

HOUSE BILL NO. 685

INTRODUCED BY HARPER, VAN VALKENBURG, TOWE,
VINCENT, FABREGA, CRIPPEN, KEMMIS

BY REQUEST OF THE GOVERNOR'S OFFICE

IN THE HOUSE

February 8, 1983	Introduced and referred to Select Committee on Economic Development.
February 21, 1983	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 22, 1983	Bill printed and placed on members' desks.
February 23, 1983	Second reading, do pass. Considered correctly engrossed. Third reading, passed. Transmitted to Senate.

IN THE SENATE

March 1, 1983	Introduced and referred to Committee on Business and Industry.
March 23, 1983	Committee recommend bill be concurrent in as amended. Report adopted.
March 25, 1983	Second reading, pass consideration.
March 26, 1983	Second reading, concurred in.
March 28, 1983	Third reading, concurred in. Ayes, 45; Noes, 2.

IN THE HOUSE

March 28, 1983

Returned to House with
amendments.

April 1, 1983

Second reading, amendments
concurred in.

April 4, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. *685*
2 INTRODUCED BY *Harper Walker Eric Vincent Folsom*
3 BY REQUEST OF THE GOVERNOR'S OFFICE *Kenneth Orr*
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE
6 AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN
7 MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING
8 TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING
9 OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT
10 OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES
11 REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
12

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

14 Section 1. Short title. [This act] may be cited as the
15 "Montana Capital Company Act".

16 Section 2. Declaration of policy. (1) The legislature
17 finds and declares that:

18 (a) economic insecurity due to unemployment is a
19 serious menace to the health, safety, and general welfare of
20 not only the affected people but of the people of the entire
21 state;

22 (b) involuntary unemployment, with its resulting
23 burden of indigency, falls with crushing force upon
24 unemployed workers and ultimately on the state itself in the
25 form of public assistance and unemployment compensation

1 payments; and

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

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

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

20 (3) The legislature further finds that:

21 (a) private investment of venture and equity capital
22 in the Montana economy will be encouraged and promoted by
23 making tax credits available to taxpayers investing in
24 Montana businesses;

25 (b) demands on state revenues restrict the financial

1 ability of the state to make unlimited tax credits available
2 for investment purposes and require that the state place
3 reasonable limits on the total amount of tax credits to be
4 made available for investment incentive;

5 (c) establishment of a rational tax credit program
6 which gives priority to investments in the order of time in
7 which they are committed will encourage prompt private
8 investment in Montana businesses.

9 Section 3. Purpose. (1) The purpose of [this act] is
10 to promote the development of the human resources and the
11 diversification of the economy of Montana. The venture
12 capital generated by [this act] must be used to encourage
13 and assist the strengthening of the economy through loans,
14 equity investments, and other business transactions for
15 purposes of developing new small business and industry in
16 Montana, rehabilitating existing small business and
17 industry, and stimulating and assisting in the expansion of
18 small business activities that promote and maintain the
19 economic stability of the state by providing maximum
20 opportunities for employment and improving the standard of
21 living of the people of Montana.

22 (2) [This act] is aimed at:

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

1 Montana and controlled or managed by residents of Montana;
2 (b) aiding those businesses to which risk and equity
3 financing are not readily or fully available through
4 traditional sources;

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

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

14 Section 4. Definitions. As used in [this act], unless
15 the context requires otherwise, the following definitions
16 apply:

17 (1) "Capital base" means equity capital or net worth.

18 (2) "Certified Montana capital company" means:

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

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

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

1 provided for in Title 2, chapter 15, part 18.

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

4 (5) "Qualified investment" means a debt or equity
5 financing of or a purchase and leaseback financing of a
6 Montana business that meets both of the following criteria:

7 (a) the business is engaged in one or more of the
8 following activities:

9 (i) manufacturing;

10 (ii) agricultural, fishery, or forestry production and
11 processing;

12 (iii) mineral production and processing, except for
13 conventional oil and gas exploration;

14 (iv) recognized nonfossil forms of energy generation as
15 defined in 15-32-102(5);

16 (v) transportation;

17 (vi) research and development of products or processes
18 associated with any of the activities enumerated in (i)
19 through (v) above;

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

23 (viii) any activity conducted in the state for which
24 50% or more of the gross receipts are derived from the sale
25 of products or services outside Montana; and

1 (b) the business is a small business as defined in
2 rules adopted by the department.

3 (6) "Qualified Montana capital company" means a
4 certified Montana capital company that has been designated a
5 qualified capital company under the provisions of [section
6 6] so that investors in the company may receive the tax
7 credits authorized in [section 6].

8 Section 5. Certification of Montana capital companies.

9 (1) Every 6 months, commencing March 1, 1984, or 3 months
10 after rules are adopted to implement [this act], whichever
11 occurs first, the department shall certify Montana capital
12 companies. A company seeking to be certified as a Montana
13 capital company must make written application to the
14 department on forms provided by the department. The
15 application must contain the information required by
16 [section 16] and such other information as the department
17 requires. The application and certificate must specify the
18 level of capitalization that the company expects to qualify
19 for the tax credits provided for in [section 6].

20 (2) The application must show that the applicant's
21 purpose is to encourage and assist in the creation,
22 development, and expansion of Montana-based businesses and
23 to provide maximum opportunities for the employment of
24 Montanans by making venture capital available to sound small
25 Montana firms.

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

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

8 Section 6. Designation of qualified Montana capital
9 companies -- tax credit. (1) Every 6 months, commencing 6
10 months after the first date on which the department
11 certifies a Montana capital company, the department shall
12 designate as qualified Montana capital companies those
13 certified companies that have been privately capitalized at
14 a minimum level of \$200,000. A certified company seeking
15 designation as a qualified Montana capital company must make
16 written application to the department on forms provided by
17 the department. The application must contain the
18 information required by [section 16] and such other
19 information as the department requires. The application
20 must be accompanied by a bond sufficient to cover the cost
21 of any penalty that could be assessed under [section 7(4)].

22 (2) The total amount of tax credits authorized for a
23 single qualified company may not exceed the company's
24 private capitalization or \$375,000, whichever is less. In
25 the event the capitalization of the company is later

1 increased, the company may apply for authorization of
2 additional tax credits within the foregoing limitation. The
3 total credits authorized for all companies may not exceed a
4 total of \$1 million prior to June 30, 1985. The total
5 credits authorized for all companies between July 1, 1985,
6 and June 30, 1987, may not exceed \$1 million plus any
7 portion of the \$1 million available for authorization before
8 June 30, 1985, that is allocated to qualified companies. The
9 credits shall be allocated to qualified companies in the
10 order that completed applications for designation as
11 qualified capital companies are received by the department,
12 and the department shall certify to each such company its
13 appropriate allocation.

14 (3) Investors in a qualified Montana capital company
15 are entitled to the tax credits provided for in subsection
16 (4). Funds invested in a certified company prior to
17 designation as a qualified Montana capital company may, at
18 the discretion of the investor, be placed in an escrow
19 account in a Montana financial institution pending
20 designation of the company as a qualified Montana capital
21 company.

