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INTRODUCED BY

House BILL NO. *567*
Harold Shea *Benoit Lynch*
facelove HARP

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; CLARIFYING THE INVESTMENT STATUS OF SCIENCE AND TECHNOLOGY INVESTMENTS RELATIVE TO THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; CONFORMING QUALIFIED INVESTMENTS TO FEDERAL SMALL BUSINESS STANDARDS; PROVIDING THAT ADMINISTRATIVE FEES MAY NOT BE CHARGED TO THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; CLARIFYING CERTIFICATION REQUIREMENTS; EXTENDING THE PERIOD FOR CLAIMING TAX CREDITS; ELIMINATING RECAPTURE PROVISIONS FOR THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; AUTHORIZING QUALIFIED RETIREMENT PLANS TO INVEST IN THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; AUTHORIZING INVESTMENT IN LIMITED PARTNERSHIP INTERESTS OF THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; REVISING THE AUTHORITY TO LIQUIDATE THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; AMENDING SECTIONS 90-3-520, 90-8-104, 90-8-106, 90-8-201, 90-8-202, 90-8-203, 90-8-204, 90-8-301, 90-8-303, 90-8-305, AND 90-8-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 90-3-520, MCA, is amended to read:

"90-3-520. Seed capital project loan agreement with venture capital company. A seed capital project loan agreement with a venture capital company must contain the following terms:

(1) a loan amount that may not be less than \$500,000 or more than \$1 million; and

(2) payback provisions:

(a) that are structured as contracted debt;

(b) that ~~allow~~ require debt to be repaid in portions of the original loan amount or as interest on the original loan amount in the same proportion as any paybacks made to the other investors or lenders that make up the remaining capitalization of the venture capital company, based upon the original capital

1 invested in or loaned to the venture capital company by the other private equity investors ~~or lenders~~;

2 (c) that are not more or less favorable than the repayment and earnings provisions applicable to
3 other private equity investors ~~or lenders~~ that make up the remaining capitalization of the venture capital
4 company; and

5 (d) that are based on a term no greater than 12 years."
6

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

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

10 (1) "Capital base" means equity capital raised by a certified Montana capital company or by a
11 certified Montana small business investment capital company for which tax credits were claimed under this
12 chapter.

13 (2) "Certified Montana capital company" or "certified Montana small business investment capital
14 company" means:

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

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

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

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

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

24 (a) a debt or equity financing of a Montana business that is eligible for small business investment
25 financing under Title III of the Small Business Act of 1958, as amended and as implemented under 13 CFR
26 107, or that meets both of the following criteria:

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

28 (A) manufacturing;

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

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

1 (D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or
2 biomass combustion devices as defined in 15-32-102;

3 (E) transportation;

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

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

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

10 (I) tourism; and

11 (ii) the business is a small business as defined in Title III of the Small Business Act of 1958, as
12 amended and as implemented under 13 CFR 107, or rules adopted by the department;

13 (b) a debt or equity financing of a business outside Montana if such investment is likely to produce
14 a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base
15 of the capital company; or

16 (c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated
17 in Montana.

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

21 (7) "Qualified Montana small business investment capital company" means a certified Montana
22 small business investment capital company that has been designated a qualified small business investment
23 capital company under the provisions of 90-8-202 so that investors in the company may receive the tax
24 credits authorized in 90-8-202."

25
26 **Section 3.** Section 90-8-106, MCA, is amended to read:

27 **"90-8-106. Fees.** The department may charge fees commensurate with costs for the
28 administration of this chapter. Fees for the administration of this chapter must be assessed to each
29 qualified Montana capital company, other than the qualified Montana small business investment capital
30 company, in a ratio proportionate to the tax credits allocated to the capital company divided by the total

1 tax credits allocated to all qualified Montana capital companies."

2

3 **Section 4.** Section 90-8-201, MCA, is amended to read:

4 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
5 **investment capital company.** (1) The department shall certify one Montana small business investment
6 capital company, and from time to time the department shall certify Montana capital companies. A
7 company seeking to be certified as a Montana capital company or as the Montana small business
8 investment capital company shall make written application to the department on forms provided by the
9 department. The application must contain the information required by 90-8-204 and other information that
10 the department requires. The application and certificate must specify the level of capitalization that the
11 company expects to qualify for the tax credits provided for in 90-8-202.

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

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

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

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

19 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
20 capital company or as the qualified Montana small business investment capital company.

21 (5) To be eligible for certification under this section as the Montana small business investment
22 capital company, the applicant shall commit to:

23 (a) utilize the tax credits to accumulate private capital with the intention of being designated a small
24 business investment corporation by the United States small business administration as provided in Title III
25 of the Small Business Act of 1958, as amended, and as implemented under 13 CFR 107;

26 (b) target its investments as a small business investment capital company toward commercialization
27 projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small
28 business innovative research program, the federal cooperative research and development agreement
29 program, Montana university system research and development, the Montana board of science and
30 technology development (second stage), small business incubators, community development block grant

1 programs, and projects emerging from economic development programs of Montana certified communities
 2 with the objective of providing significant investment opportunities in an area where economic development
 3 capital is limited;

4 (c) consider investment opportunities originating in any Montana county; and

5 (d) adopt investment guidelines that ~~ensure that~~ allow not less than 10% of its available capital
 6 is to be invested in counties with populations of 20,000 or less."

7
 8 **Section 5.** Section 90-8-202, MCA, is amended to read:

9 **"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana**
 10 **small business investment capital company -- tax credit.** (1) The department shall designate as:

11 (a) qualified Montana capital companies those certified companies that have been privately
 12 capitalized at a minimum level of \$200,000; or

13 (b) the qualified Montana small business investment capital company the certified Montana small
 14 business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

15 (2) A certified company seeking designation as a qualified Montana capital company or as the
 16 qualified Montana small business investment capital company must make written application to the
 17 department on forms provided by the department. The application must contain the information required
 18 by 90-8-204 and other information that the department requires.

19 (3) (a) The total amount of tax credits authorized for a single qualified capital company or the
 20 qualified Montana small business investment capital company may not exceed \$1,500,000, except that the
 21 qualified Montana small business investment capital company must receive all remaining tax credits under
 22 this section available as of January 1, 1991. In the event the capitalization of a qualified capital company
 23 is later increased, the company may apply for authorization of additional tax credits within the foregoing
 24 limitation.

25 (b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June
 26 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may
 27 not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985,
 28 that is allocated to qualified companies. The total credits authorized for all companies between July 1,
 29 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for
 30 authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized

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

3 (4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that
4 completed applications for designation as qualified capital companies are received by the department, and
5 the department shall certify to each company its appropriate allocation.

6 (b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must
7 be allocated to the qualified Montana small business investment capital company, and the department shall
8 certify the allocation to the company.

9 (c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if
10 tax credits become available by reversion to the department by a capital company or by the qualified
11 Montana small business investment capital company, those additional or reverted tax credits must be
12 allocated by the department to qualified capital companies or to the qualified Montana small business
13 investment capital company in accordance with this chapter and the rules of the department.

