



Economic Affairs Interim Committee

58th Montana Legislature

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January 7, 2004

To: Economic Affairs Committee members
From: Pat Murdo, EAC Research Staff
**Re: Background Information and Questions related to
Venture/Equity/Seed Capital Programs in Montana**

BACKGROUND: WHAT IS VENTURE/EQUITY/SEED CAPITAL?

Venture/equity/seed capital programs have a variety of purposes, as indicated by the name. A venture capital program is not quite the same as a seed capital program, since venture capital is not always provided at start-up, which is what the word "seed" capital implies. Regardless of the term used, venture, seed or equity capital programs seek to invest in up-and-coming companies that need equity capital to grow beyond the start-up stage by expanding operations, increasing staff, or otherwise developing. Some of these companies may intend to reach a point where an IPO (initial public offering on equity markets) makes sense for future growth. For most private venture capitalists, the IPO represents a major expectation of making money on their venture investment, since their goal is to nurture a growing company to a point where equity returns are multiples of the early investment. Most companies do not plan to "go public," but these, too, can return many times the initial investment, typically through the sale of the company..

Money is not all that is provided in an investment. Often, venture capital providers, including angel investors (typically individuals who will invest their own time and money for a stake in a company or other consideration), offer contacts and guidance that are intended to help the young firm reach its next stage. Jon Marchi of Glacier Venture Fund in Polson says a venture capital fund staff spends 10% of its time putting together the investment and 90% of its time monitoring and guiding the company in which it has invested. Some young company founders do not like to relinquish the authority that comes with the original ownership, and they do not seek out venture capital. They may find that angel investors meet their financing needs. However, since even the lottery takes an initial investment, the key to finding "venture" money is to remember that money seldom is free. If a state decides to help an entrepreneur who wants to seek out "venture" money, then what are the options?

The following pages of the memorandum address:

- ✓ Background on where venture capital works, how it is structured
- ✓ Questions for a state to consider if developing policies for venture capital programs
- ✓ A comparison of the existing Montana Capital Company Act and SB378 and SB465, which were presented to but not passed by the 2003 Legislature
- ✓ A partial list of other economic development programs
- ✓ Tables of past venture capital investments in Montana
- ✓ Additional questions to be considered in developing legislation for venture capital programs

HOW ARE VENTURE/EQUITY CAPITAL PROGRAMS STRUCTURED AND WHERE IS THE NEED?

The structure of a venture/equity/seed capital program typically consists of investors who pool their money in a venture capital firm that then investigates companies to determine which have the potential to grow and return dividends on investments. Private venture capital companies may operate with no state incentive programs, but typically these types of companies are in "hot spots" like California and New York where start-ups are more plentiful, where competition among venture capital firms is more acute, and where investors can interact directly with their proteges. (The above description applies to angel investors and angel networks, as well.)

One analysis of traditional venture capital found that between 1991 and 2000 the majority of venture capital investment dollars -- 65.2% -- flowed to companies in five states: California, Massachusetts, New York, Texas and Colorado.¹ Brian Schmitt of the Community Development Venture Capital Alliance wrote in December 2002, "Counties that are completely rural have 2.2 percent of the total number of business establishments in the US yet received no VC investments in 2001." He further found "that metropolitan counties received 98.4 percent of all VC investments by number of companies (and 99.2 percent of the total dollars), yet only account for 80.8 percent of all of the establishments in the U.S. By contrast, non-metropolitan counties, which hold 17.0 percent of all establishments in the US, received only 1.6 percent of the VC investments by company (and 0.8 percent of the dollars)."² For many states where venture capitalists are seldom seen, states often have taken a role in packaging incentive programs.

But where is the need? The multiple names under which "venture" capital is described -- seed, venture, risk and equity -- contributes to confusion about when the investment is most helpful. Seed capital may be at the very start of a good idea. One review found that in 1997 venture capital firms invested \$10 billion nationwide but only about 6% of that went to start-ups.³ Angel investors are more likely to be involved at the earliest stages -- often even before a business plan is written.

Venture or equity capital typically comes at a stage where a company already has some value. Robert Heard and John Sibert, writing on venture capital for the National Governors' Association in 2000, estimated that seed and early-stage investment needs generally were in the \$500,000 to \$2 million range -- "largely below the VC horizon." Yet they also commented that 42% of the venture capital in 1999 flowed to start-up and early stage companies. The average formative-stage company received venture capital of \$7.5 million each in 1998, according to the authors. They also noted that venture capital was focusing on larger investments. The gap between the companies with needs for lower

¹Brian Schmitt, "Assessing the Availability of Traditional Venture Capital in the US: A Preliminary Analysis," New York, The Community Development Venture Capital Alliance, December 2002, pp. 2-4.