22 (4) Subject to the provisions of subsection (2), an
23 individual, small business corporation, partnership, or
24 corporate taxpayer who makes a capital investment in a
25 qualified Montana capital company is entitled to a tax

1 credit equal to 25% of the investment, up to a maximum
 2 credit of \$25,000 per taxpayer. The credit may be taken
 3 against the tax liability imposed on the investor pursuant
 4 to Title 15, chapter 30 or 31. The credit for investments
 5 by a small business corporation electing to be taxed under
 6 15-31-202 or a partnership may be claimed by the small
 7 business corporation shareholders or the partners.

8 (5) The tax credit allowed under subsection (4) is to
 9 be credited against the taxpayer's income tax liability for
 10 the taxable year in which the investment in a qualified
 11 Montana capital company is made. If the amount of the tax
 12 credit exceeds the taxpayer's tax liability for the taxable
 13 year, the amount of the credit which exceeds the tax
 14 liability may be carried back or carried forward in
 15 accordance with the provisions of section 46(b) of the
 16 Internal Revenue Code of 1954, as amended.

17 (6) The tax credit provided for in this section is
 18 available only to those taxpayers who invest in a qualified
 19 Montana capital company within 5 years of [the effective
 20 date of this act].

21 Section 7. Unused investments -- company penalty. (1)
 22 If the amount invested by a taxpayer in a qualified Montana
 23 capital company is not used by the company for qualified
 24 investments as provided in subsection (2), the taxpayer is
 25 not subject to a recapture provision for any tax credit

1 claimed by him but the company is subject to the penalty
 2 provided for in subsection (4).

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

7 (a) at least 30% of its capital base within 3 years of
 8 the date on which tax credits were certified as allocated to
 9 the company for investment;

10 (b) at least 50% of its capital base within 4 years of
 11 the date on which tax credits were certified as allocated to
 12 the company for investment; and

13 (c) at least 70% of its capital base within 5 years of
 14 the date on which tax credits were certified as allocated to
 15 the company for investment.

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

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

1 the qualified Montana capital company. The department of
2 revenue shall deposit any amount received under this
3 subsection to the credit of the state general fund.

4 Section 9. Investment reporting and recordkeeping. (1)
5 Each qualified Montana capital company shall report to the
6 department on a quarterly basis:

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

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

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

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

15 (3) The department shall provide each investor in a
16 qualified Montana capital company with a certificate
17 authorizing the tax credit, and the certificate shall be
18 submitted with each tax return requesting a credit under
19 [section 6].

20 (4) Each qualified Montana capital company shall
21 report to the department on a quarterly basis all qualified
22 investments that the company has made. The department shall
23 share the information with the department of revenue, in
24 order that the provisions of [section 7] may be complied
25 with.

1 Section 9. Restriction on investment. No more than 50%
2 of the capital base of a Montana capital company may be
3 invested in any one Montana business, and no more than 25%
4 of the total funds raised for which tax credits were claimed
5 pursuant to the investment credit provisions of [this act]
6 may be invested in any one Montana business.

7 Section 10. Conflict of interest. (1) The director of
8 the department, the commissioner of financial institutions,
9 or a bank examiner may not have a monetary interest in or be
10 a borrower from any Montana capital company, either directly
11 or indirectly.

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

16 Section 11. Legislative review and oversight. The
17 department shall report on an annual basis to the revenue
18 oversight committee of the legislature concerning Montana
19 capital companies.

20 Section 12. Examination. (1) At least once a year the
21 bank examiners of the department of commerce shall examine
22 the books and affairs of each Montana capital company. The
23 examination must address the methods of operation and
24 conduct of the business of the Montana capital company to
25 determine if the company is abiding by the purposes of [this

1 act] and that the funds received by the company have been
2 invested within the time limits required for a qualified
3 Montana capital company in [section 7].

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

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

16 Section 13. Decertification. (1) If the examination
17 conducted pursuant to [section 12] discloses that a Montana
18 capital company is not in compliance with the provisions of
19 [this act], the department of commerce may exercise any of
20 the powers with regard to banks granted in Title 32, chapter
21 1, part 5, and may seize the assets of the company and
22 liquidate it.

23 (2) If in the discretion of the department of commerce
24 the action allowed under subsection (1) is not required to
25 protect the company's investors, the department of commerce

1 may place the company on notice that it will lose its
2 certification as a Montana capital company within a
3 specified period of time if the company does not come into
4 compliance with the provisions of [this act].

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

10 Section 14. Application of securities law. In lieu of
11 registration under Title 30, chapter 10, a Montana capital
12 company may file all disclosure documents, along with a
13 consent to service of process, with the state securities
14 commissioner. The commissioner may not charge a fee for
15 such filing or deposit.

16 Section 15. State liability disclaimed. The state of
17 Montana may not be held liable for any damages to an
18 investor in a Montana capital company that fails to become
19 designated as a certified or qualified Montana capital
20 company.

21 Section 16. Application requirements. A company
22 applying to become either a certified or qualified Montana
23 capital company shall include in its application evidence
24 that it has disclosed or will disclose to all investors the
25 following:

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

6 (2) the terms and conditions under which a company may
7 be denied designation as a qualified Montana capital company
8 and the limits on tax credits that may be authorized; and

9 (3) the fact that the state of Montana is not liable
10 for damages in accordance with [section 15].

11 Section 17. Rulemaking. The department may adopt rules
12 to implement the provisions of [this act].

13 Section 18. Coordination. (1) If either House Bill No.
14 100 or ____ Bill No. ____ [LC 1148], including the sections
15 of those bills creating the Montana economic development
16 board, is passed and approved, all references to "the
17 department of commerce" in sections 4 through 11 of this act
18 are changed to "the Montana economic development board".

19 (2) If section 17 of House Bill No. 100 is passed and
20 approved, "the committee" referred to in section 11 of this
21 act is changed to "the economic development oversight
22 committee".

23 Section 19. Severability. If a part of this act is
24 invalid, all valid parts that are severable from the invalid
25 part remain in effect. If a part of this act is invalid in

1 one or more of its applications, the part remains in effect
2 in all valid applications that are severable from the
3 invalid applications.

4 Section 20. Effective date. This act is effective on
5 passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 366-83

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 83, there is hereby submitted a Fiscal Note for House Bill 685 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 685 authorizes the creation of Montana capital companies, their certification by the Department of Commerce and a total of \$1,000,000 in tax credits against personal or corporate income tax for each of the next two bienniums for investors in the "qualified" capital companies. Qualified capital companies must have a minimum of \$200,000 capitalization and tax credits are limited to \$25,000 per investor. The act provides for the annual examination of the companies by the commissioner of financial institutions and repayment of tax credits and penalties by a capital company that fails to make qualified investments as authorized by the act. The act will be administered by the Department of Commerce or the Montana Economic Development Board if House Bill 100 is adopted.