14 (5) Investors in a qualified Montana capital company or in the qualified Montana small business
15 investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested
16 in a certified company prior to designation as a qualified Montana capital company or as the qualified
17 Montana small business investment capital company may, at the discretion of the investor, be placed in
18 an escrow account in a Montana financial institution pending designation of the company as a qualified
19 Montana capital company or as the qualified Montana small business investment capital company.

20 (6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation,
21 partnership, trust, decedent's estate, qualified retirement plan, or corporate taxpayer that makes a capital
22 investment in a qualified Montana capital company or the qualified Montana small business investment
23 capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for
24 investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied
25 to the qualified small business investment capital company, the maximum tax credit is \$250,000 per
26 taxpayer and the tax credit limitation relating to a capital investment in the qualified Montana small business
27 investment capital company must be in addition to any other tax credit limitation in this section. The credit
28 may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35.
29 The credit for investments by a small business corporation defined in 15-31-201 or a partnership may be
30 claimed by the small business corporation shareholders or the partners.

1 (7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax
2 liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana
3 capital company or the qualified Montana small business investment capital company is made. If an
4 investment is made by a qualified retirement plan, the credits may be passed through to the person or
5 corporation making the contributions to the qualified plan. If the amount of the tax credit exceeds the
6 taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be
7 carried back or carried forward in the following manner:

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

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

15 (8) The tax credit provided for in this section is available only to those taxpayers who invest in a
16 qualified Montana capital company within 4 years of July 1, 1987, or in the qualified Montana small
17 business investment capital company within 4 6 years of July 1, 1991.

18 (9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains
19 the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in
20 subsection (6) by making investments as more than one entity.

21 (b) A partner or shareholder in a small business corporation may not obtain more than \$150,000,
22 or not more than \$250,000 in the case of the qualified Montana small business investment capital
23 company, in credits as an individual and as the partnership or small business corporation. A corporate
24 taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional
25 credits through investments by wholly owned subsidiaries or affiliates. An individual, small business
26 corporation, partnership, qualified retirement plan, or corporate taxpayer who obtains the tax credit allowed
27 under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for
28 donation of stock in the qualified Montana small business investment capital company."
29

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

1 **"90-8-203. No recapture -- unqualified investments -- penalty.** (1) If the amount invested by a
 2 taxpayer in a qualified Montana capital company ~~or in the qualified Montana small business investment~~
 3 ~~capital company~~ is not used by the company for qualified investments as provided in 90-8-301, the
 4 taxpayer is not subject to a recapture provision for any tax credit claimed by ~~him~~ the taxpayer but the
 5 company is subject to the penalty provided for in 90-8-301(4).

6 (2) If a qualified Montana capital company does not invest its capital base in accordance with
 7 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the
 8 investment, the department of revenue may recover from the person receiving the distributed funds a
 9 penalty in an amount not to exceed the lesser of:

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

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

15
 16 **Section 7.** Section 90-8-204, MCA, is amended to read:

17 **"90-8-204. Application requirements.** A company applying to become either a certified or qualified
 18 Montana capital company or the certified or qualified Montana small business investment capital company
 19 shall include in its application evidence that it has disclosed or will disclose to all investors the following:

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

24 (2) the condition that a tax credit will not be made available until a qualified capital company raises
 25 at least \$200,000 in capital and has been designated a qualified capital company or the qualified Montana
 26 small business investment capital company raises at least \$500,000 in committed capital before July 1,
 27 ~~1995~~ 1997, and has been designated the qualified Montana small business investment capital company and
 28 the limits on tax credits that may be authorized; and

29 (3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205."
 30

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

2 **"90-8-301. Qualified investments -- penalty -- extension permissible.** (1) A qualified Montana
3 capital company receiving investments for which a taxpayer has applied and received a tax credit ~~must~~ shall
4 use its capital base to make qualified investments according to the following schedule:

5 (a) at least 30% of its capital base raised through investments for which tax credits were taken
6 within 3 years of the date on which the certified company was designated as a qualified capital company
7 by the department and, in the case of capital raised by a qualified Montana capital company under an
8 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
9 company, at least 30% of its capital base raised through investments for which tax credits were taken
10 within 3 years of the date on which the department approves the amended application;

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

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

23 (2) The qualified Montana small business investment capital company receiving investments for
24 which a taxpayer has applied and received a tax credit ~~must~~ shall use its capital base to make qualified
25 investments ~~according to the following schedule:~~

26 ~~(a). The portion of its the qualified Montana small business investment capital company's capital~~
27 ~~base raised through private equity investments for which may be used by the qualified Montana small~~
28 ~~business investment capital company to reserve tax credits were taken:~~

29 ~~((i) 30% within 3 years of the date on which the certified company was~~ if the funds are committed
30 before July 1, 1997. The designated as the qualified Montana small business investment capital company

1 ~~by the department or within 3 years of its designation~~ may claim credits for its investors after:

2 (a) licensure as a small business investment corporation by the United States small business
3 administration, whichever is later; and

4 ~~(ii) 50% within 4 years of the date on which the certified company was designated as the qualified~~
5 ~~Montana small business investment capital company by the department or within 4 years after its~~
6 ~~designation as a small business investment corporation by the small business administration, whichever is~~
7 ~~later; and~~

8 ~~(iii) 70% within 5 years of the date on which the certified company was designated as the qualified~~
9 ~~Montana small business investment capital company by the department or within 5 years after its~~
10 ~~designation as a small business investment corporation by the small business administration, whichever is~~
11 ~~later; or~~

12 ~~(b) of its capital base, in the case of capital raised through a loan from the small business~~
13 ~~administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection~~
14 ~~(2)(a)~~

15 (b) commencement of operations with \$500,000 of invested capital. Credits may be claimed for
16 investors at the time that the qualified Montana small business investment capital company makes an
17 investment in qualified investments pursuant to the schedule under this section.

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

20 (4) A qualified Montana capital company that fails to make qualified investments pursuant to
21 subsection (1) ~~or the qualified Montana small business investment capital company that fails to make~~
22 ~~qualified investments pursuant to subsection (2)~~ shall pay to the department of revenue a penalty equal to
23 all of the tax credits allowed to the investors investing in that company during that time period, with
24 interest at 1% a month from the date on which the tax credits were certified as allocated to the qualified
25 Montana capital company ~~or to the qualified Montana small business investment capital company~~. The
26 department of revenue may abate the penalty if the capital company ~~or the Montana small business~~
27 ~~investment capital company~~ establishes reasonable cause for the failure to make qualified investments
28 pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

29 (5) The department of revenue may grant an extension of time in which to make qualified
30 investments pursuant to subsection (1) or (2) upon application by a qualified Montana capital company or

1 ~~the Montana small business investment capital company~~ showing reasonable cause for an extension.

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

4 (7) A capital company may invest tax credit funds in an existing profitable business only if a
5 substantial portion of the investment is to be used for expansion of the business. The department may limit
6 the amount of the investment to be counted toward the investment percentage criteria set forth in this
7 section to the amount to be used for the expansion of the business."

8

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

10 **"90-8-303. Conflict of interest.** (1) A capital company may not invest in any business venture
11 in which the combined ownership of the business venture for all investors in the capital company exceeds
12 49% at the time of the investment decision.

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

16 (3) The Montana small business investment capital company must be governed by the conflict of
17 interest provisions of the United States small business administration."

