

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT

Call to Order: By REP. BOB BACHINI, CHAIRMAN, on March 8, 1991,
at 8:00 a.m.

ROLL CALL

Members Present:

Bob Bachini, Chairman (D)
Sheila Rice, Vice-Chair (D)
Joe Barnett (R)
Steve Benedict (R)
Brent Cromley (D)
Tim Dowell (D)
Alvin Ellis, Jr. (R)
Stella Jean Hansen (D)
H.S. "Sonny" Hanson (R)
Tom Kilpatrick (D)
Dick Knox (R)
Don Larson (D)
Scott McCulloch (D)
Bob Pavlovich (D)
John Scott (D)
Don Stepler (D)
Rolph Tunby (R)
Norm Wallin (R)

Staff Present: Paul Verdon, Legislative Council
Jo Lahti, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Announcements/Discussion: HB 742, HB 861, HB 901 were heard.
Executive Action was taken on HB 742, SB 190.

HEARING ON HOUSE BILL 742

Presentation and Opening Statement by Sponsor:

REP. DAVID WANZENRIED, House District 7, Kalispell, said HB 742 lends more creditability to boat dealers currently doing business in Montana. It is an Act revising the law regarding boat dealers; requiring a dealer to have a principal place of business and providing for signing and inspection of the premises; requiring an annual bond for a boat dealer; extending the period from time of purchase to time of licensing a boat and allowing issuance of a temporary boat sticker; amending sections 23-2-510, 23-2-511,

and 23-2-513, MCA. There are about 118 boat dealer plates, and there are probably 25 to 30 dealers. Many people appear to be doing business perhaps to exempt themselves from having to pay taxes. HB 742 streamlines and adds clarity to the transfer of boats within Montana. Page 3 and 4, shows how the process is proposed to be changed. Page 8 pertains to requirements for being a boat dealer.

Proponents' Testimony:

Dave Seyfert, owner of Flathead Sports in Kalispell and representing the Montana Boating Association, said a bond is being required, which hasn't been done in the past. It was patterned after the snowmobile dealers.

Ken Hoovestol, Montana Boating Association and Montana Snowmobile Association, said the Snowmobile Association had its bill passed a number of years ago. The wording in this bill is similar. It is to control the unauthorized use of dealer plates.

Opponents' Testimony:

Daryll "Bud" Schoen, Registrar of Motor Vehicles, Department of Justice, Motor Vehicle Division, said the Department doesn't oppose the bill, but the 60-day provision and the bonding provisions have been amended in other bills that affect Title 61, Motor Vehicles. He proposed to amend HB 742. EXHIBIT 1. For the 60-day sticker provision, Title 61 would be amended to include that the fee must be paid in lieu of taxes when the permit is applied for. The permit only costs \$2.00. If a 60-day permit is issued for a boat, that usually takes care of the entire boating season. The other amendment pertains to dealer bonds. Under the present statute, if the person is injured by a dealer, he has to get a judgment from a court. Then he applies to the Department of Justice, who must pay the amount of damages on the judgment. Then the Department tries to get the money from the bonding company. We would like to keep the state out of the bonding process and have the claimant go directly to the bonding company to collect the bond.

Questions From Committee Members:

REP. LARSON asked REP. WANZENRIED if he had seen and concurs with the amendments. REP. WANZENRIED said yes.

REP. WALLIN said Mr. Schoen had testified on HB 209, which pertains to a temporary filing receipt to cover against bankruptcies in the first ten days of the transactions. They are holding that bill in the Senate to include boats, motorhomes, and snowmobiles. He asked Mr. Schoen if HB 742 would fit into HB 209. Mr. Schoen said yes. The lien filing provisions are in the existing boat statutes, but Title 23 would not be affected by the lien filing provisions of HB 209. That would have to be added to HB 209 to apply to Title 23.

Closing by Sponsor:

REP. WANZENRIED closed the hearing on HB 742.

HEARING ON HOUSE BILL 861Presentation and Opening Statement by Sponsor:

REP. CHARLES SWYSGOOD, House District 73, Beaverhead County, said during the last session, HB 550 required the Department of Commerce (DOC) to develop a plan for a system of Visitor Information Centers (VIC) in the State of Montana. This is an Act to provide that 10% of the accommodation tax be placed in a DOC debt service account to redeem bonds used to construct state visitor information centers; and amending section 15-65-121, MCA. The overall purpose of the VICs is to offer visitors entering Montana an introduction to the state, its individual regions, and its historical and cultural heritage.

A technical steering committee was set up to provide the overall guidance for the project. This committee was comprised of representatives from Travel Montana, University of Montana, the Architectural School of Montana State University, Department of Highways, Department of Fish, Wildlife and Parks, United States Forest Service, and the Tourism Advisory Council. In assessing potential sites throughout Montana, the committee developed criteria and rated each of the areas that applied for one of these centers. Twenty entrance locations were initially considered. Seven centers came out of that process, which were on the major highways of the state. They are in the following locations: Haugan and St. Regis on I 90 West, Wibaux on I 94 East, Shelby on I 15 North, Dillon on I 15 South, West Yellowstone on Route 191 at the park entrance, Hardin on I 90 East, and Culbertson on Route 2. The report that has been presented (he displayed a book) explains how the VICs will enhance tourism and promote Montana.

It is an attempt to involve all facets in this project, which includes local communities, federal bureaucracies, Forest Service, Bureau of Land Management (BLM), local governments, and the state. The Tourism Advisory Council is involved in that report through the issuance of brochures after the centers are established. He wants to involve them further. The goals, objectives, and potential economic impact on the state from the construction of these centers are outlined in this report. They enhance the quality of visitors' experiences, they increase the word-of-mouth promotion about Montana destinations, improve visitors' images and perceptions of Montana as a vacation destination, increase visitors' length of stay and overall expenditures, and increase the likelihood of the visitors returning to Montana.

Annual visitation to the Montana visitor information system is

estimated at just over 1 million people. Additional non-resident expenditures from the systems are estimated at almost \$8 million annually. HB 861 puts a mechanism into place to pay for the bonds needed to construct these centers. Total estimated cost of construction is around \$6 million. That figure will probably be high after the process is gone through. HB 861 takes 10 percent of the bed tax to go to the DOC to retire bond debt. Currently the income derived from the bed tax is between \$6 and \$7 million. It is projected in the fiscal note to increase 10 percent per year.

HB 861 starts in 1994, which allows the Tourism Advisory Council to plan for it. It allows the other involved agencies to gear their budgets, specifically the Department of Highways. This bill is coordinated with HB 5, which is the long-range building program that has the bonding for the other institutions.

Proponents' Testimony:

Nancy Jean Ferguson, Escort Magazine, Missoula, said the Magazine is the inside track of where to eat, stay, shop, and play. The reason for its existence is to give visitors information so they can have a good time while they are here, make plans to come back, or extend their stay. The VICs will do essentially the same thing. They will give people the information they need to extend their stay. This is part of the promotion of Montana. The VICs could be built for a much lower cost than what has been proposed. The VICs are needed because people are requesting information.

Don Chance, Beaverhead County, said the Beaverhead County Commissioners strongly support this bill. Beaverhead County is on the state line and there is a significant number of out-of-state visitors traveling through their jurisdiction. When tourists cross that state line, there is no way for them to receive information pertaining to area tourist attractions, which they would normally receive in other states. Beaverhead County probably collectively contributes \$30-40,000 to the bed tax annually, but very little of that money comes back to the jurisdiction in terms of tourism promotion.

Opponents' Testimony:

Keith Colbo, Tourism Coalition, said the Tourism Coalition was formed last fall. It has 19 members, including the Montana Automobile Association, Montana Chamber of Commerce, Montana Food Distributors, Montana Retail Association, and Montana Snowmobile Association. Some of the groups have joined for two purposes: 1. Education about the elements of the tourism industry; 2. To protect the current accommodations tax against any measure that would reduce its effectiveness. The members of that industry supported the imposition of the tax on themselves to fund the effort to make Montana a destination of choice. That effort has worked and is working. The Montana Tourism Coalition is opposed to HB 861 as proposed. The VICs are a good idea. The Coalition

has the following concerns: 1. The returns from VICs may not be as great as from the current operating programs. 2. The operation of the VICs will be an ongoing burden on state and local resources that are already overburdened. 3. The costs for the VICs are beyond the capital investment as previously testified. "The operating costs concern us the most." Other sources of support may be available, but they have not yet been identified. The resources are not available to gamble on another venture that could turn out similar to the state park system. More work should be done to assure the viability of VICs over a long term. That evaluation should be undertaken in the next biennium, and the Legislature could then make a more informed decision.

Larry McRae, Chairman, Tourism Advisory Council, presented written testimony. EXHIBIT 2 Construction and operating costs of six VICs would reduce the Tourism Advertising budget 23%. It was felt that money could be better spent on the present type of advertising that is being done since many visitors come to Montana now. The VICs would be nice to have, but monetary constraints lead to doing more study and thought about building VICs at the present time.

John Carroll, Manager of the Sheraton in Great Falls and President of Russell County (the 14 north central counties of Montana), presented written testimony. EXHIBIT 3 The Board of Directors and membership of Russell County oppose HB 861 because it would take 10% of the bed tax revenues to be used for a bonding plan to construct visitor information centers. They feel advertising and promotion were the essential elements, and the tax dollars from the accommodations tax are the catalyst to the growth being experienced.

Riley Johnson, National Federation of Independent Businesses, said his organization determines its positions by ballot. "We specifically balloted this position of bed tax money in 1990." The results to the following questions were: 1. "Should we divert the bed tax to any cause?" Sixty-four percent said no, 26 percent said yes, and 10 percent were undecided. The ballot base was 6,427 members. 2. "How much of your business is directly related to tourism?" Seventy-six percent had less than 25 percent related to tourism. 3. "If you are not related to tourism, why do you have an opinion on the bed tax?" The responses were that perhaps the business is not 100 percent directly related to tourism, but local communities in the small towns of Montana are directly related to a great degree. One of the other comments was that any kind of a diversion would limit tourism.

Mike Labriola, Executive Vice President, Great Falls Area Chamber of Commerce, does not support HB 861. EXHIBIT 4 Although VICs are valuable and needed on our major highways, the present marketing system funded by the accommodations tax is working very well. The visitor count has grown consistently with the present marketing system. Another way to fund the VICs should be found.

Jo Brunner, Montana Outfitters' and Guides' Association (MOGA), said MOGA is a great contributor to the influx of tourists to the State of Montana. The Outfitters and Guides industry, through their clientele, provide Montana with visitors through various means. That brings in millions of dollars to better the economy of the state. Outfitters and guides travel extensively at their own costs throughout the United States to participate in various shows where they compete with other states in their own industry to entice hunters and fishermen to Montana. Because of the nature of their displays, they are consistently questioned and distribute tourist information. People are eager to learn about Montana before they decide to come here.

MOGA is concerned that this bill will divert funding for programs that have been proven beneficial in attracting tourists not only at the present time but in the future. It will lessen the income of the portion that goes directly to the DOC for distribution to the local visitor centers and advertising programs. It will lessen the advertising ability for local communities.