ASSUMPTIONS:

- 1) Ten companies with \$400,000 capital base each will be certified and authorized by the end of the biennium so that the entire \$1,000,000 in tax credits will be used.
- 2) Assume that the tax credits will be taken in FY 1985, although they can be carried both forward five years and back three years.
- 3) Companies will not begin actual operations until second year of biennium.
- 4) Company with \$400,000 in capital base could leverage another \$1,600,000 in investments.
- 5) Examination of companies will be somewhat simpler than examination of depository financial institutions and will take only 1/2 of the examination man-days to examine and produce a report that it would take for a depository institution of the same size.
- 6) Staff work for certification, qualification, adoption of rules, examination, and granting tax credits can be done by existing staff of the Department of Commerce and Revenue.

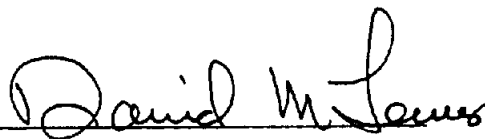
FISCAL IMPACT:

General Fund		
Reduction Due to Credit	\$ <u>FY84</u>	\$ <u>FY85</u>
Exam Fees Deposited	-0-	(750,000)
Net Decrease	\$ <u>-0-</u>	\$ <u>11,000</u>
		\$ <u>(739,000)</u>

School Foundation Program		
Reduction Due to Credit	\$ -0-	\$ (250,000)

Expenditures:

Adopt rules, printing, etc.	\$ 3,700	\$ -0-
Examination process	<u>11,000</u>	<u>11,000</u>
Total	<u>\$11,000</u>	<u>\$ 15,700</u>



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-15-83

FISCAL NOTE 13:P:1

STATE OF MONTANA

REQUEST NO. 518-83

FISCAL NOTE

Form BD-15

In compliance with a written request received March 25, 19 83, there is hereby submitted a Fiscal Note for House Bill 685, Amended, pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

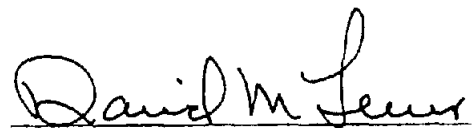
DESCRIPTION OF PROPOSED LEGISLATION:

House Bill 685, amended, authorizes the creation of Montana capital companies, their certification by the Department of Commerce and a total of \$1,000,000 in tax credits against personal and corporate income tax for each of the next two bienniums for investors in the "qualified" capital companies. Qualified capital companies must have a minimum of \$200,000 capitalization and tax credits are limited to \$25,000 per investor. The act provides for the annual examination of the companies by the commissioner of financial institutions and repayment of tax credits and penalties by a capital company that fails to make qualified investments as authorized by the act. The act will be administered by the Department of Commerce or the Montana Economic Development Board if House Bill 100 is adopted.

COMMENT:

The amendments to the bill do not change the impact of the bill. Refer to the original fiscal note for the assumptions and impact.

FISCAL NOTE 13:P:2



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 3-26-83

1 STATEMENT OF INTENT

2 HOUSE BILL 685

3 House Select Committee on Economic Development

4
5 A Statement of Intent is required for House Bill 685
6 because it grants rulemaking authority to the Department of
7 Commerce to implement the act.

8 It is the intention of the legislature that the tax
9 credits herein provided be applied only in the case of
10 properly qualified investments. It is therefore the
11 intention of the legislature that the department of
12 commerce, in making rules to define a small business, use
13 whatever means necessary to arrive at a definition of small
14 business which takes into account the unique nature of
15 Montana small business. It is similarly the intention of the
16 legislature that in the development of rules for
17 certification and qualification of capital companies, the
18 department shall take into account the capital needs of the
19 state based upon such information made available to it on
20 its own initiative and through such hearings as are
21 necessary to achieve the purposes of the act. It is further
22 the intention of the legislature that in determining such
23 rules as are necessary to carry out the examination
24 functions of the act, the department shall take into account
25 commonly accepted principles of financial institution

1 examinations currently in use in the examination of banks
2 and other such institutions. It is further the intention of
3 the legislature that the rules authorized in the act be
4 adopted in a timely fashion.

App. by comm. on education
and cultural resources

HOUSE BILL NO. 685

INTRODUCED BY HARPER, VAN VALKENBURG, TOME,

VINCENT, FABREGA, CRIPPEN, KEMMIS

BY REQUEST OF THE GOVERNOR'S OFFICE

A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE
AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN
MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING
TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING
OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT
OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES
REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Short title. [This act] may be cited as the
"Montana Capital Company Act".

Section 2. Declaration of policy. (1) The legislature
finds and declares that:

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

(b) involuntary unemployment, with its resulting
burden of indigency, falls with crushing force upon
unemployed workers and ultimately on the state itself in the

form of public assistance and unemployment compensation
payments; and

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

(2) (a) 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.

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

(3) The legislature further finds that:

(a) private investment of venture and equity capital
in the Montana economy will be encouraged and promoted by
making tax credits available to taxpayers investing in
Montana businesses CAPITAL COMPANIES;

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

(c) establishment of a rational tax credit program which gives priority to investments ~~in the order of time in which they are committed~~ IE CAPITAL COMPANIES IN THE ORDER IN WHICH THEY ARE QUALIFIED will encourage prompt private investment in Montana businesses.

Section 3. Purpose. (1) The purpose of [this act] is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by [this act] 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 act] 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, AT LEAST 60% OF WHOSE FACILITIES AND PERSONNEL ARE based in Montana and controlled or managed by residents of 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.

Section 4. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital or net worth.

(2) "Certified Montana capital company" means:

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

(b) a profit or nonprofit entity organized and

existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 10.

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

(5) "Qualified investment" means a debt or equity financing of or a purchase and leaseback financing of a Montana business that meets both of the following criteria:

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

(i) manufacturing;

(ii) agricultural, fishery, or forestry production and processing;

(iii) mineral production and processing, except for conventional oil and gas exploration;

(iv) recognized nonfossil forms of energy generation as defined in 15-32-102(5);

(v) transportation;

(vi) research and development of products or processes associated with any of the activities enumerated in (i) through (v) above;

(vii) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of

the gross sales receipts; and

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

~~(IX) TOURISM; AND~~

(b) the business is a small business as defined in rules adopted by the department.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of [section 6] so that investors in the company may receive the tax credits authorized in [section 6].

Section 5. Certification of Montana capital companies.

(1) Every 6 months, commencing March 1, 1984, or 3 months after rules are adopted to implement [this act], whichever occurs first, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in [section 6].

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

purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

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

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

Section 6. Designation of qualified Montana capital companies -- tax credit. (1) ~~Every 6 months, commencing 6 months after the first date on which the department certifies a Montana capital company, the~~ IHE department shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires. ~~The application must be accompanied by a bond sufficient to cover the cost~~

~~of any penalty that could be assessed under [section 7(4)]~~

(2) The total amount of tax credits authorized for a single qualified company may not exceed ~~the company's private capitalization or~~ \$375,000, ~~whichever is less~~. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation. The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each such company its appropriate allocation.

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

1 company.

2 (4) Subject to the provisions of subsection (2), an
3 individual, small business corporation, partnership, or
4 corporate taxpayer who makes a capital investment in a
5 qualified Montana capital company is entitled to a tax
6 credit equal to 25% of the investment, up to a maximum
7 credit of \$25,000 per taxpayer. The credit may be taken
8 against the tax liability imposed on the investor pursuant
9 to Title 15, chapter 30 or 31. The credit for investments
10 by a small business corporation electing to be taxed under
11 15-31-202 or a partnership may be claimed by the small
12 business corporation shareholders or the partners.

