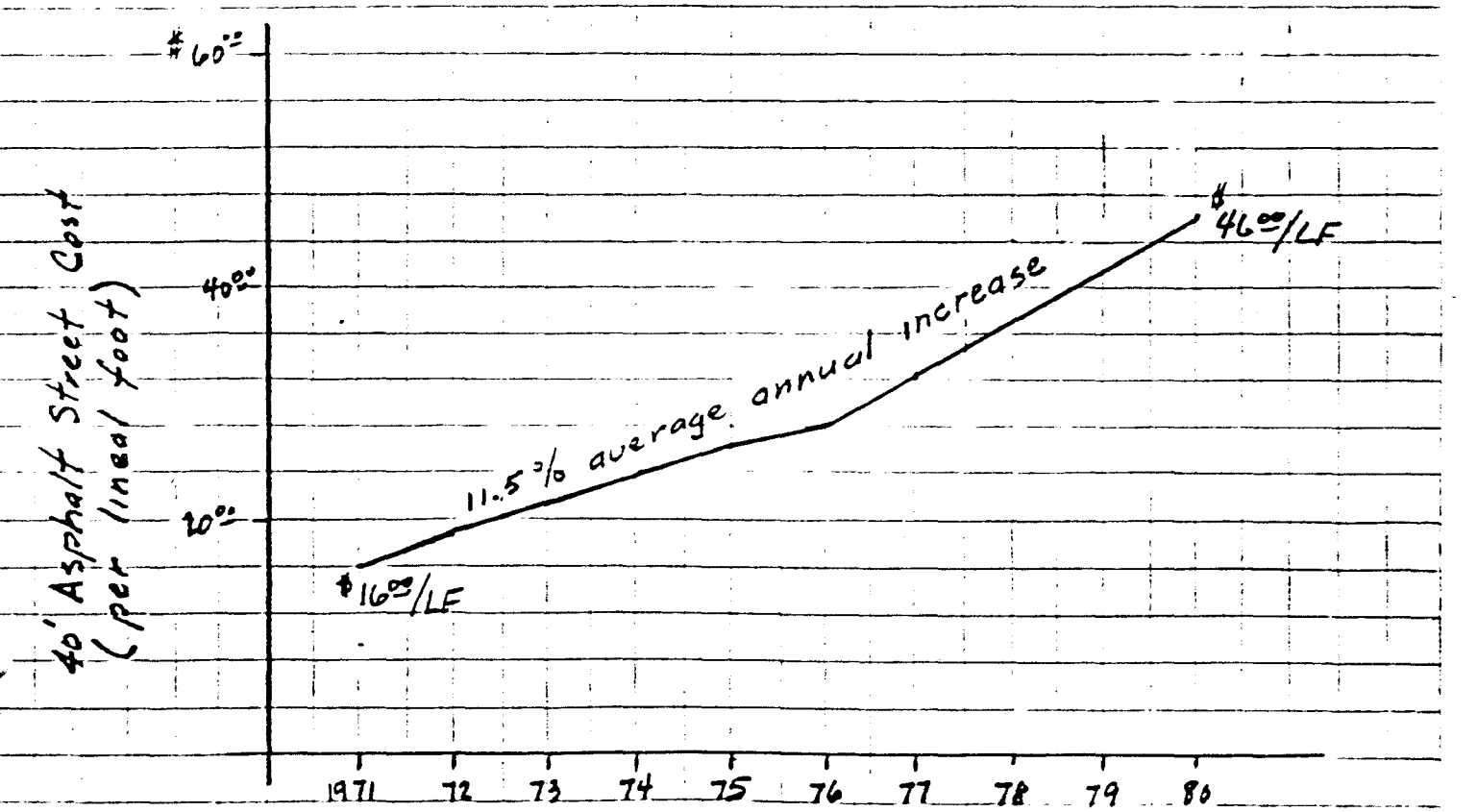