18

19 **Section 10.** Section 90-8-305, MCA, is amended to read:

20 **"90-8-305. Sale of debentures.** (1) A qualified Montana capital company or the qualified Montana
21 small business investment capital company is authorized to issue and sell debentures or limited partnership
22 interests to the permanent coal tax trust fund.

23 (2) Proceeds received by a qualified Montana capital company or by the qualified Montana small
24 business investment capital company from the sale of debentures or limited partnership interests authorized
25 in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time
26 periods for making qualified investments must be calculated from the date on which the company sells the
27 debentures or limited partnership interests to the permanent coal tax trust fund."

28

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

30 **"90-8-321. Decertification.** (1) (a) If the examination conducted pursuant to 90-8-313 discloses

1 that a Montana capital company ~~or the Montana small business investment capital company~~ is not in
 2 compliance with the provisions of this chapter, the department may exercise any of the powers with regard
 3 to banks granted in Title 32, chapter 1, part 5, and may seize the assets of the company and liquidate it.
 4 In the event of liquidation of the assets, any penalty imposed pursuant to 90-8-301 must be included in
 5 the claims to be paid.

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

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

15 ~~(4)(d)~~ A Montana capital company ~~or the Montana small business investment capital company~~ may
 16 apply to the department for decertification.

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

19 ~~(6)(f)~~ The department shall decertify a capital company once the capital company has met the
 20 investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has
 21 been invested in qualified investments and after at least 5 years have elapsed since the date the capital
 22 company was qualified.

23 (2) The department may decertify the Montana small business investment capital company if the
 24 company:

25 (a) discontinues its operations; or

26 (b) is not in compliance with the United States small business administration laws and regulations
 27 as determined by the small business administration."

28
 29 NEW SECTION. Section 12. Effective date. [This act] is effective on passage and approval.

30 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0567, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the laws governing the qualified Montana small business investment capital company; clarifying the investment status of science and technology investments relative to the qualified Montana small business investment capital company; conforming qualified investments to federal small business standards; providing that administrative fees may not be charged to the qualified Montana small business investment capital company; clarifying certification requirements; extending the period for claiming tax credits; eliminating recapture provisions for the qualified Montana small business investment capital company; authorizing qualified retirement plans to invest in the qualified Montana small business investment capital company; authorizing investment in limited partnership interests of the qualified Montana small business investment capital company; revising the authority to liquidate the qualified Montana small business investment capital company; and providing an immediate effective date.

ASSUMPTIONS:

1. The Department of Commerce (DOC) is charged with the administration of the Montana Capital Company Act. DOC will assess a fee for the administration of this chapter to each qualified Montana capital company in a ratio proportionate to the tax credits allocated to the capital company. (90-8-106, MCA)
2. The Montana capital company administrative fees cover the cost of issuance of authorized tax credits to investors of a qualified Montana small business investment capital company. The capital company administrative oversight includes quarterly reporting of investment activities, annual financial and compliance examinations, and accountability for legal expenses incurred in the decertification process.
3. Three of the remaining qualified Montana capital companies are expected to be decertified by FYE95, resulting in a substantial reduction of the Montana capital company revenues for administration of the Montana Capital Company Act in the 1997 biennium.
4. The proposed legislation effectively eliminates the collection of fees from the remaining SBIC capital companies for the administration of the Montana capital company act. The Executive Budget present law base includes \$20,000 of state special revenue each year of the 1997 biennium. Under HB567, DOC would be required to replace funding of administrative costs from fees charged to SBIC capital companies with general fund receipts.
5. Unused capital company tax credits are approximately \$2 million. HB567 will allow them to be taken by a qualified personal retirement plan and passed through to the person making contributions to the plan. Section 5 will increase the use of the credits by 50%
6. HB567 takes away the ability of the state to require investments in only qualified activities.

FISCAL IMPACT:

<u>Dept. of Commerce:</u>	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
<u>Revenue:</u>		
SBIC Capital Company (02)	(20,000)	(20,000)
General Fund (01)	20,000	20,000

(continued)

Dave Lewis 2-22-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

CHASE HIBBARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0567, as introduced
HB 567

Dept. of Revenue:

Because the proposed legislation extends the period for claiming tax credits and expands the population of potential investors (qualified retirement plans), it will likely have a negative impact to both individual and corporate income tax collections. For every additional dollar claimed in qualified investments as a result of the proposed legislation, there will be a 50 cent reduction in revenue collections.

<u>General Fund Revenue Loss:</u>	(500,000)	(500,000)
Net Impact on General Fund		
General Fund (Cost) (01)	(520,000)	(520,000)

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0567, Third Reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act revising the laws governing the qualified Montana small business investment capital company; clarifying the investment status of science and technology investments relative to the qualified Montana small business investment capital company; conforming qualified investments to federal small business standards; clarifying certification requirements; extending the period for claiming tax credits; clarifying recapture provisions for the qualified Montana small business investment capital company; authorizing investment in limited partnership interests of the qualified Montana small business investment capital company; revising the authority to liquidate the qualified Montana small business investment capital company; and providing an immediate effective date.

ASSUMPTIONS:

1. The Department of Commerce (DOC) is charged with the administration of the Montana Capital Company Act. DOC will assess a fee for the administration of this chapter to each qualified Montana capital company in a ratio proportionate to the tax credits allocated to the capital company. (90-8-106, MCA)
2. The Montana capital company administrative fees cover the cost of issuance of authorized tax credits to investors of a qualified Montana small business investment capital company. The capital company administrative oversight includes quarterly reporting of investment activities, annual financial and compliance examinations, and accountability for legal expenses incurred in the decertification process.
3. Three of the remaining qualified Montana capital companies are expected to be decertified by FYE95, resulting in a substantial reduction of the Montana capital company revenues for administration of the Montana Capital Company Act in the 1997 biennium.

FISCAL IMPACT:

The proposal as amended should have no fiscal impact in the biennium.

Dave Lewis 3.20.95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Chase Hibbard

CHASE HIBBARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0567, Third Reading

HB 567-#2

**REREFERRED AND APPROVED BY COM
ON TAXATION**

1 HOUSE BILL NO. 567

2 INTRODUCED BY HIBBARD, SHEA, BENEDICT, LYNCH, JACOBSON, HARP

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING THE QUALIFIED MONTANA
5 SMALL BUSINESS INVESTMENT CAPITAL COMPANY; CLARIFYING THE INVESTMENT STATUS OF
6 SCIENCE AND TECHNOLOGY INVESTMENTS RELATIVE TO THE QUALIFIED MONTANA SMALL BUSINESS
7 INVESTMENT CAPITAL COMPANY; CONFORMING QUALIFIED INVESTMENTS TO FEDERAL SMALL
8 BUSINESS STANDARDS; ~~PROVIDING THAT ADMINISTRATIVE FEES MAY NOT BE CHARGED TO THE~~
9 ~~QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY;~~ CLARIFYING
10 CERTIFICATION REQUIREMENTS; EXTENDING THE PERIOD FOR CLAIMING TAX CREDITS; ~~ELIMINATING~~
11 CLARIFYING RECAPTURE PROVISIONS FOR THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT
12 CAPITAL COMPANY; AUTHORIZING QUALIFIED RETIREMENT PLANS TO INVEST IN THE QUALIFIED
13 MONTANA SMALL BUSINESS INVESTMENT CAPITAL COMPANY; AUTHORIZING INVESTMENT IN LIMITED
14 PARTNERSHIP INTERESTS OF THE QUALIFIED MONTANA SMALL BUSINESS INVESTMENT CAPITAL
15 COMPANY; REVISING THE AUTHORITY TO LIQUIDATE THE QUALIFIED MONTANA SMALL BUSINESS
16 INVESTMENT CAPITAL COMPANY; AMENDING SECTIONS 90-3-520, 90-8-104, ~~90-8-106~~, 90-8-201,
17 90-8-202, 90-8-203, 90-8-204, 90-8-301, 90-8-303, 90-8-305, AND 90-8-321, MCA; AND PROVIDING
18 AN IMMEDIATE EFFECTIVE DATE AND A CONTINGENT VOIDNESS PROVISION."