13 (5) The tax credit allowed under subsection (4) is to
14 be credited against the taxpayer's income tax liability for
15 the taxable year in which the investment in a qualified
16 Montana capital company is made. If the amount of the tax
17 credit exceeds the taxpayer's tax liability for the taxable
18 year, the amount of the credit which exceeds the tax
19 liability may be carried back or carried forward in
20 accordance with the provisions of section 46(b) of the
21 Internal Revenue Code of 1954, as amended.

22 (6) The tax credit provided for in this section is
23 available only to those taxpayers who invest in a qualified
24 Montana capital company within 5 years of [the effective
25 date of this act].

1 Section 7. Unused investments -- company penalty. (1)

2 If the amount invested by a taxpayer in a qualified Montana
3 capital company is not used by the company for qualified
4 investments as provided in subsection (2), the taxpayer is
5 not subject to a recapture provision for any tax credit
6 claimed by him but the company is subject to the penalty
7 provided for in subsection (4).

8 (2) A qualified Montana capital company receiving
9 investments for which a taxpayer has applied and received a
10 tax credit must use its capital base to make qualified
11 investments according to the following schedule:

12 (a) at least 30% of its capital base within 3 years of
13 the date on which ~~tax-credits-were-certified-as-allocated-to~~
14 ~~the--company--for--investment~~ THE CERTIFIED COMPANY WAS
15 DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT;

16 (b) at least 50% of its capital base within 4 years of
17 the date on which ~~tax-credits-were-certified-as-allocated-to~~
18 ~~the--company--for--investment~~ THE CERTIFIED COMPANY WAS
19 DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT;
20 and

21 (c) at least 70% of its capital base within 5 years of
22 the date on which ~~tax-credits-were-certified-as-allocated-to~~
23 ~~the--company--for--investment~~ THE CERTIFIED COMPANY WAS
24 DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT.

25 (3) Following each annual examination, the

1 commissioner of financial institutions shall notify the
2 department of revenue of any companies that are not in
3 compliance with this section.

4 (4) A qualified Montana capital company that fails to
5 make qualified investments pursuant to subsection (2) shall
6 pay to the department of revenue a penalty equal to all of
7 the tax credits allowed to the taxpayers investing in that
8 company during that time period, with interest at 1% a month
9 from the date the tax credits were certified as allocated to
10 the qualified Montana capital company. ~~THE DEPARTMENT OF~~
11 ~~REVENUE MAY ABATE THE PENALTY IF THE CAPITAL COMPANY~~
12 ~~ESTABLISHES REASONABLE CAUSE FOR THE FAILURE TO MAKE~~
13 ~~QUALIFIED INVESTMENTS PURSUANT TO SUBSECTION (2) AND THAT~~
14 ~~THE FAILURE WAS NOT DUE TO NEGLIGENCE ON THE PART OF THE~~
15 ~~COMPANY.~~ The department of revenue shall deposit any amount
16 received under this subsection to the credit of the state
17 general fund.

18 Section 8. Investment reporting and recordkeeping. (1)
19 Each qualified Montana capital company shall report to the
20 department on a quarterly basis:

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

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

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

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

4 (3) The department shall provide each investor in a
5 qualified Montana capital company with a certificate
6 authorizing the tax credit, and the certificate shall be
7 submitted with each tax return requesting a credit under
8 [section 6].

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

15 Section 9. Restriction on investment. No more than 50%
16 of the ~~capital--base--of--a--Montana-capital-company~~ EQUITY
17 ~~RAISED BY A MONTANA CAPITAL COMPANY UNDER [THIS ACT]~~ may be
18 invested in any one Montana business, and no more than 25%
19 of the total funds raised for which tax credits were claimed
20 pursuant to the investment credit provisions of [this act]
21 may be invested in any one Montana business.

22 Section 10. Conflict of interest. (1) The director of
23 the department, the commissioner of financial institutions,
24 or a bank examiner may not have a monetary interest in or be
25 a borrower from any Montana capital company, either directly

1 or indirectly.

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

6 Section 11. Legislative review and oversight. The
7 department shall report on an annual basis to the revenue
8 oversight committee of the legislature concerning Montana
9 capital companies.

10 Section 12. Examination. (1) At least once a year the
11 bank examiners of the department of commerce shall examine
12 the books and affairs of each Montana capital company. The
13 examination must address the methods of operation and
14 conduct of the business of the Montana capital company to
15 determine if the company is abiding by the purposes of [this
16 act] and that the funds received by the company have been
17 invested within the time limits required for a qualified
18 Montana capital company in [section 7].

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

1 shall enforce obedience to the subpoena in the manner
2 provided by law.

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

6 Section 13. Decertification. (1) If the examination
7 conducted pursuant to [section 12] discloses that a Montana
8 capital company is not in compliance with the provisions of
9 [this act], the department of commerce may exercise any of
10 the powers with regard to banks granted in Title 32, chapter
11 1, part 5, and may seize the assets of the company and
12 liquidate it. ~~IN THE EVENT OF LIQUIDATION OF THE ASSETS,~~
13 ~~ANY PENALTY IMPOSED PURSUANT TO [SECTION 7 OF THIS ACT]~~
14 ~~SHALL BE INCLUDED IN THE CLAIMS TO BE PAID.~~

15 (2) If in the discretion of the department of commerce
16 the action allowed under subsection (1) is not required to
17 protect the company's investors, the department of commerce
18 may place the company on notice that it will lose its
19 certification as a Montana capital company within a
20 specified period of time if the company does not come into
21 compliance with the provisions of [this act].

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

to act under it.

Section 14. Application of securities law. In lieu of registration under Title 30, chapter 10, a Montana capital company may file all disclosure documents, along with a consent to service of process, with the state securities commissioner. The commissioner may not charge a fee for such filing or deposit.

Section 15. State liability disclaimed. The state of Montana may not be held liable for any damages to an investor in a Montana capital company that fails to become designated as a certified or qualified Montana capital company.

Section 16. Application requirements. A company applying to become either a certified or qualified Montana capital company shall include in its application evidence that it has disclosed or will disclose to all investors the following:

(1) the condition that a tax credit is not available for investment in a company until the company has been designated a qualified Montana capital company and the investor has received a certificate approving the credit from the department;

~~(2) the terms and conditions under which a company may be denied designation as a qualified Montana capital company~~
~~THE CONDITION THAT A TAX CREDIT WILL NOT BE MADE AVAILABLE~~

~~UNTIL THE COMPANY RAISES AT LEAST \$200,000 IN CAPITAL, AND~~
~~HAS BEEN DESIGNATED A QUALIFIED CAPITAL COMPANY,~~ and the limits on tax credits that may be authorized; and

(3) the fact that the state of Montana is not liable for damages in accordance with [section 15].

Section 17. Rulemaking. The department may adopt rules to implement the provisions of [this act].

Section 18. Coordination. (1) If either House Bill No. 100 or ____ Bill No. ____ [LC 1148], including the sections of those bills creating the Montana economic development board, is passed and approved, all references to "the department of commerce" in sections 4 through 11 of this act are changed to "the Montana economic development board".