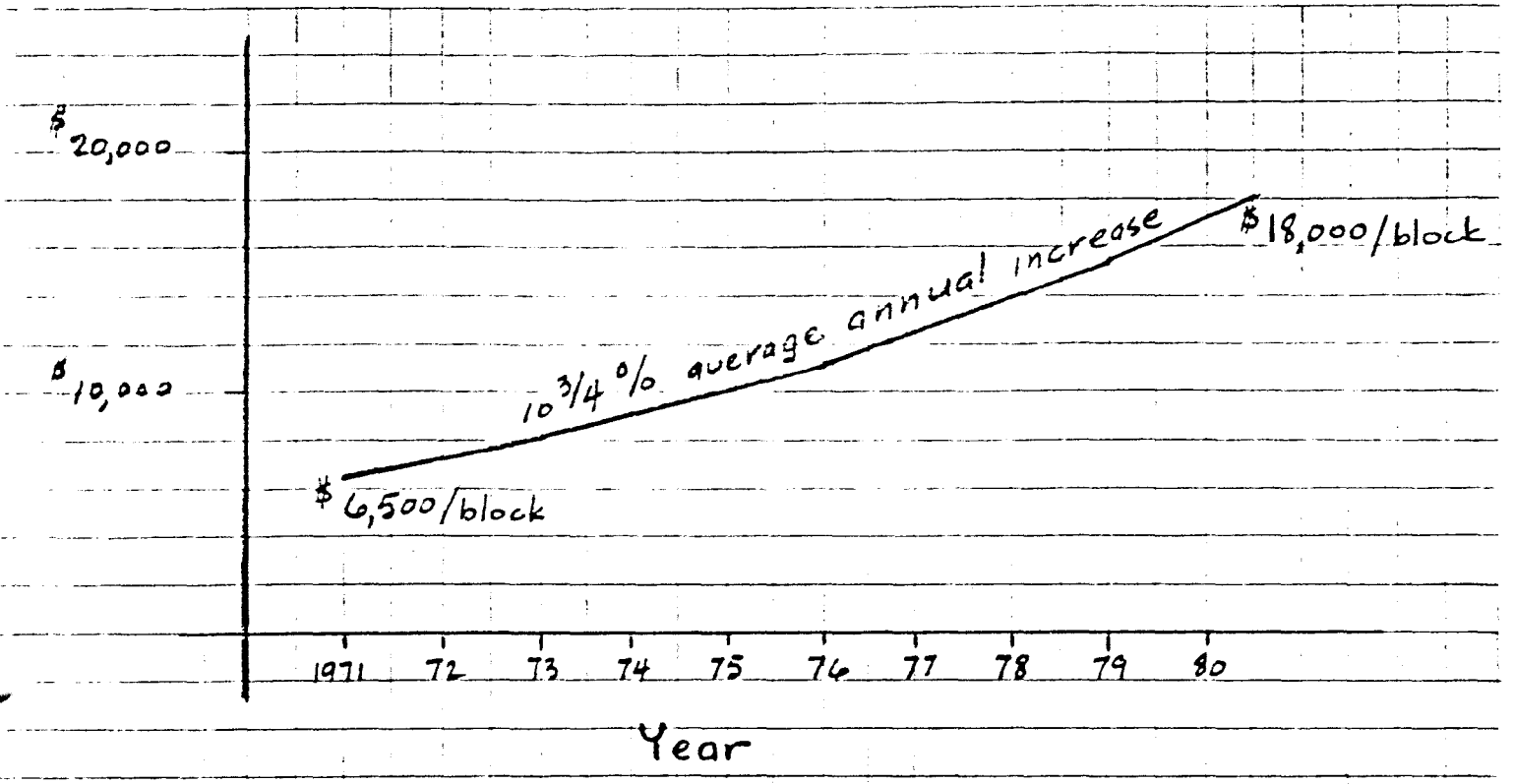
