

SENATE BILL NO. 351

INTRODUCED BY WILLIAMS, WALKER, AAFEDT, MEYER, NISBET,  
NOBLE, PHILLIPS, THAYER, MANNING, SIMPKINS

IN THE SENATE

FEBRUARY 6, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1989	PRINTING REPORT.
FEBRUARY 20, 1989	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
	FIRST READING.
MARCH 10, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 11, 1989	SECOND READING, CONCURRED IN.
MARCH 14, 1989	THIRD READING, CONCURRED IN. AYES, 97; NOES, 1.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 1, 1989

RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS  
CONCURRED IN.

APRIL 4, 1989

THIRD READING, AMENDMENTS  
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *351*  
 2 INTRODUCED BY *William J. ...*  
 3 *Meyer ...*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE  
 5 MONTANA CAPITAL COMPANY ACT; PROVIDING FOR THE SALE OF  
 6 DEBENTURES TO THE IN-STATE INVESTMENT FUND; REMOVING  
 7 RETAINED EARNINGS FROM A COMPANY'S CAPITAL BASE; AMENDING  
 8 THE TIME FOR CERTIFICATION; AMENDING PROVISIONS FOR CARRYING  
 9 BACK AND CARRYING FORWARD OF TAX CREDITS; ALLOWING  
 10 INVESTMENTS IN CAPITAL COMPANIES BY A TRUST AND A DECEDENT'S  
 11 ESTATE; AMENDING THE TIME SCHEDULE FOR MAKING QUALIFIED  
 12 INVESTMENTS; PROVIDING FOR AN EXTENSION TO THE SCHEDULE;  
 13 REMOVING THE REQUIREMENT FOR INVESTMENT IN A MONTANA  
 14 BUSINESS; PROVIDING FOR AUTOMATIC DECERTIFICATION IN CERTAIN  
 15 CASES AND FOR VOLUNTARY DECERTIFICATION; AND AMENDING  
 16 SECTIONS 90-8-104, 90-8-201, 90-8-202, 90-8-301, 90-8-302,  
 17 AND 90-8-321, MCA."

18  
 19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. Section 1. Sale of debentures. (1) A  
 21 qualified Montana capital company is authorized to issue and  
 22 sell debentures to the in-state investment fund established  
 23 in 17-6-306.

24 (2) Proceeds received by a qualified Montana capital  
 25 company from the sale of debentures authorized in subsection

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

5 Section 2. Section 90-8-104, MCA, is amended to read:

6 "90-8-104. Definitions. As used in this chapter,  
 7 unless the context requires otherwise, the following  
 8 definitions apply:

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

11 (2) "Capital base" means equity capital raised by a  
 12 certified Montana capital company for which tax credits were  
 13 claimed under this chapter ~~and additions to net worth caused~~  
 14 ~~by increases in retained earnings.~~

15 (3) "Certified Montana capital company" means:

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

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

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

24 (5) "Qualified investment" means:

25 (a) a debt or equity financing of a Montana business

1 that meets both of the following criteria:

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

4 (A) manufacturing;

5 (B) agricultural, fishery, or forestry production and  
6 processing;

7 (C) mineral production and processing, except for  
8 conventional oil and gas exploration;

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

11 (E) transportation;

12 (F) research and development of products or processes  
13 associated with any of the activities enumerated in (A)  
14 through (E) above;

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

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

21 (I) tourism; and

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

24 (b) a debt or equity financing of a business outside  
25 Montana if such investment is likely to produce a qualified

1 investment in Montana, as long as such investment does not  
2 exceed 25% of the capital base of the capital company.

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 90-8-202  
6 so that investors in the company may receive the tax credits  
7 authorized in 90-8-202."

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

9 **"90-8-201. Certification of Montana capital companies.**

10 ~~(1) Every-6-months, commencing-January-1, 1984, or-3--months~~  
11 ~~after-rules-are-adopted-to-implement-this-chapter, whichever~~  
12 ~~occurs--first, From time to time~~ the board shall certify  
13 Montana capital companies. A company seeking to be certified  
14 as a Montana capital company must make written application  
15 to the board on forms provided by the board. The application  
16 must contain the information required by 90-8-204 and such  
17 other information as the board requires. The application and  
18 certificate must specify the level of capitalization that  
19 the company expects to qualify for the tax credits provided  
20 for in 90-8-202.