(2) If section 17 of House Bill No. 100 is passed and approved, "the committee" referred to in section 11 of this act is changed to "the economic development oversight committee".

Section 19. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. Effective date. This act is effective on passage and approval.

-End-

-16-

1 STATEMENT OF INTENT

2 HOUSE BILL 685

3 House Select Committee on Economic Development

4
5 A Statement of Intent is required for House Bill 685
6 because it grants rulemaking authority to the Department of
7 Commerce to implement the act.

8 It is the intention of the legislature that the tax
9 credits herein provided be applied only in the case of
10 properly qualified investments. It is therefore the
11 intention of the legislature that the department of
12 commerce, in making rules to define a small business, use
13 whatever means necessary to arrive at a definition of small
14 business which takes into account the unique nature of
15 Montana small business. It is similarly the intention of the
16 legislature that in the development of rules for
17 certification and qualification of capital companies, the
18 department shall take into account the capital needs of the
19 state based upon such information made available to it on
20 its own initiative and through such hearings as are
21 necessary to achieve the purposes of the act. It is further
22 the intention of the legislature that in determining such
23 rules as are necessary to carry out the examination
24 functions of the act, the department shall take into account
25 commonly accepted principles of financial institution

1 examinations currently in use in the examination of banks
2 and other such institutions. It is further the intention of
3 the legislature that the rules authorized in the act be
4 adopted in a timely fashion.

1 HOUSE BILL NO. 685

2 INTRODUCED BY HARPER, VAN VALKENBURG, TOME,

3 VINCENT, FABREGA, CRIPPEN, KENNIS

4 BY REQUEST OF THE GOVERNOR'S OFFICE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE
7 AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN
8 MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING
9 TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING
10 OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT
11 OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES
12 REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Short title. [This act] may be cited as the
16 "Montana Capital Company Act".17 Section 2. Declaration of policy. (1) The legislature
18 finds and declares that:19 (a) economic insecurity due to unemployment is a
20 serious menace to the health, safety, and general welfare of
21 not only the affected people but of the people of the entire
22 state;23 (b) involuntary unemployment, with its resulting
24 burden of indigency, falls with crushing force upon
25 unemployed workers and ultimately on the state itself in the1 form of public assistance and unemployment compensation
2 payments; and3 (c) unemployment causes a migration of Montana workers
4 and families seeking jobs and establishing homes elsewhere,
5 which deprives the state of its most valuable resource, its
6 people, and reduces the tax base of local governments,
7 impairing their ability to provide basic services.8 (2) (a) The legislature further finds that the best
9 method of combating unemployment and protecting Montana
10 against the loss of its people is by promoting, stimulating,
11 developing, rehabilitating, and revitalizing the business
12 prosperity and economic welfare of the state and its
13 citizens.14 (b) To accomplish this goal, the legislature seeks to
15 encourage the formation of venture and equity capital in
16 Montana for use in diversifying, strengthening, and
17 stabilizing the Montana economy by increasing Montana
18 employment and business opportunities while protecting the
19 peoples' constitutional right to a clean and healthful
20 environment.

21 (3) The legislature further finds that:

22 (a) private investment of venture and equity capital
23 in the Montana economy will be encouraged and promoted by
24 making tax credits available to taxpayers investing in
25 Montana businesses CAPITAL COMPANIES;

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

(c) establishment of a rational tax credit program which gives priority to investments ~~in the order of time in which they are committed~~ IF CAPITAL COMPANIES IN THE ORDER IN WHICH THEY ARE QUALIFIED will encourage prompt private investment in Montana businesses.

Section 3. Purpose. (1) The purpose of [this act] is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by [this act] 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 act] 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, AT LEAST 60% OF WHOSE FACILITIES AND PERSONNEL ARE based in Montana and controlled or managed by residents of 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.

Section 4. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital or net worth.

(2) "Certified Montana capital company" means:

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

(b) a profit or nonprofit entity organized and

existing under the laws of Montana, created for the purpose of making venture or risk capital available for qualified investments and that has been certified by the department.

(3) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

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

(5) "Qualified investment" means a debt or equity financing of or a purchase and leaseback financing of a Montana business that meets both of the following criteria:

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

(i) manufacturing;

(ii) agricultural, fishery, or forestry production and processing;

(iii) mineral production and processing, except for conventional oil and gas exploration;

(iv) recognized nonfossil forms of energy generation as defined in 15-32-102(5);

(v) transportation;

(vi) research and development of products or processes associated with any of the activities enumerated in (i) through (v) above;

(vii) wholesale or retail distribution activities for which products produced in Montana comprise 50% or more of

the gross sales receipts; and

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

~~(IX) TOURISM; AND~~

(b) the business is a small business as defined in rules adopted by the department.

(6) "Qualified Montana capital company" means a certified Montana capital company that has been designated a qualified capital company under the provisions of [section 6] so that investors in the company may receive the tax credits authorized in [section 6].

Section 5. Certification of Montana capital companies.

(1) Every 6 months, commencing March 1, 1984, or 3 months after rules are adopted to implement [this act], whichever occurs first, the department shall certify Montana capital companies. A company seeking to be certified as a Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires. The application and certificate must specify the level of capitalization that the company expects to qualify for the tax credits provided for in [section 6].

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

purpose is to encourage and assist in the creation, development, and expansion of Montana-based businesses and to provide maximum opportunities for the employment of Montanans by making venture capital available to sound small Montana firms.

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

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

Section 6. Designation of qualified Montana capital companies -- tax credits. (1) Every 6 months, commencing 6 months after the first date on which the department certifies a Montana capital company, the IHE department shall designate as qualified Montana capital companies those certified companies that have been privately capitalized at a minimum level of \$200,000. A certified company seeking designation as a qualified Montana capital company must make written application to the department on forms provided by the department. The application must contain the information required by [section 16] and such other information as the department requires. The application must be accompanied by a bond sufficient to cover the cost

~~of any penalty that could be assessed under [section 7(4)]~~

(2) The total amount of tax credits authorized for a single qualified company may not exceed the company's private capitalization or \$375,000, whichever is less. In the event the capitalization of the company is later increased, the company may apply for authorization of additional tax credits within the foregoing limitation. The total credits authorized for all companies may not exceed a total of \$1 million prior to June 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985, that is allocated to qualified companies. The credits shall be allocated to qualified companies in the order that completed applications for designation as qualified capital companies are received by the department, and the department shall certify to each such company its appropriate allocation.

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

company.

(4) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 25% of the investment, up to a maximum credit of \$25,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(5) The tax credit allowed under subsection (4) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended.

(6) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 5 years of [the effective date of this act].

Section 7. Unused investments -- company penalty. (1)

If the amount invested by a taxpayer in a qualified Montana capital company is not used by the company for qualified investments as provided in subsection (2), the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in subsection (4).

(2) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base within 3 years of the date on which tax-credits-were-certified-as-allocated-to the--company--for--investment THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT;

(b) at least 50% of its capital base within 4 years of the date on which tax-credits-were-certified-as-allocated-to the--company--for--investment THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT; and

(c) at least 70% of its capital base within 5 years of the date on which tax-credits-were-certified-as-allocated-to the--company--for--investment THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT.