19

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

21

22 **Section 1.** Section 90-3-520, MCA, is amended to read:

23 **"90-3-520. Seed capital project loan agreement with venture capital company.** A seed capital
24 project loan agreement with a venture capital company must contain the following terms:

25 (1) a loan amount that may not be less than \$500,000 or more than \$1 million; and

26 (2) payback provisions:

27 (a) that are structured as contracted debt;

28 (b) that ~~allow~~ require debt to be repaid in portions of the original loan amount or as interest on the
29 original loan amount in the same proportion as any paybacks made to the other investors or lenders that
30 make up the remaining capitalization of the venture capital company, based upon the original capital

1 invested in or loaned to the venture capital company by the other private equity investors ~~or lenders~~;

2 (c) that are not more or less favorable than the repayment and earnings provisions applicable to
3 other private equity investors ~~or lenders~~ that make up the remaining capitalization of the venture capital
4 company; and

5 (d) that are based on a term no greater than 12 years."
6

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

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

10 (1) "Capital base" means equity capital raised by a certified Montana capital company or by a
11 certified Montana small business investment capital company for which tax credits were claimed under this
12 chapter.

13 (2) "Certified Montana capital company" or "certified Montana small business investment capital
14 company" means:

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

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

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

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

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

24 (a) a debt or equity financing of a Montana business that is eligible for small business investment
25 financing under Title III of the Small Business Act of 1958, as amended and as implemented under 13 CFR
26 107, or that meets both of the following criteria:

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

28 (A) manufacturing;

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

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

1 (D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or
2 biomass combustion devices as defined in 15-32-102;

3 (E) transportation;

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

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

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

10 (I) tourism; and

11 (ii) the business is a small business as defined in Title III of the Small Business Act of 1958, as
12 amended and as implemented under 13 CFR 107, or rules adopted by the department;

13 (b) a debt or equity financing of a business outside Montana if such investment is likely to produce
14 a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base
15 of the capital company; or

16 (c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated
17 in Montana.

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

21 (7) "Qualified Montana small business investment capital company" means a certified Montana
22 small business investment capital company that has been designated a qualified small business investment
23 capital company under the provisions of 90-8-202 so that investors in the company may receive the tax
24 credits authorized in 90-8-202."

25
26 ~~Section 3. Section 90-8-106, MCA, is amended to read:~~

27 ~~"90-8-106. Fees. The department may charge fees commensurate with costs for the~~
28 ~~administration of this chapter. Fees for the administration of this chapter must be assessed to each~~
29 ~~qualified Montana capital company, other than the qualified Montana small business investment capital~~
30 ~~company, in a ratio proportionate to the tax credits allocated to the capital company divided by the total~~

1 ~~tax credits allocated to all qualified Montana capital companies."~~

2

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

4 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
5 **investment capital company.** (1) The department shall certify one Montana small business investment
6 capital company, and from time to time the department shall certify Montana capital companies. A
7 company seeking to be certified as a Montana capital company or as the Montana small business
8 investment capital company shall make written application to the department on forms provided by the
9 department. The application must contain the information required by 90-8-204 and other information that
10 the department requires. The application and certificate must specify the level of capitalization that the
11 company expects to qualify for the tax credits provided for in 90-8-202.

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

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

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

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

19 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
20 capital company or as the qualified Montana small business investment capital company.

21 (5) To be eligible for certification under this section as the Montana small business investment
22 capital company, the applicant shall commit to:

23 (a) utilize the tax credits to accumulate private capital with the intention of being designated a small
24 business investment corporation by the United States small business administration as provided in Title III
25 of the Small Business Act of 1958, as amended, and as implemented under 13 CFR 107;

26 (b) target its investments as a small business investment capital company toward commercialization
27 projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small
28 business innovative research program, the federal cooperative research and development agreement
29 program, Montana university system research and development, the Montana board of science and
30 technology development (second stage), small business incubators, community development block grant

1 programs, and projects emerging from economic development programs of Montana certified communities
 2 with the objective of providing significant investment opportunities in an area where economic development
 3 capital is limited;

4 (c) consider investment opportunities originating in any Montana county; and

5 (d) adopt investment guidelines that ~~ensure that~~ allow not less than 10% of its available capital
 6 ~~is to be~~ invested in counties with populations of 20,000 or less."

7
 8 **Section 4.** Section 90-8-202, MCA, is amended to read:

9 **"90-8-202. Designation of qualified Montana capital companies -- designation of qualified Montana**
 10 **small business investment capital company -- tax credit.** (1) The department shall designate as:

11 (a) qualified Montana capital companies those certified companies that have been privately
 12 capitalized at a minimum level of \$200,000; or

13 (b) the qualified Montana small business investment capital company the certified Montana small
 14 business investment capital company once it has been privately capitalized at a minimum level of \$500,000.

15 (2) A certified company seeking designation as a qualified Montana capital company or as the
 16 qualified Montana small business investment capital company must make written application to the
 17 department on forms provided by the department. The application must contain the information required
 18 by 90-8-204 and other information that the department requires.

19 (3) (a) The total amount of tax credits authorized for a single qualified capital company or the
 20 qualified Montana small business investment capital company may not exceed \$1,500,000, except that the
 21 qualified Montana small business investment capital company must receive all remaining tax credits under
 22 this section available as of January 1, 1991. In the event the capitalization of a qualified capital company
 23 is later increased, the company may apply for authorization of additional tax credits within the foregoing
 24 limitation.

25 (b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June
 26 30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may
 27 not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985,
 28 that is allocated to qualified companies. The total credits authorized for all companies between July 1,
 29 1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for
 30 authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized

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

3 (4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that
4 completed applications for designation as qualified capital companies are received by the department, and
5 the department shall certify to each company its appropriate allocation.

6 (b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must
7 be allocated to the qualified Montana small business investment capital company, and the department shall
8 certify the allocation to the company.

9 (c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if
10 tax credits become available by reversion to the department by a capital company or by the qualified
11 Montana small business investment capital company, those additional or reverted tax credits must be
12 allocated by the department to qualified capital companies or to the qualified Montana small business
13 investment capital company in accordance with this chapter and the rules of the department.

14 (5) Investors in a qualified Montana capital company or in the qualified Montana small business
15 investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested
16 in a certified company prior to designation as a qualified Montana capital company or as the qualified
17 Montana small business investment capital company may, at the discretion of the investor, be placed in
18 an escrow account in a Montana financial institution pending designation of the company as a qualified
19 Montana capital company or as the qualified Montana small business investment capital company.