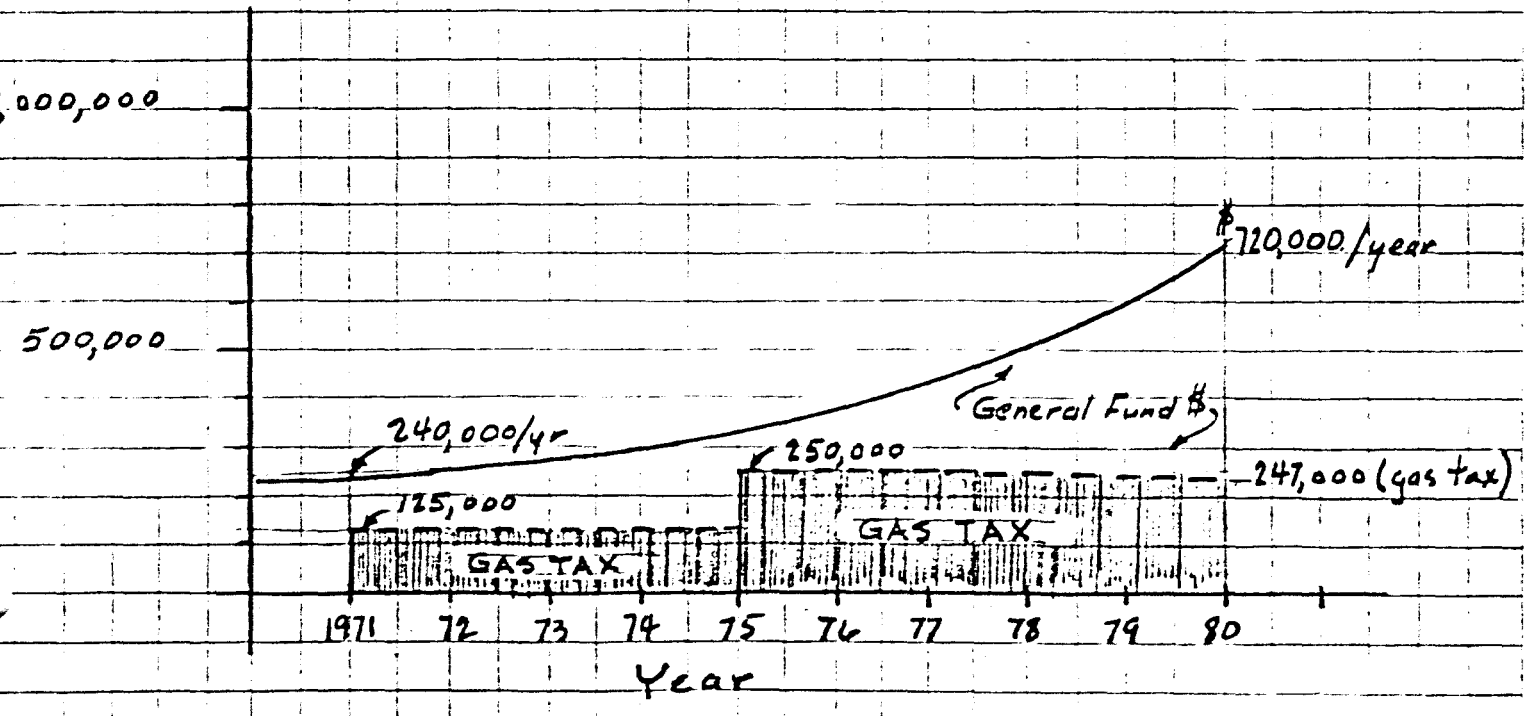