(3) Following each annual examination, the

1 commissioner of financial institutions shall notify the
2 department of revenue of any companies that are not in
3 compliance with this section.

4 (4) A qualified Montana capital company that fails to
5 make qualified investments pursuant to subsection (2) shall
6 pay to the department of revenue a penalty equal to all of
7 the tax credits allowed to the taxpayers investing in that
8 company during that time period, with interest at 1% a month
9 from the date the tax credits were certified as allocated to
10 the qualified Montana capital company. ~~THE DEPARTMENT OF~~
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14 ~~THE FAILURE WAS NOT DUE TO NEGLIGENCE ON THE PART OF THE~~
15 ~~COMPANY.~~ The department of revenue shall deposit any amount
16 received under this subsection to the credit of the state
17 general fund.

18 Section 8. Investment reporting and recordkeeping. (1)
19 Each qualified Montana capital company shall report to the
20 department on a quarterly basis:

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

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

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

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

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5 qualified Montana capital company with a certificate
6 authorizing the tax credit, and the certificate shall be
7 submitted with each tax return requesting a credit under
8 [section 6].

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10 report to the department on a quarterly basis all qualified
11 investments that the company has made. The department shall
12 share the information with the department of revenue, in
13 order that the provisions of [section 7] may be complied
14 with.

15 Section 9. Restriction on investment. No more than 50%
16 of the capital--base--of--a-Montana-capital-company ~~EQUITY~~
17 ~~RAISED BY A MONTANA CAPITAL COMPANY UNDER [THIS ACT]~~ may be
18 invested in any one Montana business, and no more than 25%
19 of the total funds raised for which tax credits were claimed
20 pursuant to the investment credit provisions of [this act]
21 may be invested in any one Montana business.

22 Section 10. Conflict of interest. (1) The director of
23 the department, the commissioner of financial institutions,
24 or a bank examiner may not have a monetary interest in or be
25 a borrower from any Montana capital company, either directly

1 or indirectly.

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

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7 department shall report on an annual basis to the revenue
8 oversight committee of the legislature concerning Montana
9 capital companies.

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11 bank examiners of the department of commerce shall examine
12 the books and affairs of each Montana capital company. The
13 examination must address the methods of operation and
14 conduct of the business of the Montana capital company to
15 determine if the company is abiding by the purposes of [this
16 act] and that the funds received by the company have been
17 invested within the time limits required for a qualified
18 Montana capital company in [section 7].

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

1 shall enforce obedience to the subpoena in the manner
2 provided by law.

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

6 Section 13. Decertification. (1) If the examination
7 conducted pursuant to [section 12] discloses that a Montana
8 capital company is not in compliance with the provisions of
9 [this act], the department of commerce may exercise any of
10 the powers with regard to banks granted in Title 32, chapter
11 1, part 5, and may seize the assets of the company and
12 liquidate it. IN THE EVENT OF LIQUIDATION OF THE ASSETS,
13 ANY PENALTY IMPOSED PURSUANT TO [SECTION 7 OF THIS ACT]
14 SHALL BE INCLUDED IN THE CLAIMS TO BE PAID.

15 (2) If in the discretion of the department of commerce
16 the action allowed under subsection (1) is not required to
17 protect the company's investors, the department of commerce
18 may place the company on notice that it will lose its
19 certification as a Montana capital company within a
20 specified period of time if the company does not come into
21 compliance with the provisions of [this act].

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

1 to act under it.

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4 company may file all disclosure documents, along with a
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6 commissioner. The commissioner may not charge a fee for
7 such filing or deposit.

8 Section 15. State liability disclaimed. The state of
9 Montana may not be held liable for any damages to an
10 investor in a Montana capital company that fails to become
11 designated as a certified or qualified Montana capital
12 company.

13 Section 16. Application requirements. A company
14 applying to become either a certified or qualified Montana
15 capital company shall include in its application evidence
16 that it has disclosed or will disclose to all investors the
17 following:

18 (1) the condition that a tax credit is not available
19 for investment in a company until the company has been
20 designated a qualified Montana capital company and the
21 investor has received a certificate approving the credit
22 from the department;

23 (2) ~~the terms and conditions under which a company may~~
24 ~~be denied designation as a qualified Montana capital company~~
25 ~~THE CONDITION THAT A TAX CREDIT WILL NOT BE MADE AVAILABLE~~

1 ~~UNTIL THE COMPANY RAISES AT LEAST \$200,000 IN CAPITAL, AND~~
2 ~~HAS BEEN DESIGNATED A QUALIFIED CAPITAL COMPANY,~~ and the
3 limits on tax credits that may be authorized; and

4 (3) the fact that the state of Montana is not liable
5 for damages in accordance with [section 15].

6 Section 17. Rulemaking. The department may adopt rules
7 to implement the provisions of [this act].

8 Section 18. Coordination. (1) If either House Bill No.
9 100 or ____ Bill No. ____ [LC 1148], including the sections
10 of those bills creating the Montana economic development
11 board, is passed and approved, all references to "the
12 department of commerce" in sections 4 through 11 of this act
13 are changed to "the Montana economic development board".

14 (2) If section 17 of House Bill No. 100 is passed and
15 approved, "the committee" referred to in section 11 of this
16 act is changed to "the economic development oversight
17 committee".

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

24 Section 20. Effective date. This act is effective on
25 passage and approval.

-End-

-16-

SENATE STANDING COMMITTEE REPORT
(Business & Industry)

That House Bill No. 685 be amended as follows:

1. Page 4, line 2.

Following: "businesses"

Strike: Remainder of line 2 through "ARE" on line 3.

2. Page 4, line 3.

Following: "Montana"

Strike: Remainder of line 3 through "Montana" on line 4.

3. Page 6, line 14.

Strike: "March"

Insert: "January"

4. Page 16, line 12.

Following: "11"

Insert: "and 16 and 17"

1 STATEMENT OF INTENT

2 HOUSE BILL 685

3 House Select Committee on Economic Development

5 A Statement of Intent is required for House Bill 685

6 because it grants rulemaking authority to the Department of
7 Commerce to implement the act.

8 It is the intention of the legislature that the tax
9 credits herein provided be applied only in the case of
10 properly qualified investments. It is therefore the
11 intention of the legislature that the department of
12 commerce, in making rules to define a small business, use
13 whatever means necessary to arrive at a definition of small
14 business which takes into account the unique nature of
15 Montana small business. It is similarly the intention of the
16 legislature that in the development of rules for
17 certification and qualification of capital companies, the
18 department shall take into account the capital needs of the
19 state based upon such information made available to it on
20 its own initiative and through such hearings as are
21 necessary to achieve the purposes of the act. It is further
22 the intention of the legislature that in determining such
23 rules as are necessary to carry out the examination
24 functions of the act, the department shall take into account
25 commonly accepted principles of financial institution

1 examinations currently in use in the examination of banks
2 and other such institutions. It is further the intention of
3 the legislature that the rules authorized in the act be
4 adopted in a timely fashion.