20 (6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation,
21 partnership, trust, decedent's estate, qualified retirement plan, or corporate taxpayer that makes a capital
22 investment in a qualified Montana capital company or the qualified Montana small business investment
23 capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for
24 investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied
25 to the qualified small business investment capital company, the maximum tax credit is \$250,000 per
26 taxpayer and the tax credit limitation relating to a capital investment in the qualified Montana small business
27 investment capital company must be in addition to any other tax credit limitation in this section. The credit
28 may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35.
29 The credit for investments by a small business corporation defined in 15-31-201 or a partnership may be
30 claimed by the small business corporation shareholders or the partners.

1 (7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax
2 liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana
3 capital company or the qualified Montana small business investment capital company is made. If an
4 investment is made by a qualified retirement plan, the credits may be passed through to the person or
5 corporation making the contributions to the qualified plan. If the amount of the tax credit exceeds the
6 taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be
7 carried back or carried forward in the following manner:

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

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

15 (8) The tax credit provided for in this section is available only to those taxpayers who invest in a
16 qualified Montana capital company within 4 years of July 1, 1987, or in the qualified Montana small
17 business investment capital company within 4 6 years of July 1, 1991.

18 (9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains
19 the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in
20 subsection (6) by making investments as more than one entity.

21 (b) A partner or shareholder in a small business corporation may not obtain more than \$150,000,
22 or not more than \$250,000 in the case of the qualified Montana small business investment capital
23 company, in credits as an individual and as the partnership or small business corporation. A corporate
24 taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional
25 credits through investments by wholly owned subsidiaries or affiliates. An individual, small business
26 corporation, partnership, qualified retirement plan, or corporate taxpayer who obtains the tax credit allowed
27 under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for
28 donation of stock in the qualified Montana small business investment capital company."
29

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

1 **"90-8-203. ~~No-recapture~~ RECAPTURE PROVISIONS -- unqualified investments -- penalty. (1) (A)**

2 If the amount invested by a taxpayer in a qualified Montana capital company ~~or in the qualified Montana~~
3 ~~small business investment capital company~~ is not used by the company for qualified investments as
4 provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by ~~him~~
5 the taxpayer but the company is subject to the penalty provided for in 90-8-301(4).

6 **(B) IF THE AMOUNT INVESTED BY A TAXPAYER IN THE QUALIFIED MONTANA SMALL BUSINESS**
7 **INVESTMENT CAPITAL COMPANY IS NOT USED BY THE COMPANY FOR QUALIFIED INVESTMENTS AS**
8 **PROVIDED IN 90-8-301, THE TAXPAYER IS SUBJECT TO A RECAPTURE PROVISION FOR ANY TAX**
9 **CREDIT CLAIMED BY THE TAXPAYER IN ACCORDANCE WITH PROVISIONS ADOPTED BY THE**
10 **DEPARTMENT OF REVENUE.**

11 (2) If a qualified Montana capital company does not invest its capital base in accordance with
12 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the
13 investment, the department of revenue may recover from the person receiving the distributed funds a
14 penalty in an amount not to exceed the lesser of:

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

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

20
21 **Section 6.** Section 90-8-204, MCA, is amended to read:

22 **"90-8-204. Application requirements.** A company applying to become either a certified or qualified
23 Montana capital company or the certified or qualified Montana small business investment capital company
24 shall include in its application evidence that it has disclosed or will disclose to all investors the following:

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

29 (2) the condition that a tax credit will not be made available until a qualified capital company raises
30 at least \$200,000 in capital and has been designated a qualified capital company or the qualified Montana

1 small business investment capital company raises at least \$500,000 in committed capital before July 1,
 2 ~~1995~~ 1997, and has been designated the qualified Montana small business investment capital company and
 3 the limits on tax credits that may be authorized; and

4 (3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205."
 5

6 **Section 7.** Section 90-8-301, MCA, is amended to read:

7 **"90-8-301. Qualified investments -- penalty -- extension permissible.** (1) A qualified Montana
 8 capital company receiving investments for which a taxpayer has applied and received a tax credit ~~must~~ shall
 9 use its capital base to make qualified investments according to the following schedule:

10 (a) at least 30% of its capital base raised through investments for which tax credits were taken
 11 within 3 years of the date on which the certified company was designated as a qualified capital company
 12 by the department and, in the case of capital raised by a qualified Montana capital company under an
 13 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
 14 company, at least 30% of its capital base raised through investments for which tax credits were taken
 15 within 3 years of the date on which the department approves the amended application;

16 (b) at least 50% of its capital base raised through investments for which tax credits were taken
 17 within 4 years of the date on which the certified company was designated as a qualified capital company
 18 by the department and, in the case of capital raised by a qualified Montana capital company under an
 19 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
 20 company, at least 50% of its capital base raised through investments for which tax credits were taken
 21 within 4 years of the date on which the department approves the amended application; and

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

28 (2) The qualified Montana small business investment capital company receiving investments for
 29 which a taxpayer has applied and received a tax credit ~~must~~ shall use its capital base to make qualified
 30 investments ~~according to the following schedule:~~

1 ~~(a).~~ The portion of its the qualified Montana small business investment capital company's capital
 2 base raised through private equity investments for which may be used by the qualified Montana small
 3 business investment capital company to reserve tax credits were taken:

4 ~~(i) 30% within 3 years of the date on which the certified company was~~ if the funds are committed
 5 before July 1, 1997. The designated as the qualified Montana small business investment capital company
 6 by the department or within 3 years of its designation may claim credits for its investors after:

7 (a) licensure as a small business investment corporation by the United States small business
 8 administration, whichever is later; and OR AND

9 ~~(ii) 50% within 4 years of the date on which the certified company was designated as the qualified~~
 10 ~~Montana small business investment capital company by the department or within 4 years after its~~
 11 ~~designation as a small business investment corporation by the small business administration, whichever is~~
 12 ~~later; and~~

13 ~~(iii) 70% within 5 years of the date on which the certified company was designated as the qualified~~
 14 ~~Montana small business investment capital company by the department or within 5 years after its~~
 15 ~~designation as a small business investment corporation by the small business administration, whichever is~~
 16 ~~later; or~~

17 ~~(b) of its capital base, in the case of capital raised through a loan from the small business~~
 18 ~~administration pursuant to 13 CFR 107, as provided under this chapter except as provided in subsection~~
 19 ~~(2)(a)~~

20 (b) commencement of operations with \$500,000 of invested capital. Credits may be claimed for
 21 investors at the time that the qualified Montana small business investment capital company makes an ITS
 22 FIRST investment in qualified investments pursuant to the schedule under this section.

23 (3) Following each annual examination, the department shall notify the department of revenue of
 24 any companies that are not in compliance with this section.