²*Ibid.*

³As cited in Robert Heard and John Sibert, "Growing New Businesses with Seed and Venture Capital: State Experiences and Options," National Governors' Association, Washington DC, 2000, p. 11.

amounts of financial assistance and the companies being targeted for larger investments by private venture capital firms may be filled by angel investors, who "can be found in every major community in every state," they said. The gap, they said, also may be filled by "a variety of state-sponsored and state-facilitated funds."⁴

IF VENTURE/EQUITY CAPITAL IS NOT ABUNDANT, WHAT CAN/SHOULD THE STATE DO?

Any state considering promotion of a venture/equity capital program would do well to ask questions. For example:

What is the purpose of venture/equity capital?

Does the state see the role of venture/equity capital as:

- a) expanding jobs?
- b) enabling start-up companies to take the next step toward growth, regardless of jobs?
- c) encouraging economic development that brings out-of-state money into the state?
- d) promoting the bottom line of venture capital firms and their investors?
- e) other rationales?

What is the state's role in venture/equity capital?

1. Can the state be involved without investing, partnering, providing incentives? Many observers have said that money is available in various forms to help companies start up or expand. Others say that investors are available but that there are few vehicles available to hitch up investors with companies. Is the state's role that of an advisor or contact source?
2. Is the state's role that of an investor? Should, for example, the Montana Board of Investments be tasked with venture capital development?
3. Is the state's role to provide incentives for out-of-state investors or local investors?

What is the state's goal in getting involved in venture/equity capital?

1. Expanding jobs?
2. Promoting business opportunities (connections, spinoffs, increased investment, business growth)?
3. Increasing state revenues from income taxes, business taxes, property taxes?
4. Returning to investors some of their tax dollars (or the tax dollars of others) in expectation of additional investments?
5. Creating an ongoing special revenue fund through a private/public partnership that allows state investments in state-targeted investments?

What is the state willing to accept in order to structure venture capital competitive with venture capital incentives in other states?

1. Is the state willing to give tax incentives to companies not headquartered in Montana? What would

⁴*Ibid.*, p. 12.

the state expect in return?

2. Is the state willing to let some venture capital investments go to companies not in Montana? What would the state expect in return?
3. Is the state willing to put up investment funds and accept no direct return to the state on investment, even if venture capital-investing companies obtain a guaranteed rate of return?

Does the state want to be a partner/investor?

--The Montana Constitution does not allow equity investment, except for public retirement system assets and state compensation insurance fund assets (on the latter there is a limit of 25% of the book value of total invested assets) (Article VIII, Section 13). Article X says various state university funds "shall be respectively invested under such regulations as may be provided by law, and shall be guaranteed by the state against loss or diversion."

1. If the state wants to be a partner/investor, how can that role be structured? What needs to change?
2. What types of incentives does the state want to provide?
 - tax credits? (Current or contingent/deferred)
 - matching investment pool?
 - infrastructure assistance (e.g., easier access to markets via telecommunications, roads)?
 - marketing and development assistance (e.g. contacts with angel investors, those familiar with what is needed to help companies to grow and expand)?
3. Does the state want to offset risk, encourage risk, keep an arm's length from risk?
4. Should the state specify types of firms eligible for investment or stay an arm's length away?

What are the pitfalls of a venture/equity capital program?

Venture capital programs have the potential to fall short of legislative intent, depending on how they are structured and what the legislative goals are. If a goal is to provide the equivalent of tax relief to spur further investment, then Montana's earliest venture capital program provided some tax relief (in the form of tax credits) to venture capital providers who invested in their own businesses. A later legislature passed a statute prohibiting conflict of interest investments, apparently encouraging "new" investments rather than rewarding already planned investments with a tax credit.

Under Colorado's CAPCO legislation, adopted in 2001, one of the goals was to invest one-fourth of the investment pool in rural areas, but an audit of Colorado's CAPCO investments found that "four of the five CAPCOs that received an allocation from the rural pool had not made any investments with their rural funds... ." (Colorado State Treasurer news release -- see: http://www.treasurer.state.co.us/news/releases2003/1028_state_auditor_blasts_capcos.htm)

Another aspect of Colorado's CAPCO legislation criticized in the 2003 audit report was that the CAPCOs had collected \$15.2 million in startup and management fees, more than the \$14.1 million they invested since the start of the program. (Same citation as above) In exchange for the investments, the CAPCOs received \$100 million the first year in tax credits. Another \$100 million is to be distributed this year.

Another concern is that inaction to structure a Venture Capital Program could result in available venture funds flowing to states that offer either:

- a) better incentives, or
- b) the best package -- in terms of the types of start-up companies, the innovation associated with them and the opportunity for various investments that make a venture capitalist's time, as well as money, worth spending in an area.

What do other states do to encourage venture/equity capital?