ASPHALT STREETS Year

PROJECT STREET COST AND FUNDING DATE Jan 9, 1981



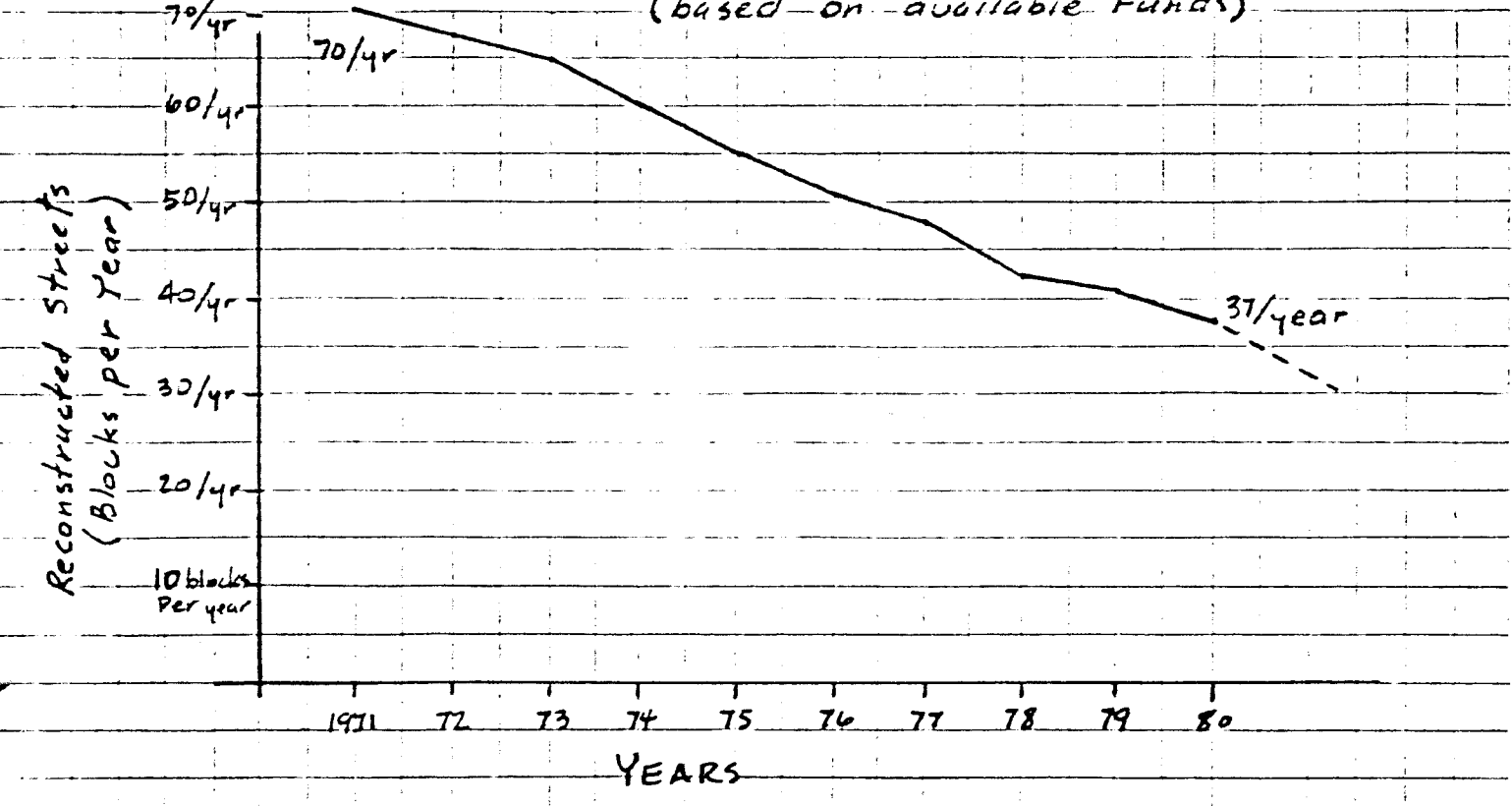
STREET COST PER 300' BLOCK



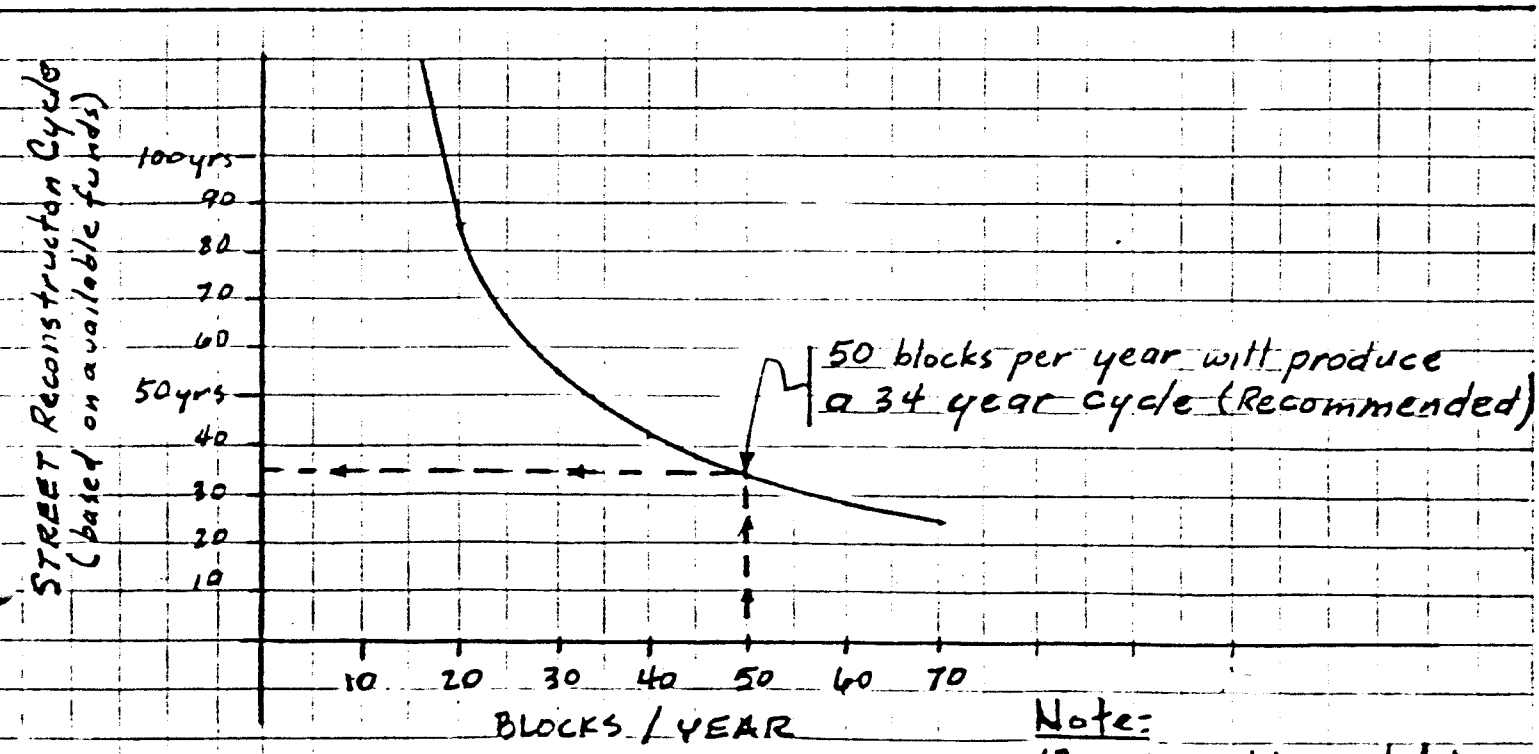
STREET CONSTRUCTION FUNDING

PROJECT Street Construction - SIZE & CYCLE DATE Jan 9, 1981

(based on available Funds)



STREET CONSTRUCTION (NUMBER BLOCKS PER YEAR)



Note:
(Based on Missoula's

MONTANA CHAPTER

INTERMOUNTAIN OIL MARKETERS ASSOCIATION

TESTIMONY SUBMITTED TO SENATE TAXATION COMMITTEE 4-13-81 WITH RESPECT TO HB 835 AND HB 499

Mr. Chairman and Members of the Committee:

Montana Intermountain Oil Marketers Association (Montana IOMA) wishes to state at the outset that we believe each community should be able to levy whatever taxes the people of that community decide. However, we rise in opposition to HB 835 not to preclude the above ability to levy taxes, but to point out mechanical difficulites and extreme costs with respect to implementation of this bill. We also would like to offer an alternative.