Stephen F. McCool, Director, Institute for Tourism and Recreation Research, University of Montana, commented on the consequences of funding the construction of the system of visitor information centers as outlined in HB 861. EXHIBIT 5 The tourism and recreation industry has become an important component of Montana's economy. A feasibility study pointed out significant potential economic benefits that could come with an outstanding VIC system that complemented current marketing efforts which are apparently doing a good job in attracting tourists to the State.

James Tutwiler, Montana Chamber of Commerce, said the Chamber is closely identified with the tourism industry because it is an important part of the economy. The Chamber conducted some informal surveys and visited 13 communities in the state last August through October. Issues were discussed that pertain to the economy, expansion, and economic development. One of the key topics was how well the bed tax was working, what effort will be made to divert the bed tax, and how do the people in the community feel about the issue. The bed tax issue developed the most intense and consistent response which was that the program is working and tourism is rising. The Chamber was asked to do all it can to keep that program intact. The bed tax should be left alone.

Sandra Guedes, Director of Tourism, DOC, said the bill has a positive intent. EXHIBIT 5 A There are three main problems: 1. The bill addresses only the construction of the centers. Raising \$6 million for construction seems to be the biggest challenge. Operation and maintenance costs are estimated at \$800,000 annually and would surpass the initial investment in less than eight years. There would be bond payments plus operating and maintenance costs reaching \$1.4 million each year. 2. In order to cover these costs, the number of people reached by the present promotions will be cut back. Seventy-five to 80 percent of the

visitors who currently come to Montana return at some time. The biggest challenge is to get them here the first time. In spite of the great strides of the tourism promotion efforts over the last three and a half years, there is a large portion of people who remain unaware of what Montana has to offer. There is a \$5.5 million tourism budget, but that isn't enough money to cover all bases.

Tourism growth on the national level has increased on an average of 3-4 percent per year. Tourism growth in Montana has been increasing at 10 percent per year. 3. This is a long-term commitment. Once HB 861 passes, it will take at least 15 to 20 years to pay off the bonds. Since the bed tax collections have been increasing, it may seem that the costs associated with the centers would not affect Montana's tourism promotion efforts. That is not accurate. While bed tax revenues have increased an average 10 percent each year, the national average state tourism budget has increased at an average of 16 percent per year. It is outpacing Montana's tourism budget growth. Each year advertising rates increase an average of 7 percent. Tourism promotion is a competitive field. Unless Montana's budget continues to move up, it will move backward.

The basic function of the State Tourism Office is to improve Montana's economy by generating increased travel revenues to the state. She drew a comparison on the expected return on investment if funds are applied toward VICs versus tourism advertising. Based on other states' results, Montana's proposed centers would result in an additional \$7.9 million in revenues for Montana each year but at a cost of \$1.5 million, which is a \$5.60 gain for each dollar spent. Based on results of two separate studies conducted by the Institute for Tourism and Recreation Research, the magazine advertising campaigns generate approximately a return of \$50 for each dollar spent. That means almost 10 times higher returns for advertising than the centers would bring in.

Large scale VICs are very appealing, but it would be unwise to try to emulate other states' centers unless the funding mechanisms can be emulated. Most of the states funded the construction of their centers through highway funds. There is a category of highway funds which specifically can be used for VICs through a huge match by the federal government with a very low cost to the states involved. Montana's federal highway funds are about to be drastically reduced. There is no suggestion to use those funds, which is a position that the Governor's Tourism Advisory Council supports. HB 861 proposes to substitute an investment which returns over \$50 for every dollar spent in favor of an investment which will result in nearly 10 times less revenue for the state.

Elmer Frame, President, Campground Owner's Association, presented written testimony and proposed an amendment. EXHIBIT 6. He is an opponent of HB 861 as written, but would support the bill with his amendment. Montana has no VICs to encourage visitors to stay

longer. They would complement the present promotional marketing funded by the bed tax. His amendment would furnish written material and fund one staff person for each state VIC.

REP. ALVIN ELLIS, JR., House District 84, Red Lodge, said Red Lodge is a small community located on an entrance to Yellowstone National Park. It has a population of about 1,800 people. There is no state payroll. Red Lodge recently built their own information center. It is a log structure, and has a large display area. It is staffed by a full-time secretary and some work is voluntary. A representative from the Chamber is there most of the time and is on salary. The center was built with volunteer help and donated materials. The civic leaders of Red Lodge believe that the available plans for these centers are too expensive. The Chamber has participated with Yellowstone Country to promote attractions. Brochures coordinate Yellowstone Country and Red Lodge. Red Lodge believes the bed tax fund currently used for promotion has been very effective. Since the program was started, the bed tax has generated an accelerating amount of money.

Greg Ryan, President, Montana Innkeepers Association, said the Montana Innkeepers Association worked hard to get the bed tax in place to support all of Montana and its economic vitality. The intent of HB 861 is good, but it destroys a very effective campaign. VICs are useful and important, but they are not affordable at this time. The mission of the bed tax and the marketing dollars is to impact the State of Montana as a whole. This bill isn't going to help local economies. Ten percent taken from the accommodation tax would dramatically affect the ability of the tourism regions and local communities receiving that support. The program is working and shouldn't be destroyed.
Questions From Committee Members:

REP. STELLA JEAN HANSEN asked if he had thought about combining the VICs with rest areas. **REP. SWYSGOOD** said the rest areas leave a great deal to be desired in some cases. Most of them are removed some distance from municipalities or entrance points. Staffing cost would become a problem. Most rest areas are located on interstate highways and are built with federal funds. The idea is worthwhile. Idaho has constructed beautiful VICs using federal funds to a large degree. The federal highway funding for Montana is in jeopardy. That isn't the appropriate place to get the funds for the VICs right now.

REP. BACHINI summarized the opponents liked the concept of the bill, but they don't want to pay for it.

REP. ELLIS said his community likes the idea, or they wouldn't have put in a center. A VIC is critical to each individual area. It should be participated in by that individual area because that is the area to be promoted. The center in his area tries to

promote Red Lodge. REP. SWYSGOOD said that is what this bill addresses. That is why it is introduced two years before it goes into effect. If the other parts do not come together, then there is nothing to worry about because it won't go ahead. The buildings are too costly, but that could be trimmed down. The communities have already been involved through land acquisitions for these sites. They will be further involved. This bill doesn't direct the use of that money for anything other than construction, not operation and maintenance. He was going to offer an amendment so the bed tax couldn't be used for anything but the construction, but he was told by legal staff that the bill is plain enough in its intent that it could only be used to retire the bonds for construction.

REP. WALLIN asked if the campgrounds collect taxes for the bed tax. Mr. Frame said yes. REP. WALLIN asked if the tax was collected from the money that is charged for people to park their trailers. Mr. Frame advised 4% of the total gross receipts goes to the bed tax.

REP. TUNBY asked the expense of the VICs to be addressed, and why they would cost so much. REP. SWYSGOOD said his proposal is what was projected by the report. The buildings that were depicted in the report resulted from the consultation with the MSU architectural students to address language in the bill that said, "we are world class." That is nice in concept. The cost is unreal. It could probably be done for half of that cost or less. Once the people come to Montana, they are like flies; they go everywhere. They get a pamphlet and they try to find the different attractions. The VICs would direct people to each area, and they would have information on all other parts of the state. The cost is too high but it could be reduced. The mechanism needs to be in place before people can get started seriously on it.

REP. TUNBY asked how the maintenance and operation would be paid for. REP. SWYSGOOD said that should be a commitment by the local areas. REP. TUNBY asked if that addresses what is in the bill pertaining to the maintenance. REP. SWYSGOOD said the bill only addresses the retiring of the bonds used for funds to construct the facilities.

REP. BARNETT said he was in support of what REP. SWYSGOOD is trying to do. The State shows very little of what we really have to tourists. When tourists come here, they are not shown what Montana has to offer. REP. SWYSGOOD said he didn't have a problem working with the industry. The statute is explicit in its definition as it relates to the bed tax money. One of the definitions is promotion of tourism. People are coming to Montana, but nothing is done to help those people once they get here. We don't have to have the fancy buildings that are predicted. The people trying to promote business and economic well being for regions of Montana are opposing their own report, which says it would bring in \$7.9 million annually in returns.

REP. TUNBY asked if the VICs would include some aspects of a rest area. REP. SWYSGOOD said yes; they would include paved parking and restroom facilities. They are structured to be located in the areas that are as close to the interstate as possible. REP. TUNBY said local areas could manage the upkeep and operational costs in areas with tourist attractions. His district includes Wibaux, which is hoping to get one of the VICs. There wouldn't be a great deal of local impact from tourism, and he didn't think they could get the funding. REP. SWYSGOOD said that each site has to have the flexibility to construct a worthwhile and attractive center. Communities went through a process to be picked for the VICs. They made a commitment when they applied, and it is the responsibility of those people to share in the cost of continuing to operate the VICs if they are constructed.

Closing by Sponsor:

REP. SWYSGOOD said in previous testimony it was stated that VIC returns are unknown. The report says there is an estimated \$7.9 million return annually from non-resident traffic. When the bed tax was put into place originally in 1987, it wasn't known what the return was going to be. It was a worthwhile endeavor. The industry has risen from fourth in the state to second. VICs would enhance that. It was stated that viable sources are not yet in place for all the other components. The Forest Service and BLM will be cost sharing in this endeavor. They will not provide funding until the state takes the lead. They will then appropriate the funds necessary to help. The Forest Service in his area is more than willing to work. This is not a diversion of the bed tax.

The VICs are an enhancement and a promotion of tourism. It is a complementary part of what is being done in advertising and promoting Montana. He didn't put the figures in the report, and hadn't seen the report until it was passed out about a month before the session. He is relying on what was included in the book. It says 12 percent of the people who stop at VICs spend 1.5 extra nights in Montana according to the information from other states. The people collecting the bed tax benefit from the 1.5 extra nights. Nobody's budget will be jeopardized this biennium. If useful and attractive VICs could be constructed for \$2 or \$3 million, the length of time it has to be bonded would be reduced. All this bill does is promote tourism and it will not destroy programs already in place.

HEARING ON HOUSE BILL 901

Presentation and Opening Statement by Sponsor:

REP. FRANCIS BARDANOUVE, House District 16, Harlem, said HB 901 is a result of a report that was prepared by the Legislative Fiscal Analyst last summer on The Montana Capital Company Act. EXHIBIT 7 . The Legislative Fiscal Analyst presented this report and the Finance Committee was "shook up." He also presented a

memo from the Legislative Fiscal Analyst to the Legislative Finance Committee dated October 10, 1990. EXHIBIT 7-A He handed out copies of the September 1990 Northern Rockies Business Review, which has written a report on the Montana Capital Company Act on Pages 16-19. EXHIBIT 8. When the Montana Capital law was passed, it was found that it already promotes business, and business received credit for ventured capital in new projects. However, it was a fine bill and the concept was fine. It was formed with the hope of creating more investments, more business in Montana, and more jobs. However, it had no supervision and it fell through the regulatory cracks. It got pretty well chewed up by some vultures. He calls it legalized embezzlement, or legalized robbery. \$7 million was taken out of the treasury, and he is not sure we have received our dollar for dollar return on it.