1 HOUSE BILL NO. 685

2 INTRODUCED BY HARPER, VAN VALKENBURG, TONE,

3 VINCENT, FABREGA, CRIPPEN, KEMMIS

4 BY REQUEST OF THE GOVERNOR'S OFFICE

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROMOTING THE
7 AVAILABILITY AND INVESTMENT OF DEVELOPMENT CAPITAL IN
8 MONTANA THROUGH THE CREATION OF CAPITAL COMPANIES; PROVIDING
9 TAX CREDITS FOR INVESTMENT IN THE COMPANIES; PROVIDING
10 OVERSIGHT AND AUDITING REQUIREMENTS; PROVIDING THAT
11 OFFERINGS OF THE COMPANIES ARE EXEMPT FROM SECURITIES
12 REGISTRATION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:15 Section 1. Short title. [This act] may be cited as the
16 "Montana Capital Company Act".17 Section 2. Declaration of policy. (1) The legislature
18 finds and declares that:19 (a) economic insecurity due to unemployment is a
20 serious menace to the health, safety, and general welfare of
21 not only the affected people but of the people of the entire
22 state;23 (b) involuntary unemployment, with its resulting
24 burden of indigency, falls with crushing force upon
25 unemployed workers and ultimately on the state itself in the1 form of public assistance and unemployment compensation
2 payments; and3 (c) unemployment causes a migration of Montana workers
4 and families seeking jobs and establishing homes elsewhere,
5 which deprives the state of its most valuable resource, its
6 people, and reduces the tax base of local governments,
7 impairing their ability to provide basic services.8 (2) (a) The legislature further finds that the best
9 method of combating unemployment and protecting Montana
10 against the loss of its people is by promoting, stimulating,
11 developing, rehabilitating, and revitalizing the business
12 prosperity and economic welfare of the state and its
13 citizens.14 (b) To accomplish this goal, the legislature seeks to
15 encourage the formation of venture and equity capital in
16 Montana for use in diversifying, strengthening, and
17 stabilizing the Montana economy by increasing Montana
18 employment and business opportunities while protecting the
19 people's constitutional right to a clean and healthful
20 environment.

21 (3) The legislature further finds that:

22 (a) private investment of venture and equity capital
23 in the Montana economy will be encouraged and promoted by
24 making tax credits available to taxpayers investing in
25 Montana businesses CAPITAL COMPANIES;

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

(c) establishment of a rational tax credit program which gives priority to investments ~~in-the-order-of-time--in which--they--are-committed~~ IN CAPITAL COMPANIES IN THE ORDER IN WHICH THEY ARE QUALIFIED will encourage prompt private investment in Montana businesses.

Section 3. Purpose. (1) The purpose of [this act] is to promote the development of the human resources and the diversification of the economy of Montana. The venture capital generated by [this act] 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 act] 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, ~~at least 60%~~ BE WHOSE FACILITIES AND PERSONNEL ARE based in Montana and ~~controlled or managed by residents of 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.

Section 4. Definitions. As used in [this act], unless the context requires otherwise, the following definitions apply:

(1) "Capital base" means equity capital or net worth.

(2) "Certified Montana capital company" means:

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

(b) a profit or nonprofit entity organized and

1 existing under the laws of Montana, created for the purpose
2 of making venture or risk capital available for qualified
3 investments and that has been certified by the department.

4 (3) "Department" means the department of commerce
5 provided for in Title 2, chapter 15, part 18.

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

8 (5) "Qualified investment" means a debt or equity
9 financing of or a purchase and leaseback financing of a
10 Montana business that meets both of the following criteria:

11 (a) the business is engaged in one or more of the
12 following activities:

13 (i) manufacturing;

14 (ii) agricultural, fishery, or forestry production and
15 processing;

16 (iii) mineral production and processing, except for
17 conventional oil and gas exploration;

18 (iv) recognized nonfossil forms of energy generation as
19 defined in 15-32-102(5);

20 (v) transportation;

21 (vi) research and development of products or processes
22 associated with any of the activities enumerated in (i)
23 through (v) above;

24 (vii) wholesale or retail distribution activities for
25 which products produced in Montana comprise 50% or more of

1 the gross sales receipts; and

2 (viii) any activity conducted in the state for which
3 50% or more of the gross receipts are derived from the sale
4 of products or services outside Montana; and

5 ~~(IX) TOURISM; AND~~

6 (b) the business is a small business as defined in
7 rules adopted by the department.

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

13 Section 5. Certification of Montana capital companies.

14 (1) Every 6 months, commencing March ~~JANUARY~~ 1, 1984, or 3
15 months after rules are adopted to implement [this act],
16 whichever occurs first, the department shall certify Montana
17 capital companies. A company seeking to be certified as a
18 Montana capital company must make written application to the
19 department on forms provided by the department. The
20 application must contain the information required by
21 [section 16] and such other information as the department
22 requires. The application and certificate must specify the
23 level of capitalization that the company expects to qualify
24 for the tax credits provided for in [section 6].

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

1 purpose is to encourage and assist in the creation,
2 development, and expansion of Montana-based businesses and
3 to provide maximum opportunities for the employment of
4 Montanans by making venture capital available to sound small
5 Montana firms.

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

10 (4) Certification is a prerequisite to and must be
11 completed before seeking designation as a qualified capital
12 company.

13 Section 6. Designation of qualified Montana capital
14 companies -- tax credit. (1) ~~Every 6 months, commencing 6~~
15 ~~months after the first date on which the department~~
16 ~~certifies a Montana capital company, the~~ IHE department
17 shall designate as qualified Montana capital companies those
18 certified companies that have been privately capitalized at
19 a minimum level of \$200,000. A certified company seeking
20 designation as a qualified Montana capital company must make
21 written application to the department on forms provided by
22 the department. The application must contain the
23 information required by [section 16] and such other
24 information as the department requires. ~~The application~~
25 ~~must be accompanied by a bond sufficient to cover the cost~~

1 ~~of any penalty that could be assessed under [section 7(4)]~~

2 (2) The total amount of tax credits authorized for a
3 single qualified company may not exceed the ~~company's~~
4 ~~private capitalization or \$375,000, whichever is less.~~ In
5 the event the capitalization of the company is later
6 increased, the company may apply for authorization of
7 additional tax credits within the foregoing limitation. The
8 total credits authorized for all companies may not exceed a
9 total of \$1 million prior to June 30, 1985. The total
10 credits authorized for all companies between July 1, 1985,
11 and June 30, 1987, may not exceed \$1 million plus any
12 portion of the \$1 million available for authorization before
13 June 30, 1985, that is allocated to qualified companies. The
14 credits shall be allocated to qualified companies in the
15 order that completed applications for designation as
16 qualified capital companies are received by the department,
17 and the department shall certify to each such company its
18 appropriate allocation.

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

company.

(4) Subject to the provisions of subsection (2), an individual, small business corporation, partnership, or corporate taxpayer who makes a capital investment in a qualified Montana capital company is entitled to a tax credit equal to 25% of the investment, up to a maximum credit of \$25,000 per taxpayer. The credit may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30 or 31. The credit for investments by a small business corporation electing to be taxed under 15-31-202 or a partnership may be claimed by the small business corporation shareholders or the partners.