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

24 (a) making investment capital available to businesses  
25 in Montana; and

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

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

**"90-8-202. Designation of qualified Montana capital companies -- tax credit.** (1) The board 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 board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed \$1,500,000. 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.

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

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

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection (5). Funds invested in a certified company prior to designation as a qualified Montana capital company may, at

1 the discretion of the investor, be placed in an escrow  
2 account in a Montana financial institution pending  
3 designation of the company as a qualified Montana capital  
4 company.

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

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

25 (a) If the sum of the amount of credit for the current

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

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

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

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

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

20 (a) at least 30% of its capital base raised through  
21 investments for which tax credits were taken within 3 years  
22 of the date on which the certified company was designated as  
23 a qualified capital company by the board ~~and at least 30% of~~  
24 ~~its capital base caused by increases in retained earnings~~  
25 ~~within 3 years of the end of the fiscal year during which~~

1 ~~the--retained--earnings--were--earned~~ and, in the case of  
 2 ~~capital raised by a qualified Montana capital company under~~  
 3 ~~an amended application for additional tax credits filed~~  
 4 ~~after its initial designation as a qualified Montana capital~~  
 5 ~~company, at least 30% of its capital base raised through~~  
 6 ~~investments for which tax credits were taken within 3 years~~  
 7 ~~of the date on which the board approves the amended~~  
 8 ~~application;~~

9 (b) at least 50% of its capital base raised through  
 10 investments for which tax credits were taken within 4 years  
 11 of the date on which the certified company was designated as  
 12 a qualified capital company by the board ~~and-at-least-50%-of~~  
 13 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 14 ~~within-4-years-of-the-end-of-the-fiscal--year--during--which~~  
 15 ~~the--retained--earnings--were--earned~~ and, in the case of  
 16 ~~capital raised by a qualified Montana capital company under~~  
 17 ~~an amended application for additional tax credits filed~~  
 18 ~~after its initial designation as a qualified Montana capital~~  
 19 ~~company, at least 50% of its capital base raised through~~  
 20 ~~investments for which tax credits were taken within 4 years~~  
 21 ~~of the date on which the board approves the amended~~  
 22 ~~application; and~~

23 (c) at least 70% of its capital base raised through  
 24 investments for which tax credits were taken within 5 years  
 25 of the date on which the certified company was designated as

1 a qualified capital company by the board ~~and-at-least-70%-of~~  
 2 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 3 ~~within-5-years-of-the-end-of-the-fiscal--year--during--which~~  
 4 ~~the--retained--earnings--were--earned~~ and, in the case of  
 5 ~~capital raised by a qualified Montana capital company under~~  
 6 ~~an amended application for additional tax credits filed~~  
 7 ~~after its initial designation as a qualified Montana capital~~  
 8 ~~company, at least 70% of its capital base raised through~~  
 9 ~~investments for which tax credits were taken within 5 years~~  
 10 ~~of the date on which the board approves the amended~~  
 11 ~~application.~~

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

16 (3) A qualified Montana capital company that fails to  
 17 make qualified investments pursuant to subsection (1) shall  
 18 pay to the department of revenue a penalty equal to all of  
 19 the tax credits allowed to the taxpayers investing in that  
 20 company during that time period, with interest at 1% a month  
 21 from the date the tax credits were certified as allocated to  
 22 the qualified Montana capital company. The department of  
 23 revenue may, ~~abate--the--penalty~~ upon application by the  
 24 ~~capital company, approve an extension of time in which to~~  
 25 ~~make qualified investments~~ if the capital company

1 establishes reasonable cause for the failure to make  
2 qualified investments pursuant to subsection (1) and that if  
3 the failure was not due to neglect on the part of the  
4 company.