HB 901 is an act to generally revise the Montana Capital Company Act; transferring administration of the act to the Department of Commerce; expanding the definition of qualified investment; limiting tax credits under the act; providing for recapture of tax credits under the act; providing for a limitation on investments to promote diligence in investment decisions; providing the department with proposed investment information; providing for decertification for noncompliance; providing for decertification upon meeting an investment schedule and having 70% of the investment in a qualified investment; providing the DOC with the authority to charge fees for administration of the act; amending several Sections of Chapter 8 of Title 90, and providing an immediate effective date.

What has happened is that he feels abused, very abused. There was no regulation, no one really looked after it, and a few sharp business people, plus a few sharp lawyers, really took advantage of the situation. A few sharp operators took advantage of the law. The DOC has now agreed that some changes are necessary. The abuses have resulted in money being wasted that could have been put to better use. There has been real fine cooperation with the DOC. They realize and admit that the regulators of this law have failed to perform. They are about to make enforcement of the law since the investment has failed to follow through and the Investment Board now has frozen this money, what is left of it. The DOC will present technical aspects of HB 901.

Proponents' Testimony:

Dave Lewis, Executive Director, Board of Investments, explained under the law an annual report is made to the Revenue Oversight Committee. In the last two years, his report had suggested that the Legislature should study The Montana Capital Company Act because it is so broad that the operations of Capital Companies may not be accomplishing the intent of the Legislature. It was intended to be the Montana Venture Capital Act. It was an incentive to raise venture capital at the private level and to create Capital Companies that made traditional venture capital

investments. The law was not written that way. With all respect to REP. BARDANOUVE, he doesn't think people have done anything illegal. They have operated within the confines of the law, but the law was written so broadly that its intent was not accomplished. The Board of Investments has worked with the DOC and the Legislative Fiscal Analyst in preparing this bill. The program needs to be refined and revised.

Andy Poole, Deputy Director, DOC, said he is representing Chuck Brooke, Director of the DOC. Mr. Lewis and REP. BARDANOUVE have mentioned that The Montana Capital Company Act was passed in 1983. He presented a copy of the purpose section of The Montana Capital Company Act. EXHIBIT 9. This text is not within the text of the bill. The Legislature intended to provide tax credits to investors to invest in small, start-up, and risky businesses to create economic development and employment in Montana. Unfortunately, that is not what has happened.

In 1983, the Legislature started with a tax policy, which incorporated within the Act a 25% tax credit which would give investors \$1 back for every \$4 they invested in a Capital Company. That didn't work well in raising capital, so two years later the Legislature changed it to a 50% tax credit. The state is giving these investors 50% of the money they invest in Capital Companies back to them in the form of tax credits, which they can use over an 18-year period (15 years forward and three years back). The purpose of the 50% tax credit to create economic development. The Act in the existing statute has not done that because of the way it was written.

It gives people the legal ability to invest the tax credit funds and their own monies into businesses that are not small or risky in all cases. We are not getting the benefit from the Act that was originally intended. He then read Page 3, Subsection (1), to Page 4, Subsection (2), from the Legislative Fiscal Analyst Report distributed by REP. BARDANOUVE. EXHIBIT 7. He cited some other examples: An individual invested \$20,000 in a Capital Company in December 1989 claiming a \$10,000 tax credit. Within the next three months the Capital Company lent \$20,000 to a company owned 100 percent by the investor. Another individual invested \$90,000 in the same Capital Company in June 1989, claiming a \$45,000 tax credit. Within nine months the Capital Company invested \$65,000 into the business owned 100 percent by the investor. A third Capital Company has only one shareholder; he invested \$200,000 in this Company, claiming a \$100,000 tax credit. To date he has invested \$47,000 of the Capital Company's funds to the company in which he has 100% ownership, \$30,000 in a company in which he has 50% ownership, and \$50,000 in a company in which he has 30% ownership. In these cases the investors clearly had capital available. However, they chose to invest the funds in a Capital Company thereby becoming eligible for a 50% tax credit rather than investing directly in their own company.

This suggests that the credit allowance did not work as intended

to encourage formation of Venture Capital. Instead, it may have resulted in the claiming of tax credits for investments that would have taken place in its absence. To date, the Legislature has authorized \$8 million in tax credits to Capital Companies in Montana, and there are currently 12 active companies. The Board of Investments has allocated about \$6.2 million of that \$8 million in tax credits which has been authorized. The \$1.8 million has not been authorized. At the time the report was printed in August of last year, it was submitted to **Chuck Brooke**, Director of the DOC, and the Legislative Finance Committee, who immediately wrote a letter to the Board of Investments asking them not to allocate any of the tax credits that were left or to carry over any tax credits for companies which had not been able to invest the percentage required under the Act. Therefore, the \$1.8 million has not been allocated to Capital Companies. It is sitting there.

About two weeks ago this Committee had a hearing on HB 863, which is the Small Business Investment Company (SBIC) bill. It would leverage that \$1.8 million with approximately \$9 million in federal funds. The DOC has no problem with that particular legislation. HB 901 will affect the existing Montana Capital Companies and the proposed SBIC if it passes. Capital Companies will not be allowed to use tax credits to finance existing profitable businesses; however, tax credits can be used for the expansion of those businesses. The financing of businesses will not be allowed when other sources of funding are readily available.

Over the past number of years a particular family has invested and built hotels, motels, convenience stores, and gas stations. It was done with bank financing. After The Montana Capital Company Act was enacted, they continued to do so with tax credits where the state would "kick in" 50% of the money. If an investment is made in a Capital Company and is returned without ever being invested, the tax credits will be taken back. The existing Act allows investors in Capital Companies to take the tax credit immediately. If there is a problem with the Capital Company, for example, if they don't invest properly or if the investment is never made, the Department of Revenue does not have the ability to go back to the taxpayer and ask for the tax credit back.

The DOC is not going to allow an investor to use tax credits to finance any business in which he has the majority interest at the time of the investment. Before an investment is made where tax credits will be used, the DOC will want to study the investment to make sure there are no violations. What will be discussed is whether that investment meets the criteria of The Montana Capital Company Act. It would probably be done within two weeks. A form will be developed that will be sent to all Capital Companies. The investment must be qualified at the time it's made to protect the State's investment in that project. It would also protect the Capital Company. The investor will be protected, because he will

know when he starts out that the investment will be qualified.

Evan Barrett, Executive Director, Butte Local Development Corporation, said he is also the Administrative Officer for the Southwest Montana Development Corporation, which is a Capital Company under The Capital Company Act. It is a small Capital Company. The dollars were raised community-wide. They have been and are being invested in ventures that are not bankable in order to create economic development. This Capital Company is an exception rather than rule. Most Capital Companies fall into two categories: 1. Companies that have been engaged in self-dealing; 2. Companies that are not getting into venturesome deals. This bill does a good job in closing the loopholes. From now on, Capital Companies will be forced to meet the original stated purposes of the statute.

Don Hutchinson, Commissioner, Financial Division, DOC, said the regulatory aspects of the present Capital Company Act have fallen into the hands of his Department, which doesn't have the staff to adequately supervise it. The Act doesn't address itself well to a regulatory function. At the time the bill was introduced, there were 15 examiners, and there are now 12. The function requires an audit procedure instead of a regulatory procedure.

Opponents' Testimony:

Jack Manning, Attorney, Dorsey & Whitney Law Firm, Great Falls, said he is a corporate and securities lawyer. In the last five years he has had considerable experience with The Montana Capital Company Act in representing several Capital Companies. He agrees that there have been abuses, but this bill is seriously flawed technically and in terms of substance. It severely changes the rules in midstream. It effectively applies them retroactively to Capital Companies that are existing and are capitalized at this point. Many provisions and perhaps the entire Act are subject to serious constitutional challenge as being an ex post facto law. This bill will not prevent or stop most of the abuses that have occurred.

The related party investments should have been prevented a long time ago. This bill is directed primarily at some of the family owned Capital Companies and at a number of Capital Companies that have already invested all of their money. If this bill is passed in its present form, it will have little affect on a large number of Capital Companies because in the last three to six months most of that money has already been invested. Several remaining Capital Companies that are more legitimate than some of the others will be potentially stuck bearing the burden of this bill. He presented a Memorandum in regard to revisions to the Montana Capital Company Act. EXHIBIT 10.

Don Fairchild, President, Great Falls Capital Corporation, said he was not opposed to the concept or the attempt to correct some of the abuses and loopholes in the law. He opposes three specific

provisions. **EXHIBIT 11** He is opposed; 1. Page 2, Section 1 (5) relegates Montana Capital Companies to sources of last resort. 2. Page 11, Section 6 (6) limits investments in existing profitable businesses to expansion capital. 3. Page 14, Section 9 (5) reporting proposed investments to a government body for prior approval would interfere with the process of negotiation and conclusion of a transaction.

Questions From Committee Members:

REP. STELLA JEAN HANSEN said she was on the original committee that drafted HB 901. She asked if there was a board that dealt with this originally. **Mr. Poole** said yes. It was called the Montana Economic Development Board, which existed until 1987 when it was integrated with the Board of Investments. **REP. STELLA JEAN HANSEN** asked how much input the Board had in directing where the money went. **Mr. Poole** referred the question to **Bob Pancich**, Board of Investments who said he came to the Board as an Administrator after the rules had actually been promulgated. **Dale Harris** was the acting Administrator at the time that rules were being put together. There has been a great deal of confusion in how to administer the law. The Montana Economic Development Board was charged with certifying and qualifying companies. The Commissioner of Financial Institutions or bank examiners were charged with seeing that the investments were made appropriately. The Department of Revenue fined a person if it wasn't done correctly.

There was confusion among the agencies as to where their authority might lie. Rules were promulgated and amended. The affected parties were notified in the public process on promulgating the rules. One of the questions that was asked many times was whether or not an investment would qualify. There were more questions about us pre-approving an investment, in which we had no authority. The qualified investment criteria seemed clear at the time, but it became more clouded. We had to refer to **Phil Brooks**, an economist in the DOC, who said that we should consider using the standard industrial code as a guideline in regard to what a qualified investment is in terms of companies.

REP. STELLA JEAN HANSEN said the attorney referred to what venture capital really is and the intent of the Legislature. The intent of that Committee was to provide capital where the local banks and investment companies would not loan to small businesses. The Great Falls manufacturing business wanted to expand nationally and could not find money in Montana to do so. After 36 hours of hearings in that Committee, we determined that the banks in Montana would not lend money to small businesses that have any kind of a risk involved at all or in companies that wanted to expand. That is why we allowed it also to be used for expansion. Most of those companies went to Seattle or Denver where venture capital was available. I assumed that the definition of venture capital was the threshold where the investment companies in Montana would not have anything to do

with them. The intention of the bill was to provide that kind of money.

Mr. Pancich said there were companies that weren't bankable. He envisioned that this particular Act would help. Some of these companies are existing and not necessarily profitable, but they do need an infusion. One of the first loans the Montana Economic Development Board became involved with a Capital Company was the Development Corporation of Montana. They used an investment into NORCO in Missoula (now called USA McDonald) and made a loan to that company, into which we bought. They made that company bankable. We also bought a portion of a loan from bank in Missoula.

There have been abuses, but there have been appropriate uses too. All of this activity occurred in the last three years, and part of it is because of the tax credit change from 25% to 50% to induce more investors. There was a carry-over provision. If the tax credits weren't reserved, they couldn't be carried over from one year to the next. Many local development organizations tried to reserve tax credits. They thought that they could raise \$700-750,000 and reserved the maximum tax credit, which was \$375,000. Therefore, the carry-over continued on. That is one way the \$8 million was preserved. Many of the companies didn't raise their money so the money went back into the pot.