25 (4) A qualified Montana capital company that fails to make qualified investments pursuant to
 26 subsection (1) ~~or the qualified Montana small business investment capital company that fails to make~~
 27 ~~qualified investments pursuant to subsection (2)~~ shall pay to the department of revenue a penalty equal to
 28 all of the tax credits allowed to the investors investing in that company during that time period, with
 29 interest at 1% a month from the date on which the tax credits were certified as allocated to the qualified
 30 Montana capital company ~~or to the qualified Montana small business investment capital company~~. The

1 department of revenue may abate the penalty if the capital company ~~or the Montana small business~~
 2 ~~investment capital company~~ establishes reasonable cause for the failure to make qualified investments
 3 pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

4 (5) The department of revenue may grant an extension of time in which to make qualified
 5 investments pursuant to subsection (1) or (2) upon application by a qualified Montana capital company ~~or~~
 6 ~~the Montana small business investment capital company~~ showing reasonable cause for an extension.

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

9 (7) A capital company may invest tax credit funds in an existing profitable business only if a
 10 substantial portion of the investment is to be used for expansion of the business. The department may limit
 11 the amount of the investment to be counted toward the investment percentage criteria set forth in this
 12 section to the amount to be used for the expansion of the business."

13
 14 **Section 8.** Section 90-8-303, MCA, is amended to read:

15 **"90-8-303. Conflict of interest.** (1) A capital company may not invest in any business venture
 16 in which the combined ownership of the business venture for all investors in the capital company exceeds
 17 49% at the time of the investment decision.

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

21 (3) The Montana small business investment capital company must be governed by the conflict of
 22 interest provisions of the United States small business administration."

23
 24 **Section 9.** Section 90-8-305, MCA, is amended to read:

25 **"90-8-305. Sale of debentures.** (1) A qualified Montana capital company or the qualified Montana
 26 small business investment capital company is authorized to issue and sell debentures or limited partnership
 27 interests to the permanent coal tax trust fund.

28 (2) Proceeds received by a qualified Montana capital company or by the qualified Montana small
 29 business investment capital company from the sale of debentures or limited partnership interests authorized
 30 in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time

1 periods for making qualified investments must be calculated from the date on which the company sells the
 2 debentures or limited partnership interests to the permanent coal tax trust fund."

3

4 **Section 10.** Section 90-8-321, MCA, is amended to read:

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

11 ~~(2)(b)~~ If in the discretion of the department the action allowed under subsection (1)(a) is not
 12 required to protect the company's investors, the department may place the company on notice that it will
 13 lose its certification as a Montana capital company ~~or as the Montana small business investment capital~~
 14 ~~company~~ within a specified period of time if the company does not come into compliance with the
 15 provisions of this chapter. The department shall automatically decertify a Montana capital company ~~or the~~
 16 ~~Montana small business investment capital company~~ that is assessed a penalty under 90-8-301(4).

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

20 ~~(4)(d)~~ A Montana capital company ~~or the Montana small business investment capital company~~ may
 21 apply to the department for decertification.

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

24 ~~(6)(f)~~ The department shall decertify a capital company once the capital company has met the
 25 investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has
 26 been invested in qualified investments and after at least 5 years have elapsed since the date the capital
 27 company was qualified.

28 (2) The department may decertify the Montana small business investment capital company if the
 29 company:

30 (a) discontinues its operations; or

1 HOUSE BILL NO. 567

2 INTRODUCED BY HIBBARD, SHEA, BENEDICT, LYNCH, JACOBSON, HARP

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25 (1) a loan amount that may not be less than \$500,000 or more than \$1 million; and

26 (2) payback provisions:

27 (a) that are structured as contracted debt;

28 (b) that ~~allow~~ require debt to be repaid in portions of the original loan amount or as interest on the
 29 original loan amount in the same proportion as any paybacks made to the other investors or lenders that
 30 make up the remaining capitalization of the venture capital company, based upon the original capital

1 invested in or loaned to the venture capital company by the other private equity investors ~~or lenders~~;

2 (c) that are not more or less favorable than the repayment and earnings provisions applicable to
3 other private equity investors ~~or lenders~~ that make up the remaining capitalization of the venture capital
4 company; and

5 (d) that are based on a term no greater than 12 years.”

6
7 **Section 2.** Section 90-8-104, MCA, is amended to read:

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

10 (1) "Capital base" means equity capital raised by a certified Montana capital company or by a
11 certified Montana small business investment capital company for which tax credits were claimed under this
12 chapter.

13 (2) "Certified Montana capital company" or "certified Montana small business investment capital
14 company" means:

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

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

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

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

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

24 (a) a debt or equity financing of a Montana business that is eligible for small business investment
25 financing under Title III of the Small Business Act of 1958, as amended and as implemented under 13 CFR
26 107, or that meets both of the following criteria:

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

28 (A) manufacturing;

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

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

1 (D) recognized nonfossil forms of energy generation or the manufacture of low emission wood or
2 biomass combustion devices as defined in 15-32-102;

3 (E) transportation;

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

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

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

10 (I) tourism; and

11 (ii) the business is a small business as defined in Title III of the Small Business Act of 1958, as
12 amended and as implemented under 13 CFR 107, or rules adopted by the department;

13 (b) a debt or equity financing of a business outside Montana if such investment is likely to produce
14 a qualified investment in Montana, as long as such investment does not exceed 25% of the capital base
15 of the capital company; or

16 (c) a debt or equity financing of an acquisition of a non-Montana business that will be relocated
17 in Montana.

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

21 (7) "Qualified Montana small business investment capital company" means a certified Montana
22 small business investment capital company that has been designated a qualified small business investment
23 capital company under the provisions of 90-8-202 so that investors in the company may receive the tax
24 credits authorized in 90-8-202."

25
26 ~~Section 3. Section 90-8-106, MCA, is amended to read:~~

27 ~~"90-8-106. Fees. The department may charge fees commensurate with costs for the~~
28 ~~administration of this chapter. Fees for the administration of this chapter must be assessed to each~~
29 ~~qualified Montana capital company, other than the qualified Montana small business investment capital~~
30 ~~company, in a ratio proportionate to the tax credits allocated to the capital company divided by the total~~

1 ~~tax credits allocated to all qualified Montana capital companies."~~

2

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

4 **"90-8-201. Certification of Montana capital companies -- certification of a Montana small business**
5 **investment capital company.** (1) The department shall certify one Montana small business investment
6 capital company, and from time to time the department shall certify Montana capital companies. A
7 company seeking to be certified as a Montana capital company or as the Montana small business
8 investment capital company shall make written application to the department on forms provided by the
9 department. The application must contain the information required by 90-8-204 and other information that
10 the department requires. The application and certificate must specify the level of capitalization that the
11 company expects to qualify for the tax credits provided for in 90-8-202.

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

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

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

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

19 (4) Certification is a prerequisite to and must be completed before seeking designation as a qualified
20 capital company or as the qualified Montana small business investment capital company.

21 (5) To be eligible for certification under this section as the Montana small business investment
22 capital company, the applicant shall commit to:

23 (a) utilize the tax credits to accumulate private capital with the intention of being designated a small
24 business investment corporation by the United States small business administration as provided in Title III
25 of the Small Business Act of 1958, as amended, and as implemented under 13 CFR 107;

26 (b) target its investments as a small business investment capital company toward commercialization
27 projects emerging from centers of excellence and entrepreneurship, federal laboratories, the federal small
28 business innovative research program, the federal cooperative research and development agreement
29 program, Montana university system research and development, the Montana board of science and
30 technology development (second stage), small business incubators, community development block grant

1 programs, and projects emerging from economic development programs of Montana certified communities
 2 with the objective of providing significant investment opportunities in an area where economic development
 3 capital is limited;

4 (c) consider investment opportunities originating in any Montana county; and

5 (d) adopt investment guidelines that ~~ensure that~~ allow not less than 10% of its available capital
 6 is to be invested in counties with populations of 20,000 or less."