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

8 **Section 6.** Section 90-8-302, MCA, is amended to read:

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

17 **Section 7.** Section 90-8-321, MCA, is amended to read:

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

1 in the claims to be paid.

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

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

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

18 **NEW SECTION. Section 8. Extension of authority.** Any  
19 existing authority to make rules on the subject of the  
20 provisions of [this act] is extended to the provisions of  
21 [this act].

22 **NEW SECTION. Section 9. Codification instruction.**  
23 [Section 1] is intended to be codified as an integral part  
24 of Title 90, chapter 8, part 3, and the provisions of Title  
25 90, chapter 8, apply to [section 1].

-End-

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APPROVED BY COMMITTEE  
ON TAXATION

## SENATE BILL NO. 351

INTRODUCED BY WILLIAMS, WALKER, AAFEDT, MEYER, NISBET,  
NOBLE, PHILLIPS, THAYER, MANNING, SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO--GENERALLY--REVISE~~  
~~AMENDING~~ THE MONTANA CAPITAL COMPANY ACT; ~~PROVIDING-FOR-THE~~  
~~SALE-OF~~ CLARIFYING THE AUTHORITY TO SELL DEBENTURES TO THE  
IN-STATE INVESTMENT FUND; REMOVING RETAINED EARNINGS FROM A  
COMPANY'S CAPITAL BASE; AMENDING THE TIME FOR CERTIFICATION;  
AMENDING PROVISIONS FOR CARRYING BACK AND CARRYING FORWARD  
OF TAX CREDITS; ALLOWING INVESTMENTS IN CAPITAL COMPANIES BY  
A TRUST AND A DECEDENT'S ESTATE; AMENDING THE TIME SCHEDULE  
FOR MAKING QUALIFIED INVESTMENTS; PROVIDING FOR AN EXTENSION  
TO THE SCHEDULE; ~~REMOVING-THE-REQUIREMENT-FOR-INVESTMENT--IN~~  
~~A--MONTANA--BUSINESS~~ CLARIFYING RESTRICTIONS ON THE USE OF  
CAPITAL COMPANY FUNDS; PROVIDING FOR AUTOMATIC  
DECERTIFICATION IN CERTAIN CASES AND FOR VOLUNTARY  
DECERTIFICATION; AND AMENDING SECTIONS 90-8-104, 90-8-201,  
90-8-202, 90-8-301, 90-8-302, AND 90-8-321, MCA."

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

NEW SECTION. **Section 1.** Sale of debentures. (1) A  
qualified Montana capital company is authorized to issue and  
sell debentures to the in-state investment fund established  
in 17-6-306.

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

**Section 2.** Section 90-8-104, MCA, is amended to read:

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

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

(2) "Capital base" means equity capital raised by a  
certified Montana capital company for which tax credits were  
claimed under this chapter ~~and-additions-to-net-worth-caused~~  
~~by-increases-in-retained-earnings.~~

(3) "Certified Montana capital company" means:

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

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

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

1 (5) "Qualified investment" means:

2 (a) a debt or equity financing of a Montana business

3 that meets both of the following criteria:

4 (i) the business is engaged in one or more of the

5 following activities:

6 (A) manufacturing;

7 (B) agricultural, fishery, or forestry production and

8 processing;

9 (C) mineral production and processing, except for

10 conventional oil and gas exploration;

11 (D) recognized nonfossil forms of energy generation as

12 defined in 15-32-102;

13 (E) transportation;

14 (F) research and development of products or processes

15 associated with any of the activities enumerated in (A)

16 through (E) above;

17 (G) wholesale or retail distribution activities for

18 which products produced in Montana comprise 50% or more of

19 the gross sales receipts;

20 (H) any activity conducted in the state for which 50%

21 or more of the gross receipts are derived from the sale of

22 products or services outside Montana; and

23 (I) tourism; and

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

25 rules adopted by the board; or

1 (b) a debt or equity financing of a business outside

2 Montana if such investment is likely to produce a qualified

3 investment in Montana, as long as such investment does not

4 exceed 25% of the capital base of the capital company.