REP. STELLA JEAN HANSEN said the attorney talked about the definition of a small business. Isn't the federal definition in the SBA (Small Business Administration) Act? **Mr. Pancich** said yes. The definition in the administrative rules was taken from the SBA Act in 1983 or 1984 when the rules were being put together.

REP. BACHINI said there will be a couple of amendments placed on the bill. Executive Action on HB 901 will be taken on Monday to give the Committee a chance to study the amendments.

REP. SONNY HANSON asked **Mr. Poole** how he intends to enforce the Prevailing Wage Act on the venture capital who said he didn't know. **REP. SONNY HANSON** said the House has passed two bills that require prevailing wage rates to be paid by any corporation or entity that receives tax credits or state funding. A means of verifying will have to be established before the money can be loaned.

REP. KNOX referred to Subsection (5), Page 2, "Qualified Investment." A statement was made that this places a Capital Company in the position of being a lender of last resort. He asked how this provision would work. **Mr. Poole** said the bill gives the Department rule-making authority. There is no reason for the state to give tax credits so a company can make an investment it would have anyway. **REP. KNOX** asked how he would envision this operating in the future using this language. **Mr. Poole** said rules would be adopted that would address displaced

capital. If someone has gone to the bank and has been turned down for a loan, that documentation from the banker would be the conditions that the DOC would be looking for. The bank doesn't want to accept that level of risk.

REP. PAVLOVICH asked Mr. Fairchild to address some of the investments of the Great Falls Capital Corporation. Mr. Fairchild said since the Great Falls Capital Corporation has bought the cab company, service and operation has been improved. Three employees and an assistant manager have been added. The fleet of cabs has been improved and more have been added. The second company was a delivery service. Both companies had been in existence and were profitable. The delivery service was much smaller but worked in very well with the cab company as another transportation company. In both cases, the intent and action was to improve the operation, expand it where possible, and add to the economy. Those intentions and actions show the spirit of adding jobs to the economy in Montana -- not in the sense which was the original intent to provide only venture and start-up capital. For companies currently in existence, that provision should be changed to be applied to future companies. It would devastate our own operation.

REP. ELLIS asked if these credits are applied against corporate income tax. Mr. Fairchild said yes, corporate license taxes.

REP. ELLIS said the credits are to the individual investors who originally invest in the company. Mr. Fairchild said yes, but they use them against personal income tax. REP. ELLIS stated the company doesn't use them; the individual investor uses them. Mr. Fairchild explained there were two categories: a 25% grouping and a 50% grouping. There were many individual investors in the 50% category; there are 190 share holders now. If shares were sold at \$10 a share, the investor got \$5 back on his state income tax for each share that he bought. REP. ELLIS asked if any of the companies were new to Montana, or were they existing in Montana prior to the time they were purchased. Mr. Fairchild said they were all existing companies. Mr. Manning pointed out that we aggressively look outside the state for companies that we can move here. REP. ELLIS said you say that your actions have not violated the concept of the law in that you have added employment. How many full-time employees were added per \$1, \$1,000, or \$10,000 worth of tax credits? Mr. Fairchild said \$700,000 has been invested out of the qualified investment fund. There is a total of about 30 employees involved in that. Some of those employees are new and some had their jobs retained or saved. REP. ELLIS asked how many jobs were saved or added. Mr. Fairchild said 12.

REP. WALLIN referred to the statement that so many companies could have gotten their own financing. He asked Mr. Fairchild if he could have borrowed the money from a commercial bank. Mr. Fairchild said it is possible in the cases of the cab company and the delivery company. It's possible that another investor of those companies would have the private funds. At the time there

were no other bidders that the owners would accept. It's not the kind of money that a bank or any other investment company would have provided. A third company was purchased by the Great Falls Capital Company last fall, and there was no other source of funding. The company would have folded otherwise. **REP. WALLIN** said **Mr. Poole** discussed previously that in some cases money could have been borrowed from a bank. Perhaps the money could have been borrowed, but the terms weren't feasible for them to pay it back. Does this bill change that in any way? If the money is available on the outside, then one of these companies can't be formed with the tax credit? **Mr. Fairchild** said the bill says that if they can get financing at any time and at any cost then it isn't a qualified investment for the Montana Capital Companies.

REP. RICE asked **Mr. Poole** to respond to **Mr. Manning's** point that this may be challengeable in court because its changing "horses in mid-stream." **Mr. Poole** said he didn't know if this particular Act would or wouldn't be considered ex post facto. Those investments that have been made to date and before this Act would become effective. They have probably been done legally under the current Act. We are not going to look at what has happened in the past as much as we would like to do that. The DOC is fairly reasonable. If there is a good investment, which increases employment and income, it will go forward. There could be a potential problem if someone has an investment, such as the hotel in Hamilton or the Great Falls Cab Company, and the DOC rejects their request because it isn't the intent of the Act.

Will the Capital Company sue the State to force the DOC to approve that investment, or will the Capital Company make the investment anyway and wait for the Department of Revenue to try to recapture the tax credits because they have not been used in a qualified investment? It is possible that a Capital Company might sue the State. He doesn't think it will happen. A lawsuit may cost the State and the Capital Company a great deal more than the investment. The solution is to find reasonable investments, send them in, and the DOC will approve them. It has been said that there aren't any investments in Montana to be made. The DOC has put about \$1.5 million per year into starting new businesses in Montana. **REP. RICE** said she was concerned about Great Falls Capital Corporation's promises to its investors via a prospectus because of changes that might occur because of this law. She suggested working on some amendments with him and the Great Falls Capital Corporation.

REP. RICE asked if he had a problem in trying to work out some amendments. **REP. BARDANOUVE** said he didn't have a problem with that.

Closing by Sponsor:

REP. BARDANOUVE said **Mr. Lewis** said it was within the law. It was legalized abuse of the law. The Appropriations Committee tries to balance the budget day after day to meet very worthwhile

projects. We're being told we should subsidize profitable businesses. The intent of the law for venture capital was not to buy out profitable businesses. That is where the abuse has occurred. The real abuse has not been in Great Falls. It was the consortium of smart people in one community that have taken advantage of this law. The Montana government is not in the business to be a free banker to all businesses in Montana. Montana's government and treasury is not big enough to underwrite all kinds of businesses across Montana just to add another job or to save a business that might go broke.

EXECUTIVE ACTION ON HOUSE BILL 742

Motion: REP. DOWELL MOVED HB 742 DO PASS.

Motion/Vote: REP. DOWELL MOVED TO AMEND HB 742. EXHIBIT 12.
Motion carried unanimously.

Vote: HB 742 DO PASS AS AMENDED. Motion carried 17 to 1 with REP. ELLIS voting no.


REP. BACHINI announced that Executive Action will be taken on HB 861 and HB 901 on Monday morning.

EXECUTIVE ACTION ON SENATE BILL 190

Motion/Vote: REP. SONNY HANSON MOVED TO RECONSIDER SB 190.
Motion failed 8 to 10. EXHIBIT 13

ADJOURNMENT

Adjournment: 10:45



BOB BACHINI, Chair



JO LAHTI, Secretary

BB/jl/jt

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE March 8, 1991

[illegible]

HOUSE STANDING COMMITTEE REPORT

March 8, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that House Bill 742 (first reading copy -- white) do pass as amended.

Signed: _____
Bob Bachini, Chairman

And, that such amendments read:

1. Page 3, line 21.

Following: first "of"

Insert: "the applicable fee in lieu of tax plus"

2. Page 9, line 10.

Following: "collecting"

Insert: "on"

3. Page 9, lines 10 and 11.

Strike: "judgment from the department of justice"

Insert: "bond"

4. Page 9, lines 11 through 13.

Following: "The" on line 11

Strike: the remainder of line 11 and line 12 in its entirety and line 13 through second "the"

5. Page 9, lines 13 and 14.

Strike: "on which the payment is based determines"

Insert: "must determine"

6. Page 9, line 15.

Strike: "concludes"

Insert: "conclude"

Strike: "dealer's"

Insert: "licensee's"

7. Page 9, line 16.

Following: "damage"

Insert: "before payment on the bond is required"

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742

SUGGESTED AMENDMENTS TO HB 742
INTRODUCED COPY

Section 1 Page 3 Line 21 following the words payment of, strike the word a and add the words the applicable fee in lieu of tax plus an additional

Section 3 Page 9 Line 7 amend subsection (b) as follows:

(b) A person who suffers loss or damage due to the unlawful conduct of a dealer licensed under this section shall obtain a judgement from a court of competent jurisdiction prior to collecting on the ~~judgement from the department bond~~. ~~The department is responsible for payment under this section, in an amount not to exceed the maximum bond amount, only if the judgement on which the payment is based determines~~ must determine a specific loss or damage amount and ~~concludes~~ conclude that the dealer's licensee's unlawful operation caused the loss or damage before payment on the bond is required.

TESTIMONY

HOUSE BILL 861

MARCH 8, 1991

**CONTACT: LARRY McRAE, CHAIRMAN, TOURISM ADVISORY COUNCIL
755-6100**

DATE 3/8/91 *Shiloh #*
BY 861

I am the chairman of the Tourism Advisory Council, which oversees the state tourism office and the fourteen non profit organizations which receive funding from the accomodations tax. I wish to testify against H.B. 861.

The Department of Commerce was directed by the 51st. Legislature, through HB 550, to conduct a study on the development of Visitor Information Centers that would encompass new construction and "state of the art" facilities. That report was delivered to this Legislative assembly in January as mandated.

The report estimates construction costs of \$6 million dollars, and annual operating costs approaching \$800 thousand dollars. Possible funding sources are suggested, including coal tax funds, communities in which the centers would be located, Department of Highways, Fish Wildlife and Parks, Bureau of Land Management, National Park Service, U.S. Forest service and appropriate foundations and corporate sponsors. I wish to emphasize that these suggestions did not insure that any of the partnerships were viable. We are aware that there are no available funding sources from the state agencies, in fact they are short of funds, and we have not yet identified any federal funding.

While the TAC and the travel industry support the idea of having Visitor Information Centers, those described in the study are a luxury that we cannot afford at this time. The plans presented in the study are much too grand, and more additional thought should be given to the concepts before we embark on such expansive and expensive projects!

The costs of over \$6 million dollars will be multiplied dramatically by interest costs of the bonds reccomended in this bill. There would no doubt be cost overruns to contend with as well. Marketing funds would be reduced by over \$600 thousand dollars annually, and operating costs conservatively estimated at \$800 thousand dollars annually, would further reduce the budget! Reducing Montana's marketing budget by 23% will seriously damage the successful promotional efforts for all of Montana as evidenced over the past three years.