As was pointed out to our last legislative session, cost to government entities and mechanics of operation of the present local option motor fuel tax provides almost insurmountable difficulties for implementation. Please consider the following:

1. Montana IOMA believes that to avoid discriminatory taxing, the bill must include diesel fuel, propane, and natural gas. Automobiles are increasingly operating on these fuels also.
2. Local governments would be required to place administrative guidelines in existance to include enforcement, auditing, collections, etc.
3. If this bill were implemented at the retail, the cost of providing auditors to keep track of retail pump requirements, key-stop operations, distributor outlets at both city and county levels could far out-weigh generated revenue.
4. Administrative costs with respect to enforcement at all levels of city, county, jobber, nd retail would possibly be prohibitive.
5. If a community elects to impose this tax, all costs would be relayed to the consumer, thus providing a cost increase to them above the initial 1 cent per gallon tax.
6. This proposal would provide incentive for consumers to buy their fuel in near counties who have not imposed the tax, thus reducing consumption and monies collected.
7. Definitions used in the bill would require alteration to coincide with definitions used in the industry.
8. An additional cost of this proposal lies with bonding requirements needed to insure city/county payments.
9. Finally, the cost of elections within the community to approve such a measure also must be considered within total cost estimates.

Realizing that city/county roads are in need of the amount of money that HB 835 would generate, Montana IOMA suggests that a state-wide 1 cent per gallon tax be imposed such that each community will be able to draw on these funds for city/county road repair and maintenance. We understand that Section 15-70-101 states that approximately $6.5 million is currently earmarked for city/county construction, reconstruction, maintenance and repair. We propose that the Committee consider amending this section to increase the $6.5 million to include the additional 1 cent per gallon revenue. We believe that the City/County Association will be, or have presented just such an amendment. Montana IOMA supports this recommendation.

Therefore, in view of the above and the difficulties with the law presently on record, Montana IOMA requests that the committee kill HB 835 and amend HB 499 to include the earmarked revenue of the 1 cent per gallon for city/county road repair and maintenance. Also, Section 15-70-101 should be amended to include the above generated revenue.

Montana IOMA

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SENATE COMMITTEE TAXATION

Date Apr. 13, 1981 House Bill No. 609 Time 10:15 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)		✓
SEN. BOB BROWN	absent	
SEN. STEVE BROWN		✓
SEN. CRIPPEN	✓	
SEN. ECK		✓
SEN. ELLIOTT	✓	
SEN. HAGER		✓
SEN. HEALY		✓
SEN. MANLEY	✓	
SEN. NORMAN	✓	
SEN. OCHSNER		✓
SEN. SEVERSON		✓
SEN. TOWE		✓
SEN. GOODOVER (CHAIRMAN)		✓
	4	9

Betty Dean
Secretary

Pat M. Goodover
Chairman

Motion: Amend #5,000.

(include enough information on motion--put with yellow copy of committee report.)

SENATE COMMITTEE TAXATION

Date Apr. 13, 1981 House Bill No. 718 Time 10:55 a.m.

NAME	YES	NO
SEN. McCALLUM (Vice-Chairman)		✓
SEN. BOB BROWN	✓	
SEN. STEVE BROWN	✓	
SEN. CRIPPEN	✓	
SEN. ECK	✓	
SEN. ELLIOTT		✓
SEN. HAGER		✓
SEN. HEALY		✓
SEN. MANLEY		✓
SEN. NORMAN	✓	
SEN. OCHSNER		✓
SEN. SEVERSON		✓
SEN. TOWE	✓	
SEN. GOODOVER (CHAIRMAN)		✓
	6	— 8

Betty Dean
Secretary

Pat M. Goodover
Chairman

Motion: To delay Consideration.

(include enough information on motion--put with yellow copy of committee report.)