(5) The tax credit allowed under subsection (4) is to be credited against the taxpayer's income tax liability for the taxable year in which the investment in a qualified Montana capital company is made. If the amount of the tax credit exceeds the taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward in accordance with the provisions of section 46(b) of the Internal Revenue Code of 1954, as amended.

(6) The tax credit provided for in this section is available only to those taxpayers who invest in a qualified Montana capital company within 5 years of [the effective date of this act].

Section 7. Unused investments -- company penalty. (1)

If the amount invested by a taxpayer in a qualified Montana capital company is not used by the company for qualified investments as provided in subsection (2), the taxpayer is not subject to a recapture provision for any tax credit claimed by him but the company is subject to the penalty provided for in subsection (4).

(2) A qualified Montana capital company receiving investments for which a taxpayer has applied and received a tax credit must use its capital base to make qualified investments according to the following schedule:

(a) at least 30% of its capital base within 3 years of the date on which ~~tax-credits-were-certified-as-allocated-to the-company-for-investment~~ THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT;

(b) at least 50% of its capital base within 4 years of the date on which ~~tax-credits-were-certified-as-allocated-to the-company-for-investment~~ THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT;

and
(c) at least 70% of its capital base within 5 years of the date on which ~~tax-credits-were-certified-as-allocated-to the-company-for-investment~~ THE CERTIFIED COMPANY WAS DESIGNATED AS A QUALIFIED CAPITAL COMPANY BY THE DEPARTMENT.

(3) Following each annual examination, the

1 commissioner of financial institutions shall notify the
2 department of revenue of any companies that are not in
3 compliance with this section.

4 (4) A qualified Montana capital company that fails to
5 make qualified investments pursuant to subsection (2) shall
6 pay to the department of revenue a penalty equal to all of
7 the tax credits allowed to the taxpayers investing in that
8 company during that time period, with interest at 1% a month
9 from the date the tax credits were certified as allocated to
10 the qualified Montana capital company. ~~THE DEPARTMENT OF~~
11 ~~REVENUE MAY ABATE THE PENALTY IF THE CAPITAL COMPANY~~
12 ~~ESTABLISHES REASONABLE CAUSE FOR THE FAILURE TO MAKE~~
13 ~~QUALIFIED INVESTMENTS PURSUANT TO SUBSECTION (2) AND THAT~~
14 ~~THE FAILURE WAS NOT DUE TO NEGLIGENCE ON THE PART OF THE~~
15 ~~COMPANY.~~ The department of revenue shall deposit any amount
16 received under this subsection to the credit of the state
17 general fund.

18 Section 8. Investment reporting and recordkeeping. (1)
19 Each qualified Montana capital company shall report to the
20 department on a quarterly basis:

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

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

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

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

4 (3) The department shall provide each investor in a
5 qualified Montana capital company with a certificate
6 authorizing the tax credit, and the certificate shall be
7 submitted with each tax return requesting a credit under
8 [section 6].

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

15 Section 9. Restriction on investment. No more than 50%
16 of the ~~capital--base--of--a-Montana-capital-company~~ EQUITY
17 RAISED BY A MONTANA CAPITAL COMPANY UNDER [THIS ACT] may be
18 invested in any one Montana business, and no more than 25%
19 of the total funds raised for which tax credits were claimed
20 pursuant to the investment credit provisions of [this act]
21 may be invested in any one Montana business.

22 Section 10. Conflict of interest. (1) The director of
23 the department, the commissioner of financial institutions,
24 or a bank examiner may not have a monetary interest in or be
25 a borrower from any Montana capital company, either directly

1 or indirectly.

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

6 Section 11. Legislative review and oversight. The
7 department shall report on an annual basis to the revenue
8 oversight committee of the legislature concerning Montana
9 capital companies.

10 Section 12. Examination. (1) At least once a year the
11 bank examiners of the department of commerce shall examine
12 the books and affairs of each Montana capital company. The
13 examination must address the methods of operation and
14 conduct of the business of the Montana capital company to
15 determine if the company is abiding by the purposes of [this
16 act] and that the funds received by the company have been
17 invested within the time limits required for a qualified
18 Montana capital company in [section 7].

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

1 shall enforce obedience to the subpoena in the manner
2 provided by law.

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

6 Section 13. Decertification. (1) If the examination
7 conducted pursuant to [section 12] discloses that a Montana
8 capital company is not in compliance with the provisions of
9 [this act], the department of commerce may exercise any of
10 the powers with regard to banks granted in Title 32, chapter
11 1, part 5, and may seize the assets of the company and
12 liquidate it. ~~IN THE EVENT OF LIQUIDATION OF THE ASSETS,~~
13 ~~ANY PENALTY IMPOSED PURSUANT TO [SECTION 7 OF THIS ACT]~~
14 ~~SHALL BE INCLUDED IN THE CLAIMS TO BE PAID.~~

15 (2) If in the discretion of the department of commerce
16 the action allowed under subsection (1) is not required to
17 protect the company's investors, the department of commerce
18 may place the company on notice that it will lose its
19 certification as a Montana capital company within a
20 specified period of time if the company does not come into
21 compliance with the provisions of [this act].

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

1 to act under it.

2 Section 14. Application of securities law. In lieu of
3 registration under Title 30, chapter 10, a Montana capital
4 company may file all disclosure documents, along with a
5 consent to service of process, with the state securities
6 commissioner. The commissioner may not charge a fee for
7 such filing or deposit.

8 Section 15. State liability disclaimed. The state of
9 Montana may not be held liable for any damages to an
10 investor in a Montana capital company that fails to become
11 designated as a certified or qualified Montana capital
12 company.

13 Section 16. Application requirements. A company
14 applying to become either a certified or qualified Montana
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19 for investment in a company until the company has been
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21 investor has received a certificate approving the credit
22 from the department;

23 ~~(2) the terms and conditions under which a company may~~
24 ~~be denied designation as a qualified Montana capital company~~
25 ~~the condition that a tax credit will not be made available~~

1 ~~UNIL THE COMPANY RAISES AT LEAST \$200,000 IN CAPITAL, AND~~
2 ~~HAS BEEN DESIGNATED A QUALIFIED CAPITAL COMPANY,~~ and the
3 limits on tax credits that may be authorized; and

4 (3) the fact that the state of Montana is not liable
5 for damages in accordance with [section 15].

6 Section 17. Rulemaking. The department may adopt rules
7 to implement the provisions of [this act].

8 Section 18. Coordination. (1) If either House Bill No.
9 100 or ____ Bill No. ____ [LC 1148], including the sections
10 of those bills creating the Montana economic development
11 board, is passed and approved, all references to "the
12 department of commerce" in sections 4 through 11, ~~16, AND 17~~
13 of this act are changed to "the Montana economic development
14 board".

15 (2) If section 17 of House Bill No. 100 is passed and
16 approved, "the committee" referred to in section 11 of this
17 act is changed to "the economic development oversight
18 committee".

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

25 Section 20. Effective date. This act is effective on

HB 0685/03

1 passage and approval.

-End-