Our task as we see it, is to expose potential vacationers to the image of Montana, through creative advertising and marketing campaigns. If our

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Larry McRae, Chairman, Tourism Advisory Council
Page 2
House Bill 861

budget is reduced by 23 percent, we will reach billions fewer potential visitors resulting in fewer visits to our state. Tourism organizations in Montana are producing their own effective promotions which are benefiting the economies of their regions and communities. Their budgets and future successes will be adversely affected by 23 percent diversion of funds. They would also have to increase the production of their promotional literature creating another sizeable dent in their budgets. Our travel promotion program is very new in its present form. It has been successful not only in the travel sector but to the entire business climate of Montana as well. VICs could benefit communities, but it could jeopardize the state as a whole by diverting 23 percent of the funds from promotions that have been proven successful in the past. We need more time to look at all the options before building six "posh" buildings that could be financial and maintenance nightmares. We need to spend more time and give more thought to this issue. While this legislation was well intended, if it is passed it may cost us a loss of visitation that will dramatically reduce revenues. We recommend a do not pass recommendation.



DATE 3/8/91
NO 861

P.O. Box 3166
Great Falls, MT 59403-3166
406-761-5036
Toll Free 1-800-527-5348

A tourism region uniting these Montana counties: Blaine, Cascade, Chouteau, Fergus, Hill, Judith Basin, Liberty, Meagher, Petroleum, Pondera, Teton, Toole & Wheatland

March 8, 1991

TO: House Business Committee

The Board of Directors and membership of Russell Country rise in opposition to HB861 which would take 10% of bed tax revenues to be used for a bonding plan to construct visitor information centers.

Our opposition is based on several points:

1. Our organization supported at the outset, along with the Montana Innkeepers Association, the enactment of HB84. Our reasons were then, and are still, based on the premise that advertising and promotion were the essential element missing at the time of introduction. Further, that the dollars being generated by the accommodations tax are the catalyst to the growth patterns we are experiencing from 1987 to the present. We did not lend our support to that legislation for any other purpose.

2. At the time of its adoption it was made clear to all that this was not to be used for bricks and mortar projects. That has been the industry's position at the beginning and remains to this day. We believe that HB861 will open a Pandora's Box, and further raids will occur because of the precedence created.

3. The tourism industry is now becoming a victim of its own success. As one of the few true growth industries in the State of Montana, it would appear that a few individuals are viewing it as a vehicle to fund other programs. If that is not the case, then why the proliferation of local option accommodations tax bills, vis-a-vis HB200, HB394, SB128, SB197 and SB294?

4. This 10% allocation only provides for construction. What of the nearly one million dollars that will be needed for maintenance and operational expenses? Will that be the new assault on the accommodations tax in 1993?

5. Our final point is the degradation of our regional budget. A 10% reduction for Russell Country based on the 1990-91 budget year would amount to \$11,252. That's not much by some people's measures. However, that loss would be the same as writing out of our budget half of our electronic or print advertising, or the full

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amount allocated for distributing our printing matter. What then will be the impact of the lesser funded regions or for that matter, the convention and visitors bureaus whose funding base is even less than ours?

In closing, the tourism industry's contribution to the economy is in ever increased jobs and new revenue sources. That contribution is causing an expansion in the tax base. Is it to become the goose that laid the golden egg? And, as we place greater demands upon it, its ability to produce is slighted. We encourage the development of new visitor centers and support their establishment completely. However, not at the sake of reduced funding for promotion.

Sincerely,



John B. Carroll
President

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*Testimony of Mike Labriola
Executive Vice President,
Great Falls Area Chamber of Commerce,*

*Before the House Business and Economic
Development Committee,
March 8, 1991.*

*The Great Falls Area Chamber of Commerce does not
support House Bill No. 861.*

*We indeed believe that first class information centers are
needed on our major arteries to welcome visitors - and to insure
that they receive appropriate information about what our
state - and our individual communities have to offer. The
experience of other states clearly shows that well managed
information centers increase the likelihood that visitors will
spend more time and money in our state.*

*The accommodations tax is working well for us as
presently structured. The bed tax has enabled Montana to be
competitive in the visitor marketplace. We have seen our
state's visitor count, and our annual Great Falls visitor count,
grow consistently since the bed tax funds became available for
our marketing efforts.*

*Of course we are all aware that our state is beautiful and a
wonderful place to live and visit, but studies show that most of*

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the world is not, and needs to be convinced. Since our bed tax was enacted other states have increased their tourism marketing budgets. We must stay competitive if our message is to be heard.

We believe that even though as visitor information centers are valuable, there must be a way to fund them without destroying an already successful program that contributes to the economic growth and well being of every community in this state.

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Statement of
Stephen F. McCool, Director
Institute for Tourism and Recreation Research
The University of Montana

Concerning HB 861
March 8, 1991

Good Morning. My name is Stephen F. McCool, and I serve as Director of the Institute for Tourism and Recreation Research at The University of Montana. The Institute was created to administer the travel research program created by the Legislature when HB 84 passed in 1987. The mission of the Institute is to provide information about Montana's travel, tourism and recreation industry so that policy-makers can make informed decisions about development, marketing, and planning.

In addition to my responsibilities as Director, I also served as a principal author of the Feasibility Study for a statewide system of Visitor Information Centers (VIC), the system that is to be funded as required in HB 861. It is in these capacities that I address the Committee this morning, and I will direct my comments to the consequences of funding the construction of the system of visitor information centers as outlined in HB 861.

As you know, Montana's tourism and recreation industry has become an important component of the state's economy. Our estimates indicate that in 1990 non-residents spent over \$750 million in the state. This initial expenditure translated into a estimated \$1.67 billion in direct, indirect and induced impacts. And, over the last decade, the industry's growth has played an important role in providing needed diversity and stability in the state's economy.

Continuing to nurture this industry with investments in appropriate developments, marketing, planning, training, and research will help this Montana industry maintain its competitive position not only within the U.S., but indeed as an important international destination as well. Our research that compares intentions to visit the state before and after exposure to Montana travel advertising in major markets, indicates that the existing state marketing program has been extremely effective in influencing non-resident perceptions or images of the state. Image of a state is a powerful factor affecting an individual's decision to visit here, and as nearly everyone in the tourism and recreation industry will tell you, Montana needs to work hard to deal with its image.

A system of visitor information centers could complement the marketing program by providing information about the state, its attractions, cultural and natural heritage, and recreation opportunities and services at an appropriate stage in visitor

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travels to Montana. Indeed, the feasibility study pointed to the significant potential economic benefits that could come with an outstanding VIC system that complemented current marketing efforts. And, I am happy to see that the Legislature is seriously considering the efforts of the many people involved in conducting the feasibility study.

However, I have several concerns with the funding mechanism for the visitor information center system proposed in HB 861.

First, the bill would divert about \$600,000 per year away from the current marketing program to retire bonds on the construction cost of the visitor information center system. While the bill would divert this amount for retirement of bonds, our estimates indicate that an additional \$800,000 per year initially would be needed to operate the system. Without a specific legislative direction, the source of these funds is unclear. If the operating costs were borne by the Travel Promotion Division, the total effect of HB 861 would be about \$1.5 million on existing or potential budgets. An impact of \$1.5 million per year on the state's marketing program would constrain Montana's ability to compete in the national and international marketplaces, and return the Department of Commerce Travel Promotion Division to the relatively anemic condition it was in 1986.

For all practical purposes, Montanans would lose the competitive gains in travel and tourism they have worked for and achieved in the last four years of exceedingly effective marketing. For example, HB 84 increased the state's budget from a rank in the bottom 6 states in the country (in 1986) to 28th (in 1987). Currently, the state's travel promotion budget ranks 29th. While other states are accelerating their tourism marketing and advertising budgets, Montana would be dismantling its award-winning one. A reduction of \$1.5 million in marketing activity would plummet the state back to the bottom of the pack.

While HB 861 would not appropriate any money for retirement of the bonds until fiscal year 1994, the effect of this proposal would be to cap the marketing program at a certain level, which would likely be below the current effort. This action should be viewed against the context of national trends in state tourism marketing programs. In the last few years, these programs have been increasing rapidly, about 9% per year--and are expected to continue to do so in the future.

Second, in the discussions I participated in for over the one and a half years it took to conduct the feasibility study, we consistently envisioned the visitor information center system to support and complement the effective out-of-state marketing program. Again, maintaining the out-of-state program is essential to preserving our competitive position and to changing image. Our rationale was that once people were convinced to visit Montana and actually get here, they would find the type of information and quality of service they needed to stay longer than planned and leave greater economic

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impact. Indeed, the report states that "a system of VICs would complement the existing Travel Montana out-of-state promotional programs . . ." rather than replacing them. And, it was within the context of the existing out-of-state marketing program that the economic impacts were estimated. A significant reduction in that marketing program would likely result in such a loss of visitors as to more than offset the benefits of the visitor centers.

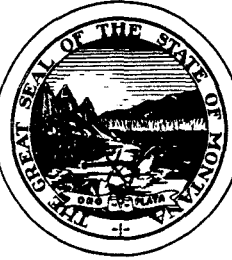
In our deliberations about funding construction and operation of the system, we carefully discussed the potential negative impacts of diverting existing accommodations tax revenues to this purpose. This is one reason why the feasibility study recommended an alternative funding source.

A third and related concern is the potential impact of the proposed funding mechanism on the 25% share of the accommodations tax revenue directed toward local and regional tourism marketing organizations. I believe that this revenue sharing process has encouraged and enabled Montana localities to develop tourism marketing programs that have helped buffer their economies from the uncertainties and setbacks we've seen in other industries. Reducing the allocation to these communities will restrict their capability in this area as well, potentially worsening an already fragile economic situation.

Again, I am pleased to see that the Legislature is conscientiously reviewing the feasibility study and apparently feels, as I do, that a visitor information center system can enhance Montana's economy. Such a system as envisioned in the feasibility study will be a distinct asset for Montanans themselves to use and enjoy. I hope that my comments have clarified some of the consequences of the funding mechanism proposed in HB 861. I would be happy to respond to your questions.

DEPARTMENT OF COMMERCE

1. RECD 5A
DATE 3/7/91
#8 861



STAN STEPHENS, GOVERNOR

1424 9TH AVENUE

STATE OF MONTANA

(406) 444-2654

HELENA, MONTANA 59620-0401

March 8, 1991

- Alternative to Large Scale Visitor Information Centers -

The objective is to assist communities that have already taken the initiative to develop their own smaller centers, and encourage other communities to do the same. In so doing, visitor services would be expanded statewide, and the biggest benefits would come to those communities that chose to invest in the visitor centers.

Those centers may be incorporated into existing or expanded Chamber of Commerce buildings; may be self-standing centers developed through partnerships between the private sector and state/federal agencies; or may be partly funded by the incorporation of stores that would generate revenues to partly support the centers ("Made in Montana" products, Montana books, etc.)

The Department of Commerce's involvement would fall within its current mandate, as described below:

The Montana Tourism Office of the Department of Commerce, currently has a customer service training program called "Superhost", which would be expanded to encompass visitor information centers. The Tourism Office would provide the following services:

- Provide technical assistance in the development and operation of visitor information centers by interested communities;
- Coordinate efforts between interested communities and appropriate state and federal agencies;
- Train volunteer and paid staff assigned by the communities to operate the centers;
- Provide state travel literature needed for distribution at the centers;

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- Develop a set of criteria for centers to become certified centers or "Superhost" centers. Upon meeting the criteria, centers would receive a large sign for placement outside the centers; those signs would provide higher visibility and credibility for the centers.
- Listing of certified centers in over 600,000 copies of the state's Travel Planner publication. Approximately 400,000 of those publications are mailed to out-of-staters.