5 (6) "Qualified Montana capital company" means a

6 certified Montana capital company that has been designated a

7 qualified capital company under the provisions of 90-8-202

8 so that investors in the company may receive the tax credits

9 authorized in 90-8-202."

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

11 **"90-8-201. Certification of Montana capital companies.**

12 ~~(1) Every 6 months, commencing January 1, 1984, or 3 months~~

13 ~~after rules are adopted to implement this chapter, whichever~~

14 ~~occurs--first, From time to time~~ the board shall certify

15 Montana capital companies. A company seeking to be certified

16 as a Montana capital company must make written application

17 to the board on forms provided by the board. The application

18 must contain the information required by 90-8-204 and such

19 other information as the board requires. The application and

20 certificate must specify the level of capitalization that

21 the company expects to qualify for the tax credits provided

22 for in 90-8-202.

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

24 purpose is to increase the general economic welfare of the

25 state of Montana by:

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

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

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

"90-8-202. Designation of qualified Montana capital companies -- tax credit. (1) The board 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 board on forms provided by the board. The application must contain the information required by 90-8-204 and such other information as the board requires.

(2) (a) The total amount of tax credits authorized for a single qualified company may not exceed \$1,500,000. 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.

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

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

(4) Investors in a qualified Montana capital company are entitled to the tax credits provided for in subsection

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

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

18 (6) The tax credit allowed under subsection (5) is to  
19 be credited against the taxpayer's income tax liability for  
20 the taxable year in which the investment in a qualified  
21 Montana capital company is made. If the amount of the tax  
22 credit exceeds the taxpayer's tax liability for the taxable  
23 year, the amount of the credit which exceeds the tax  
24 liability may be carried back or carried forward in  
25 accordance with the provisions of section 46(b) of the

1 ~~Internal--Revenue--Code, as amended,~~ in the following manner:

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

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

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

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

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

22 (a) at least 30% of its capital base raised through  
23 investments for which tax credits were taken within 3 years  
24 of the date on which the certified company was designated as  
25 a qualified capital company by the board and at least 30% of

1 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 2 ~~within-3-years-of-the-end-of-the-fiscal--year--during--which~~  
 3 ~~the--retained--earnings--were--earned~~ and, in the case of  
 4 capital raised by a qualified Montana capital company under  
 5 an amended application for additional tax credits filed  
 6 after its initial designation as a qualified Montana capital  
 7 company, at least 30% of its capital base raised through  
 8 investments for which tax credits were taken within 3 years  
 9 of the date on which the board approves the amended  
 10 application;

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

25 (c) at least 70% of its capital base raised through

1 investments for which tax credits were taken within 5 years  
 2 of the date on which the certified company was designated as  
 3 a qualified capital company by the board ~~and-at-least-70%-of~~  
 4 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 5 ~~within-5-years-of-the-end-of-the-fiscal--year--during--which~~  
 6 ~~the--retained--earnings--were--earned~~ and, in the case of  
 7 capital raised by a qualified Montana capital company under  
 8 an amended application for additional tax credits filed  
 9 after its initial designation as a qualified Montana capital  
 10 company, at least 70% of its capital base raised through  
 11 investments for which tax credits were taken within 5 years  
 12 of the date on which the board approves the amended  
 13 application.

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

18 (3) A qualified Montana capital company that fails to  
 19 make qualified investments pursuant to subsection (1) shall  
 20 pay to the department of revenue a penalty equal to all of  
 21 the tax credits allowed to the taxpayers investing in that  
 22 company during that time period, with interest at 1% a month  
 23 from the date the tax credits were certified as allocated to  
 24 the qualified Montana capital company. The department of  
 25 revenue may, ~~abate--the--penalty~~ upon application by the

1 capital company, approve an extension of time in which to  
 2 make qualified investments if the capital company  
 3 establishes reasonable cause for the failure to make  
 4 qualified investments pursuant to subsection (1) and that if  
 5 the failure was not due to neglect on the part of the  
 6 company.