7
 8 ~~Section 4. Section 90-8-202, MCA, is amended to read:~~

9 ~~"90-8-202. Designation of qualified Montana capital companies—designation of qualified Montana~~
 10 ~~small business investment capital company—tax credit. (1) The department shall designate as:~~

11 ~~(a) qualified Montana capital companies those certified companies that have been privately~~
 12 ~~capitalized at a minimum level of \$200,000; or~~

13 ~~(b) the qualified Montana small business investment capital company the certified Montana small~~
 14 ~~business investment capital company once it has been privately capitalized at a minimum level of \$500,000.~~

15 ~~(2) A certified company seeking designation as a qualified Montana capital company or as the~~
 16 ~~qualified Montana small business investment capital company must make written application to the~~
 17 ~~department on forms provided by the department. The application must contain the information required~~
 18 ~~by 90-8-204 and other information that the department requires.~~

19 ~~(3) (a) The total amount of tax credits authorized for a single qualified capital company or the~~
 20 ~~qualified Montana small business investment capital company may not exceed \$1,500,000, except that the~~
 21 ~~qualified Montana small business investment capital company must receive all remaining tax credits under~~
 22 ~~this section available as of January 1, 1991. In the event the capitalization of a qualified capital company~~
 23 ~~is later increased, the company may apply for authorization of additional tax credits within the foregoing~~
 24 ~~limitation.~~

25 ~~(b) The total credits authorized for all companies may not exceed a total of \$1 million prior to June~~
 26 ~~30, 1985. The total credits authorized for all companies between July 1, 1985, and June 30, 1987, may~~
 27 ~~not exceed \$1 million plus any portion of the \$1 million available for authorization before June 30, 1985,~~
 28 ~~that is allocated to qualified companies. The total credits authorized for all companies between July 1,~~
 29 ~~1987, and June 30, 1989, may not exceed \$3 million plus any portion of the credits available for~~
 30 ~~authorization before June 30, 1987, that is allocated to qualified companies. The total credits authorized~~

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

3 ~~(4) (a) Before January 1, 1991, credits must be allocated to qualified companies in the order that~~
4 ~~completed applications for designation as qualified capital companies are received by the department, and~~
5 ~~the department shall certify to each company its appropriate allocation.~~

6 ~~(b) All tax credits allowed under subsection (3) that are not allocated as of January 1, 1991, must~~
7 ~~be allocated to the qualified Montana small business investment capital company, and the department shall~~
8 ~~certify the allocation to the company.~~

9 ~~(c) If the legislature provides additional tax credits under this chapter after June 30, 1991, or if~~
10 ~~tax credits become available by reversion to the department by a capital company or by the qualified~~
11 ~~Montana small business investment capital company, those additional or reverted tax credits must be~~
12 ~~allocated by the department to qualified capital companies or to the qualified Montana small business~~
13 ~~investment capital company in accordance with this chapter and the rules of the department.~~

14 ~~(5) Investors in a qualified Montana capital company or in the qualified Montana small business~~
15 ~~investment capital company are entitled to the tax credits provided for in subsection (6). Funds invested~~
16 ~~in a certified company prior to designation as a qualified Montana capital company or as the qualified~~
17 ~~Montana small business investment capital company may, at the discretion of the investor, be placed in~~
18 ~~an escrow account in a Montana financial institution pending designation of the company as a qualified~~
19 ~~Montana capital company or as the qualified Montana small business investment capital company.~~

20 ~~(6) Subject to the provisions of subsections (3) and (9), an individual, small business corporation,~~
21 ~~partnership, trust, decedent's estate, qualified retirement plan, or corporate taxpayer that makes a capital~~
22 ~~investment in a qualified Montana capital company or the qualified Montana small business investment~~
23 ~~capital company is entitled to a tax credit equal to 50% of the investment, up to a maximum credit for~~
24 ~~investments in all qualified Montana capital companies of \$150,000 per taxpayer, except that, as applied~~
25 ~~to the qualified small business investment capital company, the maximum tax credit is \$250,000 per~~
26 ~~taxpayer and the tax credit limitation relating to a capital investment in the qualified Montana small business~~
27 ~~investment capital company must be in addition to any other tax credit limitation in this section. The credit~~
28 ~~may be taken against the tax liability imposed on the investor pursuant to Title 15, chapter 30, 31, or 35.~~
29 ~~The credit for investments by a small business corporation defined in 15-31-201 or a partnership may be~~
30 ~~claimed by the small business corporation shareholders or the partners.~~

1 ~~(7) The tax credit allowed under subsection (6) is to be credited against the taxpayer's income tax~~
 2 ~~liability or coal severance tax liability for the taxable year in which the investment in a qualified Montana~~
 3 ~~capital company or the qualified Montana small business investment capital company is made. If an~~
 4 ~~investment is made by a qualified retirement plan, the credits may be passed through to the person or~~
 5 ~~corporation making the contributions to the qualified plan. If the amount of the tax credit exceeds the~~
 6 ~~taxpayer's tax liability for the taxable year, the amount of the credit which exceeds the tax liability may be~~
 7 ~~carried back or carried forward in the following manner:~~

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

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

15 ~~(8) The tax credit provided for in this section is available only to those taxpayers who invest in a~~
 16 ~~qualified Montana capital company within 4 years of July 1, 1987, or in the qualified Montana small~~
 17 ~~business investment capital company within 4 6 years of July 1, 1991.~~

18 ~~(9) (a) An individual, small business corporation, partnership, or corporate taxpayer who obtains~~
 19 ~~the tax credit allowed under subsection (6) may not obtain credits in excess of the limits contained in~~
 20 ~~subsection (6) by making investments as more than one entity.~~

21 ~~(b) A partner or shareholder in a small business corporation may not obtain more than \$150,000,~~
 22 ~~or not more than \$250,000 in the case of the qualified Montana small business investment capital~~
 23 ~~company, in credits as an individual and as the partnership or small business corporation. A corporate~~
 24 ~~taxpayer that obtains the maximum credits allowed under this subsection (9)(b) may not obtain additional~~
 25 ~~credits through investments by wholly owned subsidiaries or affiliates. An individual, small business~~
 26 ~~corporation, partnership, qualified retirement plan, or corporate taxpayer who obtains the tax credit allowed~~
 27 ~~under subsection (6) may not claim deduction under the provisions of Title 15, chapter 30 or 31, for~~
 28 ~~donation of stock in the qualified Montana small business investment capital company."~~

29
 30 Section 4. Section 90-8-203, MCA, is amended to read:

1 **"90-8-203. ~~No-recapture~~ RECAPTURE PROVISIONS -- unqualified investments -- penalty.** (1) (A)
 2 If the amount invested by a taxpayer in a qualified Montana capital company ~~or in the qualified Montana~~
 3 ~~small business investment capital company~~ is not used by the company for qualified investments as
 4 provided in 90-8-301, the taxpayer is not subject to a recapture provision for any tax credit claimed by ~~him~~
 5 the taxpayer but the company is subject to the penalty provided for in 90-8-301(4).