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CAMPGROUND OWNER'S ASSOCIATION OF MONTANA

3695 Tina Avenue
Missoula, Montana 59801

President:
Elmer Frame '89 - '91
El-Mar KOA
3695 Tina Avenue
Missoula, MT 59801

March 8, 1991

Vice-President:
Pat Syring '89 - '91
Rocky Mountain Campgrd
Jardine Route, Box 10
Gardiner MT 59030

Bob Bachini, Chairman
Business & Economic Development Committee

Mr. Chairman and members of the Committee:

Secretary-Treasurer:
Decky Kiley '90 - '91
El-Mar KOA
3695 Tina Avenue
Missoula, MT 59801

I oppose HB 861 as presently worded because it does not recognize the need for and cost to operate the Visitor Centers after they are constructed.

Board of Directors:

Dud McClure '89 - '91
West Glacier KOA
Box 215
West Glacier, MT 59936

Don Thlesen '87 - '91
Sunrise Campground
31842 Frontage Road
Bozeman, MT 59715

Ed Pierce '87 - '91
Campground St. Regis
P.O. Drawer A
St. Regis, MT 59366

Paul Regan '90 - '93
Polson/Flathead KOA
P.O. Box 317
Polson, MT 59860

Tom Walchuk '90 - '93
Diamond "S" RV Park
P.O. Box 792
Ronan, MT 59864

I strongly support the need for visitor centers and endorse the concept that visitor centers reinforce the dollars spent to advertise and promote Montana. We ask people to visit Montana, yet we have no state operated information centers to encourage them to stay longer once they are here. The booklet you all received from the Dept. of Commerce on Montana Visitor Information Centers clearly points out the need for visitor centers but does not provide a means to fund them. HB 861 provides a means for funding this much needed promotional opportunity. *ways to make it work* *I ask that you amend HB 861 as follows: section 1, page 2 lines 16 thru 19 (c) 10% to the department of commerce, commencing fiscal year 1994, for the purpose of paying the interest on and redeeming bonds sold to construct and furnish printed material and provided one state staff person for each state visitor information center.

If HB 861 provides funds for the additional costs of printed material and supervision thru Travel Montana within the 10% set aside, I can support the Bill. I would envision that priority for constructing the individual visitor centers might be based on participation by local communities and cooperating state and federal agencies.

Respectfully,

Elmer Frame

Elmer M. Frame
President - Campground Owner's Assoc. of MT
(C.O.A.M.)

THE MONTANA CAPITAL COMPANY ACT

A Report Prepared for the
Legislative Finance Committee
by



Teresa Olcott Cohea
Legislative Fiscal Analyst
August 3, 1990

EXHIBIT 7-A
DATE 3/8/91
HS 901TERESA OLCOTT COHEA
LEGISLATIVE FISCAL ANALYSTSTATE OF MONTANA
*Office of the Legislative Fiscal Analyst*STATE CAPITOL
HELENA, MONTANA 59620
406/444-2986

October 10, 1990

TO: Legislative Finance Committee

FROM: Teresa Olcott Cohea *T=✓*
Legislative Fiscal Analyst

SUBJECT: Updated Information on Montana Capital Companies

The staff report on Montana's Capital Company Act, presented at the Legislative Finance Committee's August meeting, was based on capital company activity through June 30, 1990. The following memo provides updated information.

Quarterly Reports

As of September 30, 1990, \$6.02 million in capital company credits have been authorized for investors who invested \$12.67 million in qualified capital companies. In turn, these capital companies have placed \$2.44 million in qualified investments in Montana.

The amount of qualified investments actually decreased during the last quarter, since one capital company submitted a revised report, withdrawing its \$214,000 investment in a gas station/convenience store as a qualified investment. The additional investments made during this quarter have been:

TABLE 1
Qualified Investments in FY91 (First Quarter)

| Type of Company | Investment | Associated Jobs |
|----------------------|------------|-----------------|
| Software Development | \$ 200 | 0 |
| Moving/Storage | \$10,000 | 0 |
| Mining Equipment | \$30,000 | 1 |

During the quarter, investors placed an additional \$345,000 in one capital company, claiming \$172,500 in capital company credits.

As a result of the Committee's report and discussion, the Board of Investments voted at its August meeting to deny capital companies any extensions of deadlines for claiming tax credits and to freeze the reservation or allocation of any new tax credits. Since this policy went into effect, one capital company forfeited \$500,000 in reserved tax credits and was decertified for failure to reach minimum capitalization by its anniversary date. Another capital company forfeited \$387,593 in reserved tax credits. The Board has "frozen" this \$887,593 in forfeited tax credits, not reallocating them to capital companies that are on the waiting list for credits. A final capital company has until November 19, 1990, to claim the \$1 million in tax credits it has reserved. If this company does not receive sufficient capital from investors by that date to claim these reserved credits, the unused portion will be forfeited to the Board's "frozen" pool.

If these credits are unclaimed on June 30, 1991, they lapse under current law, reducing the cost of this program from \$7.91 million to \$6.02 million.

3/8/91

HB 901

Securities Violation

Two capital companies are currently on the Board of Investments' waiting list to become certified and available for tax credits. One of these companies was recently cited by the Securities Department, State Auditor's Office, for violating Montana's Securities Act. The department issued a "cease and desist" order against the company on August 23, 1990.

Examinations by the Financial Division

Within the last two months, the Financial Division has completed annual examinations for two capital companies and has issued a preliminary examination report for a third capital company.

In its examination of one of these capital companies, Financial Division staff found that the company's two investments to date appeared to meet the statutory requirements for qualification and that it had met its first "benchmark" requirement. However, the examiner noted:

The prospect that (the capital company) will notably help the local economy is remote. Some new jobs will be created, but mainly existing businesses will be kept going....there will be little or no new business created through (the capital company).

In both cases, the capital company had purchased a 100 percent ownership in existing, profitable businesses. Employment levels in these companies grew only slightly after the capital company's \$400,000 investment: by 5 employees in one business and 1.5 employees in the other business.

In its second examination, the Financial Division staff found that another capital company:

...is working to provide capital for risky and new ventures in compliance with the spirit of the [Montana Capital Company] Act...Most loans would probably not have been made by a bank, and there is evidence that some had been turned down by banks. The loans are risky and speculative in most cases. It appears that if the borrowers succeed in business, new jobs will be created.

However, the staff noted that "major problems noted at the examination were lack of adequate documentation and not using proper forms for a

financial enterprise." It found that "some loans were granted [for which] the borrower had never signed a note." In other cases, no documentation for personal guarantees on loans existed. The company had no standard forms for evaluating loan requests or for executing the loans. The examining staff suggested several changes in these procedures and documentation, which the capital company agreed to undertake. Financial Division staff noted at the end of the examination: "it is anticipated that documentation problems should be corrected shortly and will not be a problem in the future."

The examination concluded that two of the ten investments made by this capital company did not appear to be qualified. It questioned a \$65,000 investment "because it had nothing to do with business development or jobs, and there really is not enough information to make a good judgement about the situation." A \$5,000 investment did not appear qualified because it created no jobs and had little documentation. The examination also noted one "potential abuse" of the credits: an individual invested \$20,000 in the capital company on December 29, 1989, and received a \$20,000 loan from the capital company on the same day.

Inadequate documentation continues to be a problem in the preliminary examination of the third capital company. The staff reported that the capital company's documentation is so poor that it is "impossible to verify the purpose of the investment, any potential sources of repayment, or determine the financial condition of the entities receiving investments." It concluded that based on the available information, none of the company's reported investments were qualified.

The preliminary audit further found that: "some of the company's present investments are held in violation of...the [Montana Capital Company] Act." Section 90-8-303(2), MCA, says:

...a member of the investment committee of a Montana capital company who has an interest in a venture that comes before the committee for a vote shall disclose such interest and abstain from voting on the investment in the venture.

The examination found that the capital company has only one stockholder, who made the decision to invest in companies in which he had substantial ownership interest. The examination found in another case, the capital company had invested more than 25 percent of its capital base in a single company, in violation of Section 90-8-104, MCA.

Lastly, the examination concluded that the capital company's "investment policies and procedures are informal at best...In some cases, [promissory] notes are not obtained at all. There is no documentation available regarding the uses of the funds being invested, no source of repayment is identified, nor is any financial information presented."

The examination made five recommendations to the capital company to improve its operations. The Financial Division is seeking further information from the capital company prior to issuing a final examination report.

The three capital companies examined have invested \$1,141,560 in Montana's economy. The examinations reported 46.5 additional jobs that appear to have resulted from these investments, based on information presented by the capital companies.

House Business

Econ Development

EXHIBIT 8

DATE 3/8/91

4B 901

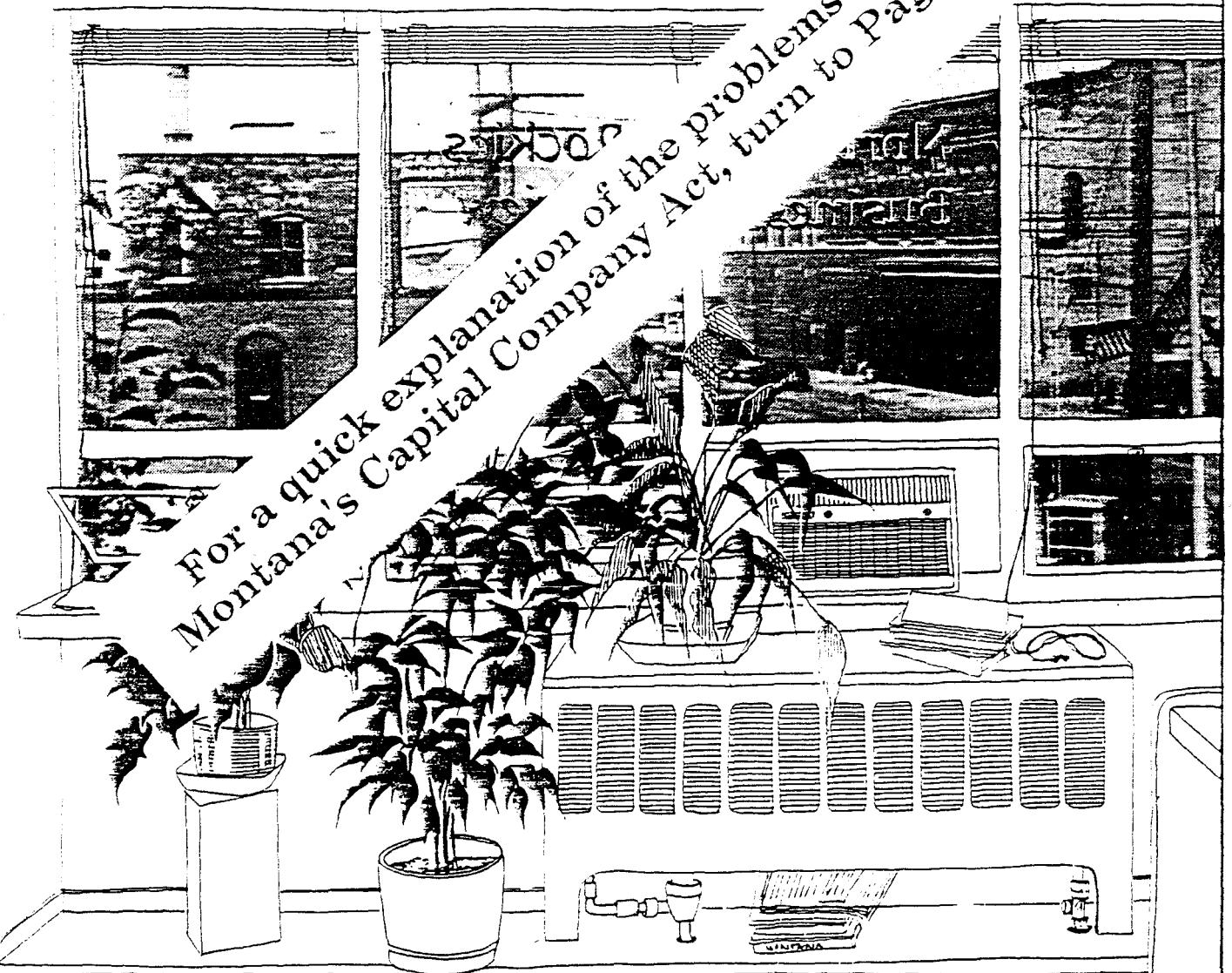
NORTHERN ROCKIES BUSINESS REVIEW

September 1990

Flathead Valley Edition

\$1.50 per copy

For a quick explanation of the problems with
Montana's Capital Company Act, turn to Page 16



Gary Ogle

IN THIS ISSUE: What's Upstairs Kalispell? Lee Carothers Says Goodbye. Montana Capital Companies Act-Big Mistake? Produce Markets in the Flathead. Olson On the Phone.