7 (4) The department of revenue shall deposit any amount  
 8 received under this subsection to the credit of the state  
 9 general fund."

10 **Section 6.** Section 90-8-302, MCA, is amended to read:

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

19 **Section 7.** Section 90-8-321, MCA, is amended to read:

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

1 liquidate it. In the event of liquidation of the assets,  
 2 any penalty imposed pursuant to 90-8-301 shall be included  
 3 in the claims to be paid.

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

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

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

20 **NEW SECTION. Section 8.** Extension of authority. Any  
 21 existing authority to make rules on the subject of the  
 22 provisions of [this act] is extended to the provisions of  
 23 [this act].

24 **NEW SECTION. Section 9.** Codification instruction.  
 25 [Section 1] is intended to be codified as an integral part

SB 0351/02

- 1 of Title 90, chapter 8, part 3, and the provisions of Title
- 2 90, chapter 8, apply to [section 1].

-End-

## 1 SENATE BILL NO. 351

2 INTRODUCED BY WILLIAMS, WALKER, AAFEDT, MEYER, NISBET,

3 NOBLE, PHILLIPS, THAYER, MANNING, SIMPKINS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO--GENERALLY--REVISE~~  
6 AMENDING THE MONTANA CAPITAL COMPANY ACT; PROVIDING-FOR-THE  
7 SALE-OF CLARIFYING THE AUTHORITY TO SELL DEBENTURES TO THE  
8 IN-STATE INVESTMENT FUND; REMOVING RETAINED EARNINGS FROM A  
9 COMPANY'S CAPITAL BASE; AMENDING THE TIME FOR CERTIFICATION;  
10 AMENDING PROVISIONS FOR CARRYING BACK AND CARRYING FORWARD  
11 OF TAX CREDITS; ALLOWING INVESTMENTS IN CAPITAL COMPANIES BY  
12 A TRUST AND A DECEDENT'S ESTATE; AMENDING THE TIME SCHEDULE  
13 FOR MAKING QUALIFIED INVESTMENTS; PROVIDING FOR AN EXTENSION  
14 TO THE SCHEDULE; REMOVING-THE-REQUIREMENT-FOR-INVESTMENT--IN  
15 A--MONTANA--BUSINESS CLARIFYING RESTRICTIONS ON THE USE OF  
16 CAPITAL COMPANY FUNDS; PROVIDING FOR AUTOMATIC  
17 DECERTIFICATION IN CERTAIN CASES AND FOR VOLUNTARY  
18 DECERTIFICATION; AND AMENDING SECTIONS 90-8-104, 90-8-201,  
19 90-8-202, 90-8-301, 90-8-302, AND 90-8-321, MCA."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Sale of debentures. (1) A  
23 qualified Montana capital company is authorized to issue and  
24 sell debentures to the in-state investment fund established  
25 in 17-6-306.

There is no change on SB 351 and will not  
be reprinted. Please refer to second reading  
(yellow) for complete text.



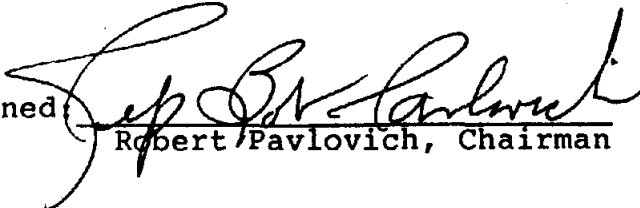
STANDING COMMITTEE REPORT

March 9, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 351 (third reading copy - blue) be concurred in as amended.