6 (B) IF THE AMOUNT INVESTED BY A TAXPAYER IN THE QUALIFIED MONTANA SMALL BUSINESS
 7 INVESTMENT CAPITAL COMPANY IS NOT USED BY THE COMPANY FOR QUALIFIED INVESTMENTS AS
 8 PROVIDED IN 90-8-301, THE TAXPAYER IS SUBJECT TO A RECAPTURE PROVISION FOR ANY TAX
 9 CREDIT CLAIMED BY THE TAXPAYER IN ACCORDANCE WITH PROVISIONS ADOPTED BY THE
 10 DEPARTMENT OF REVENUE.

11 (2) If a qualified Montana capital company does not invest its capital base in accordance with
 12 90-8-301 and has paid or otherwise distributed funds to an investor or subsequent holder of the
 13 investment, the department of revenue may recover from the person receiving the distributed funds a
 14 penalty in an amount not to exceed the lesser of:

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

16 (b) the amount of funds paid or otherwise distributed to the investor or the subsequent holder of
 17 the investment. Dividends or distributions made in accordance with applicable law may not be included in
 18 the amount specified in this subsection (b) unless the capital company has not invested its capital base in
 19 accordance with 90-8-301."
 20

21 **Section 5.** Section 90-8-204, MCA, is amended to read:

22 **"90-8-204. Application requirements.** A company applying to become either a certified or qualified
 23 Montana capital company or the certified or qualified Montana small business investment capital company
 24 shall include in its application evidence that it has disclosed or will disclose to all investors the following:

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

29 (2) the condition that a tax credit will not be made available until a qualified capital company raises
 30 at least \$200,000 in capital and has been designated a qualified capital company or the qualified Montana

1 small business investment capital company raises at least \$500,000 in committed capital before July 1,
 2 ~~1995~~ 1997, and has been designated the qualified Montana small business investment capital company and
 3 the limits on tax credits that may be authorized; and

4 (3) the fact that the state of Montana is not liable for damages in accordance with 90-8-205."
 5

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

7 **"90-8-301. Qualified investments -- penalty -- extension permissible.** (1) A qualified Montana
 8 capital company receiving investments for which a taxpayer has applied and received a tax credit ~~must~~ shall
 9 use its capital base to make qualified investments according to the following schedule:

10 (a) at least 30% of its capital base raised through investments for which tax credits were taken
 11 within 3 years of the date on which the certified company was designated as a qualified capital company
 12 by the department and, in the case of capital raised by a qualified Montana capital company under an
 13 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
 14 company, at least 30% of its capital base raised through investments for which tax credits were taken
 15 within 3 years of the date on which the department approves the amended application;

16 (b) at least 50% of its capital base raised through investments for which tax credits were taken
 17 within 4 years of the date on which the certified company was designated as a qualified capital company
 18 by the department and, in the case of capital raised by a qualified Montana capital company under an
 19 amended application for additional tax credits filed after its initial designation as a qualified Montana capital
 20 company, at least 50% of its capital base raised through investments for which tax credits were taken
 21 within 4 years of the date on which the department approves the amended application; and

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

28 (2) The qualified Montana small business investment capital company receiving investments for
 29 which a taxpayer has applied and received a tax credit ~~must~~ shall use its capital base to make qualified
 30 investments ~~according to the following schedule:~~

1 department of revenue may abate the penalty if the capital company ~~or the Montana small business~~
 2 ~~investment capital company~~ establishes reasonable cause for the failure to make qualified investments
 3 pursuant to subsection (1) or (2) and if the failure was not due to neglect on the part of the company.

4 (5) The department of revenue may grant an extension of time in which to make qualified
 5 investments pursuant to subsection (1) or (2) upon application by a qualified Montana capital company ~~or~~
 6 ~~the Montana small business investment capital company~~ showing reasonable cause for an extension.

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

9 (7) A capital company may invest tax credit funds in an existing profitable business only if a
 10 substantial portion of the investment is to be used for expansion of the business. The department may limit
 11 the amount of the investment to be counted toward the investment percentage criteria set forth in this
 12 section to the amount to be used for the expansion of the business."

13
 14 **Section 7.** Section 90-8-303, MCA, is amended to read:

15 **"90-8-303. Conflict of interest.** (1) A capital company may not invest in any business venture
 16 in which the combined ownership of the business venture for all investors in the capital company exceeds
 17 49% at the time of the investment decision.

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

21 (3) The Montana small business investment capital company must be governed by the conflict of
 22 interest provisions of the United States small business administration."

23
 24 **Section 8.** Section 90-8-305, MCA, is amended to read:

25 **"90-8-305. Sale of debentures.** (1) A qualified Montana capital company or the qualified Montana
 26 small business investment capital company is authorized to issue and sell debentures or limited partnership
 27 interests to the permanent coal tax trust fund.

28 (2) Proceeds received by a qualified Montana capital company or by the qualified Montana small
 29 business investment capital company from the sale of debentures or limited partnership interests authorized
 30 in subsection (1) must be invested in accordance with the provisions of 90-8-301, except that the time

1 periods for making qualified investments must be calculated from the date on which the company sells the
 2 debentures or limited partnership interests to the permanent coal tax trust fund."

3
 4 **Section 9.** Section 90-8-321, MCA, is amended to read:

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

11 ~~(2)(b)~~ If in the discretion of the department the action allowed under subsection (1)(a) is not
 12 required to protect the company's investors, the department may place the company on notice that it will
 13 lose its certification as a Montana capital company ~~or as the Montana small business investment capital~~
 14 ~~company~~ within a specified period of time if the company does not come into compliance with the
 15 provisions of this chapter. The department shall automatically decertify a Montana capital company ~~or the~~
 16 ~~Montana small business investment capital company~~ that is assessed a penalty under 90-8-301(4).

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

20 ~~(4)(d)~~ A Montana capital company ~~or the Montana small business investment capital company~~ may
 21 apply to the department for decertification.

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

24 ~~(6)(f)~~ The department shall decertify a capital company once the capital company has met the
 25 investment schedule outlined in 90-8-301 and over 70% of the capital base of the capital company has
 26 been invested in qualified investments and after at least 5 years have elapsed since the date the capital
 27 company was qualified.

28 (2) The department may decertify the Montana small business investment capital company if the
 29 company:

30 (a) discontinues its operations; or

1 (b) is not in compliance with the United States small business administration laws and regulations
2 as determined by the small business administration; OR

3 (C) REQUESTS DECERTIFICATION."
4

5 ~~NEW SECTION. SECTION 11. CONTINGENT VOIDNESS. IN ORDER TO MAINTAIN A BALANCED~~
6 ~~BUDGET, BECAUSE [THIS ACT] REDUCES REVENUE, IT MAY NOT BE TRANSMITTED TO THE GOVERNOR~~
7 ~~UNLESS A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS CONTAINED IN HOUSE BILL NO.~~
8 ~~2. IF A CORRESPONDING IDENTIFIED REDUCTION IN SPENDING IS NOT CONTAINED IN HOUSE BILL NO.~~
9 ~~2, [THIS ACT] IS VOID.~~

10

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

12

-END-