Ex. 8
3/8/91
HB 901

CAPITAL COMPANIES

Montana Act Under Review

By Jerry Hanson

Is the Montana Capital Company Act in trouble? The answer appears to be "Yes." Are the flaws fatal to the program? Not unless there is an over-reaction on the part of those that could correct its shortcomings. The Legislative Fiscal Analyst's report dated August 3, 1990 indicates the Montana Capital Company Act has been poorly managed and has done little to improve the State's economy. According to one newspaper's headline, the program is "...not working."

Because risk capital (venture capital) is different in intent and nature than most business financing programs, the legislature designed the program: 1) to encourage the private sector to generate and operate funding pools in the State, whose intent was to assist in business financing in its more risky aspects, and 2) to have a minimum level of state regulation and

... an individual invested \$20,000 in a capital company, gained a \$10,000 tax credit, and within three months was loaned \$20,000 by the capital company, for a business wholly owned by the investor.

has a very well deserved place in Montana's effort to pull its economy up by its bootstraps. There are only ten to twelve qualified capital companies in the State, in various stages of organization or operation, and many of these are sincere, well intended organizations whose intent is the same as was envisioned by the creators of the Act. Others are, to say the least, falling a bit short of the legislative intent. The Fiscal Analyst's Report points out the problem areas currently existing, and suggests ways to correct the situation.

Abusing the System

Examples of the questionable practices involve approximately one-third of the capital companies, but these companies represent 64% of the tax credits that have been issued to investors as of June 30, 1990. Slightly over half of the tax credits have been given to investors in two capital companies, both of which are owned by one family and its wholly owned corporations.

This opportunistic and enterprising family operates a chain of retail gasoline outlets, convenience stores and motels. By forming two capital companies, and infusing \$3 million into each, they received the maximum allowable tax credits per capital company of \$1,500,000. The \$6 million they put into these companies was their own (personal and corporate), and involved no outside investors. They indicated in their applications for certification that their purpose in establishing these two capital companies was to assist in financing expansion of their own motel, gas and convenience store chains.

For their efforts in forming and funding these two capital companies, the State of Montana issued them a cumulative total of \$3,000,000 in personal and corporate income tax credits. Their maneuver very nicely turned \$6 million into \$9 million.

A second capital company was organized by a single individual, and he retained sole ownership of this company. He funded it with \$200,000 of his own money and received a \$100,000 tax credit. In the following months, his capital company then funded a business in which he had 100% ownership



involvement, as even the legislature viewed excessive state involvement as potentially restrictive and encumbering to fulfilling the intent of the law. It may be an understatement to suggest the State has been overly lax to date in regulating capital companies, however.

As the Act is written in fairly broad, yet vague language, the Capital Company Act seems to have paved the way for a few opportunistic individuals to take advantage of a program that

with \$47,000; another in which he held a 50% ownership was given \$30,000, and a third business in which he only held 30% was provided with \$50,000. No other investments by this capital company were reported by the Fiscal Analyst.

... effectively no one was minding the store ... those who would take advantage of the weaknesses in the program were virtually able to plunder it.

A third situation developed where an individual invested \$20,000 in a capital company, gained a \$10,000 tax credit, and within three months was loaned \$20,000 by the capital company, for a business wholly owned by the investor. The same capital company accepted a \$90,000 investment from another investor, for which the investor was issued a \$45,000 tax credit, and within nine months that investor also got a \$65,000 loan from the capital company. One-half of the investments made by this capital company went to businesses in which its investors had a substantial interest!

Lastly, five individuals invested \$753,000 in yet another capital company, collectively received \$376,500 in tax credits, and then the capital company invested \$750,000 in a motel which the five owned.

Other capital companies, by contrast, have raised the majority of their capital bases from numerous investors, one with 150 investors, another with over 200, and a third with corporate and banking involvement from across the state. These capital companies do appear to be serving the intended purpose of generating new capital availability, which is then being utilized more in keeping with the legislative intent.

What Went Wrong?

Several things went wrong, it appears. Language in the Act is either very broadly phrased, vague, or both broad and vague, and seems to be one of the primary villains in this program. Whenever opportunity arises, there are the opportunists who zero in on such language as an open invitation to better their own position. Compound this weakness with the failure of the State's administrative branch to carry out mandated annual audits of those capital companies which were qualified and doing business. Because of the split responsibility of various aspects of the Capital Company Act, between three agencies and two separate divisions within one agency, effectively no one was minding the store. Add a shortage of personnel, and those who would take advantage of the weaknesses in the program were virtually able to plunder it.

This is not to suggest that every State official who had anything to do with capital companies fell short. The legislature did not give any one department or division a clear mandate to take an oversight role in coordinating and ensuring all monitoring functions were carried out, effectively and

continued on page 19

Ex. 8
3-8-91
43 901

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Capital Companies
continued from page 17

consistently. It was not until the Legislative Fiscal Analyst took an objective review of the entire program as it has functioned to date that a comprehensive overview was presented.

For example, the Department of Commerce's Investments Division is charged with certifying and qualifying capital companies, and issues the certificates of tax credit to the investors. The same department's Financial Division is supposed to annually audit every qualified capital company, something they did not do, largely due to lack of qualified personnel. This audit is to ascertain if the investments have both been of a qualifying nature, and have met the time frames for reinvestment of the capital base. But they had also never fully written comprehensive administrative rules spelling out how they would conduct their audits. From 1983, when the Act was first passed, only two audits were conducted, one in mid-1988 and the other in January of 1990; both on the same capital company located in Helena.

The two other agencies involved in capital companies are the Securities Commissioner's Office (State Auditor), and the Department of Revenue. The Securities Commissioner only gets involved in the initial application process (unless there is evidence later of securities fraud), and the DOR deducts taxes owed from the tax credit certificate as the investor files his annual tax return, and also assesses penalties if a capital company fails to make qualified investments as, and when, the law requires.

Restoration

These separations of function concerning monitoring and regulating capital companies can be anticipated to be amended, but how this will be accomplished is as yet unclear. The Department of Commerce is undertaking a review of the entire program, and will be reporting back to the legislature in October, 1990. The Governor's office has also initiated some requests concerning the program, and the Board of Investments has taken interim measures to maintain the status quo until corrective measures can be determined and implemented.

An examination of existing capital companies by the State's Financial Division, including a review of how the investment decisions were arrived at and by whom, might clear up a number of questionable practices as evidenced in the Analysts report. Add to this some clarification of the wording in the Capital Company Act by the legislature, and tightening of a few of the administrative rules, and the Montana Capital Company Act again becomes a viable vehicle to carry out the original purpose of enhancing our State's economy through providing risk capital to small businesses. □

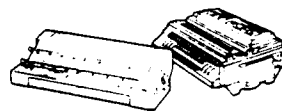
Jerry Hanson is the president of JERICHO GROUP, a small business development consulting firm, and is also the president of Commercial Underwriters, Inc., a certified Montana Capital Company in Whitefish.

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90-8-103. Purpose. (1) The purpose of this chapter is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by this chapter must be used to encourage and assist the strengthening of the economy through loans, equity investments, and other business transactions for purposes of developing new small business and industry in Montana, rehabilitating existing small business and industry, and stimulating and assisting in the expansion of small business activities that promote and maintain the economic stability of the state by providing maximum opportunities for employment of Montanans and improving the standard of living of the people of Montana.

(2) This chapter is aimed at:

(a) increasing the availability of development capital in order to encourage and assist in the creation, development, and expansion of small businesses based in Montana;

(b) aiding those businesses to which risk and equity financing are not readily or fully available through traditional sources, including those owned and operated by women and minorities;

(c) developing, preserving, diversifying, expanding, and strengthening the agricultural, industrial, and business base of Montana's economy, particularly for those small businesses utilizing the state's technical, managerial, and research resources in domestic and international markets; and

(d) providing the residents of Montana with greater opportunities to invest and participate in the economic development and potential of the state.

History: En. Sec. 3, Ch. 554, L. 1983.

EXHIBIT 9
DATE 3/8/91
NO. 901

*Exhibit # 10*MEMORANDUM

TO: Andy Poole

FROM: Jack Manning

DATE: March 7, 1991

RE: Revisions to Montana Capital Company Act

*1. Requirement that Investment not Displace Other Sources of Financing (§90-8-104(5)). This new requirement should be eliminated. The requirement is unusual, unreasonable and vague. It would severely and unduly restrict the pool of investments available for capital companies. It would require capital companies to be lenders and investors of last resort. (Why would anyone form a company to invest exclusively in businesses that could not obtain any other financing?). The requirement would also interfere with the ability of businesses to choose the best available form of financing. Also, how would it be determined whether other financing was "available" to a business? I think the provision is so vague and so unreasonable that it would be subject to serious challenge on constitutional grounds.

2. Recapture of Credits Related to Unrisked Funds (§90-8-203(2)). The rationale behind this new provision is fine. However, the specific language has deficiencies and needs clarification.

- (a) Instead of using the term "risky", the term "invested" should be used.
- (b) The wording "investor or subsequent entities having an interest in that investment" is rather vague. I suggest using the words "original investor or any subsequent holder of the investment".
- (c) The wording should be modified to clearly mesh with §90-8-301 (Qualified Investments).
- (d) The recovery should be from the person receiving the distributed funds, in order to avoid constitutional challenge.
- (e) The provision should specifically permit "dividends and other distributions paid in accordance with applicable law".

I suggest the following revised wording for the provision:

"If a capital company does not invest its capital base in accordance with §90-8-301, and if and to the extent that the capital company has paid or otherwise distributed funds to an investor or subsequent holder of the investment, the department of revenue may recover from the person receiving the distributed funds an amount not to exceed the lesser of (a) the amount of the tax credit received by the original investor or (b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of the investment. Dividends or distributions made in accordance with applicable law shall not be subject to recovery unless the capital company shall not have invested its capital base in accordance with §90-8-301.