Signed:

  
Robert Pavlovich, Chairman

[REP. MCCORMICK WILL CARRY THIS BILL ON THE HOUSE FLOOR]

And, that such amendments read:

1. Page 8, line 17.

Following: "penalty"

Insert: "-- extension permissible"

2. Page 10, line 25.

Following: "may"

Strike: "I"

3. Page 10, line 25, through page 11, line 2.

Following: "~~penalty~~" on line 25

Strike: remainder of line 25 through "investments" on line 2

Insert: "abate the penalty"

4. Page 11, line 7.

Following: line 6

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

Renumber: subsequent subsection

HOUSE

SB 351

## 1 SENATE BILL NO. 351

2 INTRODUCED BY WILLIAMS, WALKER, AAFEDT, MEYER, NISBET,

3 NOBLE, PHILLIPS, THAYER, MANNING, SIMPKINS

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO--GENERALLY--REVISE~~  
6 ~~AMENDING~~ THE MONTANA CAPITAL COMPANY ACT; ~~PROVIDING-FOR-THE~~  
7 ~~SALE-OF~~ CLARIFYING THE AUTHORITY TO SELL DEBENTURES TO THE  
8 IN-STATE INVESTMENT FUND; REMOVING RETAINED EARNINGS FROM A  
9 COMPANY'S CAPITAL BASE; AMENDING THE TIME FOR CERTIFICATION;  
10 AMENDING PROVISIONS FOR CARRYING BACK AND CARRYING FORWARD  
11 OF TAX CREDITS; ALLOWING INVESTMENTS IN CAPITAL COMPANIES BY  
12 A TRUST AND A DECEDENT'S ESTATE; AMENDING THE TIME SCHEDULE  
13 FOR MAKING QUALIFIED INVESTMENTS; PROVIDING FOR AN EXTENSION  
14 TO THE SCHEDULE; ~~REMOVING-THE-REQUIREMENT-FOR-INVESTMENT--IN~~  
15 ~~A--MONTANA--BUSINESS~~ CLARIFYING RESTRICTIONS ON THE USE OF  
16 CAPITAL COMPANY FUNDS; PROVIDING FOR AUTOMATIC  
17 DECERTIFICATION IN CERTAIN CASES AND FOR VOLUNTARY  
18 DECERTIFICATION; AND AMENDING SECTIONS 90-8-104, 90-8-201,  
19 90-8-202, 90-8-301, 90-8-302, AND 90-8-321, MCA."

20  
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22 NEW SECTION. Section 1. Sale of debentures. (1) A  
23 qualified Montana capital company is authorized to issue and  
24 sell debentures to the in-state investment fund established  
25 in 17-6-306.

1 (2) Proceeds received by a qualified Montana capital  
2 company from the sale of debentures authorized in subsection  
3 (1) must be invested in accordance with the provisions of  
4 90-8-301, except that the time periods for making qualified  
5 investments must be calculated from the date the company  
6 sells the debentures to the in-state investment fund.

7 Section 2. Section 90-8-104, MCA, is amended to read:

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

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

13 (2) "Capital base" means equity capital raised by a  
14 certified Montana capital company for which tax credits were  
15 claimed under this chapter ~~and-additions-to-net-worth-caused~~  
16 ~~by-increases-in-retained-earnings.~~

17 (3) "Certified Montana capital company" means:

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

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

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

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

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

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

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

11 **"90-8-201. Certification of Montana capital companies.**  
 12 ~~(1) Every 6 months, commencing January 1, 1984, or 3 months~~  
 13 ~~after rules are adopted to implement this chapter, whichever~~  
 14 ~~occurs--first, From time to time~~ the board shall certify  
 15 Montana capital companies. A company seeking to be certified  
 16 as a Montana capital company must make written application  
 17 to the board on forms provided by the board. The application  
 18 must contain the information required by 90-8-204 and such  
 19 other information as the board requires. The application and  
 20 certificate must specify the level of capitalization that  
 21 the company expects to qualify for the tax credits provided  
 22 for in 90-8-202.

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

1 (a) making investment capital available to businesses  
2 in Montana; and

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

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

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

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

15 "90-8-202. Designation of qualified Montana capital  
16 companies -- tax credit. (1) The board shall designate as  
17 qualified Montana capital companies those certified  
18 companies that have been privately capitalized at a minimum  
19 level of \$200,000. A certified company seeking designation  
20 as a qualified Montana capital company must make written  
21 application to the board on forms provided by the board.  
22 The application must contain the information required by  
23 90-8-204 and such other information as the board requires.