*3. Restrictions on Investments in Profitable Businesses (§90-301(6)). The new restriction on investing in profitable businesses should be eliminated. Permitting investment only for expansion of profitable businesses is unduly restrictive. Again, capital companies should not be required to be lenders and investors of last resort. In addition, it would be difficult in some situations to determine whether a business is profitable and whether all of the investment is for expansion. Again, the requirement would also interfere with the ability of businesses to choose the best available form of financing.

4. Conflicts of Interest (§90-8-303(1)). I agree that there should be restrictions on investments in businesses affiliates with or related to capital companies. However, I wonder whether the proposed provision adequately accomplishes that goal. I have no specific suggestions for altering the proposed provision.

5. Expansion of Reporting Requirements (§90-8-312(1)(d)). The new provision requires capital companies to report "any other information determined by the department." I think that requirement is unduly broad and creates potential for abuse of discretion. I think the information desired by the department should be set forth generally in the statute, or the department should be required to adopt regulations to specify the necessary information. I note that in most situations capital companies would provide requested information, but in certain situations capital companies might think the request for information was unreasonable.

6. Requirement to Pre-Clear Investments (90-8-312(5)). The new requirement to pre-clear proposed investments with the department seems unnecessary to me. The

statute is already clear that capital companies must invest funds in accordance with various provisions of the statute. If the capital company does not comply with the statute, there are serious penalties. The department already has the opportunity to review investments after they are made. Is this additional bureaucracy really necessary? If the department thinks pre-clearance is absolutely necessary, then I suggest adding a provision that says that proposed investments are deemed qualified if the department does not deny them within seven days. In addition, the wording of the first sentence of the provision is not quite right. It should be changed to add the following words:

"Each qualified Montana capital company shall report to the department all proposed investments from its capital base."

7. De-Certification After Investment of 70% of Capital Base (90-8-321(6)). The requirement to de-certify capital companies after investment of 70% of the capital base is fine, if no more tax credits will be allocated to capital companies. However, in the past, some capital companies have continued to raise capital and use tax credits as they invested their funds in portfolio businesses. In that situation, there would be no reason to de-certify a capital company that was still raising funds.

General. Most of the proposed amendments in this Bill appear to be directed at two things: (a) making life tough for organizers of several capital companies who are perceived to be taking advantage of the Act by forming capital companies to invest in their own businesses and (b) forcing capital companies to invest only in start up companies, risky ventures and business expansion.

It is my understanding that a number of capital companies, including several family-owned capital companies, have already invested their funds. Thus, the Bill will have little or no effect on them.

The Act has never required capital companies to make only start up, risky and expansion investments. In fact, the present Act, which was originally adopted in 1983, has relatively few restrictions. The investments can be equity or debt, must be confined to certain industries, are limited to small and medium-sized businesses and must adhere to certain diversity requirements. For your information, I believe that the regulations define a small business as one with a net worth less than \$6,000,000, net income less than \$2,000,000 and less than 200 employees. That is hardly venture capital.

The written purpose section of the Act contains references to venture capital, but there is not one reference to venture capital in the operative provisions of the Act. Usually the phraseology is "venture and equity capital." I call your attention to the following language in the purpose section of the Act:

1. "The legislature further finds that the best method of combating unemployment and protecting Montana against the loss of its people is by promoting, stimulating, developing, rehabilitating, and revitalizing the business prosperity and economic welfare of the state and its citizens."
2. "...the legislature seeks to encourage the formation of venture and equity capital ... for use in diversifying, strengthening and stabilizing the Montana economy..."
3. "This chapter is aimed at: ...developing, preserving, diversifying, expanding and strengthening...the business base of Montana's economy..."

I think that several provisions of the Bill, as presently drafted and as applied to existing capital companies, are unconstitutional as an ex post facto law (an after-the-fact law).

In summary, I don't think the Legislature should or can drastically change the rules of the game for capital companies at this late date. While some changes can and perhaps should be made and provisions can be fine-tuned, I do not believe that it is fair, right or constitutional to drastically change the Act for existing, capitalized capital companies.

5896m

SUMMARY OF COMMENTS IN OPPOSITION TO HB901
BEFORE THE BUSINESS & ECONOMIC COMMITTEE

MARCH 8, 1991

by D. S. Fairchild, President
Great Falls Capital Corporation
A Montana Capital Company

Mr. Bachini, Chairperson, and Members of the Committee:

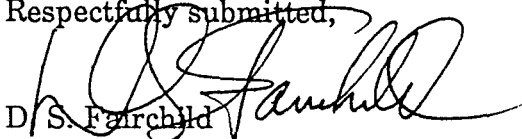
Thank you for giving me the opportunity to present my views. Upon reading a draft of HB901, I found three provisions to which, as a representative of Great Falls Capital Corporation, I am opposed.

First, on page 2, Section 1, paragraph 5, defining "qualified investment" that "does not displace other sources of investment available" relegates Montana Capital Companies to sources of last resort. Montana Capital Companies would, in effect, be allowed to invest only in high risk, questionable investments which would make it difficult if not impossible for MCC's to survive. The phrase should be eliminated.

Second, on page 11, in Section 6, paragraph 6, limiting investments in existing profitable businesses to expansion capital in effect restricts investment to unprofitable businesses or those which are in the early phases of development, because profitable businesses needing expansion capital normally can find expansion capital elsewhere based on their track record. Great Falls Capital Corporation invests in companies to secure an ownership position and a position of control whereby it can help the company operate, improve, and expand, all of which adds jobs. However, the portion of the invested capital applied to expansion is usually a small portion of the total and difficult to define. This restriction would have a pronounced negative impact on GFCC's ability to find investments which are permitted under our charter and our pledge to our shareholders. I oppose this provision in its entirety.

Third, on page 14, Section 9, paragraph 5, reporting proposed investments to the department or to any government body for prior approval would interfere unduly with the process of negotiation and concluding a transaction. A concern here is that such pre-approval process would delay the normal course of working out an agreement between the two parties involved and such delay and uncertainty could kill the transaction. Submitting the required information to the approval body may violate confidences or render negotiations awkward. I oppose this requirement. In the event that it stands as written, I would add a requirement by the approval body that it act and give notice of approval or disapproval within five working days after it receives notice of a proposed investment. Also, if it stands, the information required in order to make a decision regarding qualification should be defined, the format and communication method specified, and the specific points upon which the approval body will make the decision be spelled out.

Respectfully submitted,


D. S. Fairchild

12
3/5/91
742

Amendments to House Bill No. 742
First Reading Copy

For the Committee on Business and Economic Development

Prepared by Paul Verdon
March 8, 1991

1. Page 3, line 21.
Following: first "of"
Insert: "the applicable fee in lieu of tax plus"
2. Page 9, line 10.
Following: "collecting"
Insert: "on"
3. Page 9, lines 10 and 11.
Strike: "judgment from the department of justice"
Insert: "bond"
4. Page 9, lines 11 through 13.
Following: "The" on line 11
Strike: the remainder of line 11 and line 12 in its entirety and
line 13 through second "the"
5. Page 9, lines 13 and 14.
Strike: "on which the payment is based determines"
Insert: "must determine"
6. Page 9, line 15.
Strike: "concludes"
Insert: "conclude"
Strike: "dealer's"
Insert: "licensee's"
7. Page 9, line 16.
Following: "damage"
Insert: "before payment on the bond is required"

AMOUNT 13
DATE 3/8/91
→ SB 290

HOUSE OF REPRESENTATIVES

BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL VOTE

DATE MARCH 8, 1991 BILL NO. SB190 NUMBER 1

MOTION: to Reconsider Action

Motion Failed

| NAME | AYE | NO |
|------------------------------|-----|----|
| REP. JOE BARNETT | ✓ | |
| REP. STEVE BENEDICT | ✓ | |
| REP. BRENT CROMLEY | | ✓ |
| REP. TIM DOWELL | | ✓ |
| REP. ALVIN ELLIS, JR. | ✓ | |
| REP. STELLA JEAN HANSEN | | ✓ |
| REP. H.S. "SONNY" HANSON | ✓ | |
| REP. TOM KILPATRICK | | ✓ |
| REP. DICK KNOX | ✓ | |
| REP. DON LARSON | | ✓ |
| REP. SCOTT MCCULLOCH | | ✓ |
| REP. BOB PAVLOVICH | ✓ | |
| REP. JOHN SCOTT | | ✓ |
| REP. DON STEPPLER | | ✓ |
| REP. ROLPH TUNBY | ✓ | |
| REP. NORM WALLIN | ✓ | |
| REP. SHEILA RICE, VICE-CHAIR | | ✓ |
| REP. BOB BACHINI, CHAIRMAN | | ✓ |
| TOTAL | 8 | 10 |

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

BUSINESS & ECONOMIC DEVELOPMENT COMMITTEE

BILL NO. HB 742

DATE MARCH 8, 1991 SPONSOR(S) REP. DAVE WANZENRIED

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | BILL | OPPOSE | SUPPORT |
|----------------------|-------------------|--------|--------|---------|
| DARVILL (BUD) SCHOEN | DJS - MV Division | HB 742 | | |
| Dave Syfert | MT. Boating Ass | HB 742 | | ✓ |
| Ken Hoodcroft | MT Boating Assoc | 742 | | ✓ |
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COMMITTEE

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| NAME AND ADDRESS | REPRESENTING | BILL | OPPOSE | SUPPORT |
|-----------------------|--|------|--------|---------|
| Jerry McRae Kalispell | Tourism Advisory Council | | ✓ | |
| Keith L. Colbo | Tourism Coalition | | ✓ | |
| SAND M GUEDES | Tourism - Dept of Commerce | | ✓ | |
| Mike Laleside | Great Falls Chamber of Commerce | | ✓ | |
| Nancy Jean Ferguson | Expert Magazine | | | ✓ |
| Elmer Francis | Campgrounds | | ✓ | |
| Stephen F. McCall | Institute for Business & Recreation Research | | ✓ | |
| Riley Johnson | NFIB | | ✓ | |
| Bonnie Tappin | MT Enterprise | | ✓ | |
| Greg Bryan | MIKA | | ✓ | |
| J. Brumme | MOHA | | ✓ | |
| Al Buckholz | MT Chamber | | ✓ | |
| Don Chance | BEAVERHEAD Co. | | | ✓ |

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James Tutwiler

Al Chandler

✓

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| NAME AND ADDRESS | REPRESENTING | BILL | OPPOSE | SUPPORT |
|------------------|---|------|--------|---------|
| Evan Barrett | Southwest Montana Development Corporation | 901 | | ✓ |
| Don Fauschild | Great Falls Capital Corp | 901 | ✓ | |
| Jack Manning | Dorsey Whitney | 901 | ✓ | |
| Keith L. Colbo | Private Capital | | | ✓ |
| D.W. HUTCHINSON | FINANCE DIV. Commerce | 901 | | ✓ |
| ALDY POOLE | DEPT OF Commerce | 901 | | ✓ |
| DAVE LEWIS | Bd of INVESTMENT | 901 | | ✓ |
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