24 (2) (a) The total amount of tax credits authorized for  
25 a single qualified company may not exceed \$1,500,000. In the

1 event the capitalization of the company is later increased,  
2 the company may apply for authorization of additional tax  
3 credits within the foregoing limitation.

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

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

24 (4) Investors in a qualified Montana capital company  
25 are entitled to the tax credits provided for in subsection

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

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

18 (6) The tax credit allowed under subsection (5) is to  
19 be credited against the taxpayer's income tax liability for  
20 the taxable year in which the investment in a qualified  
21 Montana capital company is made. If the amount of the tax  
22 credit exceeds the taxpayer's tax liability for the taxable  
23 year, the amount of the credit which exceeds the tax  
24 liability may be carried back or carried forward in  
25 accordance with the provisions of section 46(b) of the

1 ~~Internal--Revenue-Code, as amended, in the following manner:~~

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

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

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

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

17 "90-8-301. Qualified investments -- penalty --  
18 EXTENSION PERMISSIBLE. (1) A qualified Montana capital  
19 company receiving investments for which a taxpayer has  
20 applied and received a tax credit must use its capital base  
21 to make qualified investments according to the following  
22 schedule:

23 (a) at least 30% of its capital base raised through  
24 investments for which tax credits were taken within 3 years  
25 of the date on which the certified company was designated as

1 a qualified capital company by the board ~~and-at-least-30%-of~~  
 2 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 3 ~~within-3-years-of-the-end-of-the-fiscal--year--during--which~~  
 4 ~~the--retained--earnings--were--earned~~ and, in the case of  
 5 capital raised by a qualified Montana capital company under  
 6 an amended application for additional tax credits filed  
 7 after its initial designation as a qualified Montana capital  
 8 company, at least 30% of its capital base raised through  
 9 investments for which tax credits were taken within 3 years  
 10 of the date on which the board approves the amended  
 11 application;

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

1 (c) at least 70% of its capital base raised through  
 2 investments for which tax credits were taken within 5 years  
 3 of the date on which the certified company was designated as  
 4 a qualified capital company by the board ~~and-at-least-70%-of~~  
 5 ~~its--capital--base--caused-by-increases-in-retained-earnings~~  
 6 ~~within-5-years-of-the-end-of-the-fiscal--year--during--which~~  
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 9 an amended application for additional tax credits filed  
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 11 company, at least 70% of its capital base raised through  
 12 investments for which tax credits were taken within 5 years  
 13 of the date on which the board approves the amended  
 14 application.

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

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

1 revenue may ~~abate--the--penalty upon--application-by-the~~  
 2 ~~capital-company--approve-an-extension-of-time--in--which--to~~  
 3 ~~make--qualified-investments~~ ABATE THE PENALTY if the capital  
 4 company establishes reasonable cause for the failure to make  
 5 qualified investments pursuant to subsection (1) and that if  
 6 the failure was not due to neglect on the part of the  
 7 company.

8 (4) THE DEPARTMENT OF REVENUE MAY GRANT AN EXTENSION  
 9 OF TIME IN WHICH TO MAKE QUALIFIED INVESTMENTS PURSUANT TO  
 10 SUBSECTION (1) UPON APPLICATION BY A CAPITAL COMPANY SHOWING  
 11 REASONABLE CAUSE FOR AN EXTENSION.

12 ~~†4†(5)~~ The department of revenue shall deposit any  
 13 amount received under this subsection to the credit of the  
 14 state general fund."

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 17 to the requirements of 90-8-301, no more than 50% of the  
 18 equity raised by a Montana capital company under--this  
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 4 the powers with regard to banks granted in Title 32, chapter  
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 6 liquidate it. In the event of liquidation of the assets,  
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 19 department and its employees and agents may not be held  
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 21 bonds for action taken under this section or for any failure  
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23 (4) A Montana capital company may apply to the  
 24 department for decertification."

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5 [Section 1] is intended to be codified as an integral part  
6 of Title 90, chapter 8, part 3, and the provisions of Title  
7 90, chapter 8, apply to [section 1].

-End-