- 1. Tax credits via CAPCO programs (in Louisiana, Florida, Missouri, Wisconsin, New York, Colorado)
- 2. State-overview with deferred tax credit backstop program, found in Fund of Funds programs (in Oklahoma, Iowa, being considered in Arkansas)
- 3. Direct funding involvement (Connecticut, Maryland, Massachusetts). Minnesota Investment Network Corp. received a one-time \$7 million state investment. It now operates independently with \$15 million in capital.

What are the differences among various programs as reflected in Montana legislation?

The table below offers a comparison of venture capital programs considered or enacted in Montana:

Comparison of Existing Montana Capital Companies Act and Two 2003 Proposed Bills

	Existing Program	Cap-Co. Program SB 378 in 2003 Leg.	Fund of Funds SB 465 in 2003 Leg.
Organization	Venture funds, certified by Dept. of Commerce, invest money in companies.	Venture funds, certified by Dept. of Commerce, invest money in companies.	State-appointed board chooses nonprofit corporation to collect and distribute venture fund investments.
<i>Comment</i>	<i>State involvement includes ongoing certification and oversight.</i>	<i>State involvement includes ongoing certification and oversight.</i>	<i>Involves state in choosing nonprofit company but keeps equity involvement separate to meet constitutional issues.</i>

<p>Restrictions on who receives venture funds</p>	<p>Eligible entities include local and community development corporations, small business administration certified development companies, small business investment companies. Investment may not go to company affiliated with investor.</p>	<p>Recipient must have headquarters and operations mainly in state, be unable to obtain conventional financing, and have fewer than 100 employees.</p>	<p>1) Up to 5% of Fund of funds set aside for rural or small businesses in MT. 2) Recommendation that investments be made in businesses with main operations in Montana. 3) At least 50% of money in a separate revolving fund, created from excess returns to main fund, must be invested in MT firms if investment is prudent and financially responsible.</p>
<p><i>Comment</i></p>	<p><i>Targets recipients for economic development. Limits self-interest in distribution of funding.</i></p>	<p><i>Targets recipients for economic development. Limits self-interest in distribution of funding.</i></p>	<p><i>1) Extra layer of separation between distribution and recipient. 2) Allows for greater returns on investment.</i></p>
<p>Restrictions on venture capital firms</p>	<p>Two types of certification are described in 90-8-202, MCA - a qualified and certified company privately capitalized at \$200,000 or more, and a qualified and certified small business investment firm privately capitalized at \$500,000 or more.</p>	<p>Dept. Commerce sets rules for certified capital company eligibility, including types of companies, net worth, and payment of \$7,500 fee. Criteria set and limits outlined for qualified investments (e.g. unsecured debt, 5-yr maturity, or more, convertible into equity).</p>	<p>1) Montana Capital Investment Corp. contracts with venture capital firms, specifying scheduled rate of return to investors, and recognizing that excess returns would go to MT fund of funds, generally. 2) Recommendation that venture firms have office in MT.</p>
<p><i>Comment</i></p>	<p><i>1) Generally venture capital firm is a pass-through entity, gathering investments for ventures & distributing tax credits. 2) Conflict of interest statute inserted after venture capital investors put money in own business and gained tax credit.</i></p>	<p><i>1) Fees paid for participation at start-up and annually. 2) Fiscal note identifies confusion regarding who is an eligible investor, since affiliates are allowed to participate.</i></p>	<p><i>1) Contract between nonprofit and venture firms. 2) Venture firm's presence in state means expertise is available.</i></p>

<p>What's the rationale for participation?</p>	<p>1) Tax credits were made available equal to 50% of investment but not more than \$150,000 or \$250,000 depending on the type of investment company (per investor/taxpayer). 2) Venture firms also receive all proceeds from investment, if successful. If not, tax credits are only benefit.</p>	<p>1) Tax credits over 10 years at 10% a year or by amount that investments exceed amount invested for year prior to claim for credit, whichever is less. 2) Venture firms also receive all proceeds from investment, if successful. If not, tax credits are only benefit.</p>	<p>1) Investors receive certificates that reflect deferred tax credit, with year or years in which credit can be claimed. 2) The tax credit is based on difference between scheduled aggregate rate of return to investor, as set by board, and aggregate actual return.. Rate of return limits set. 3) If scheduled aggregate rate of return is equal to or less than actual return, the tax credit is not used. Investor gets only scheduled rate of return, with excess provided back to Fund of Funds (the contract may let investor get a portion).</p>
<p><i>Comments</i></p>	<p><i>Benefit to investor is guaranteed return, through tax credits, of 50% of investment.</i></p>	<p><i>Benefit to investor is guaranteed return, through tax credits, of 100% of investment.</i></p>	<p><i>Benefit to investor is guaranteed return as established by contract, with tax credit backstop.</i></p>
<p>What costs to state?</p>	<p>-\$7.61 million in foregone taxes (tax credits, 1983-2001) (Fiscal Note for SB378) (According to a Department of Commerce report, \$5.94 million in tax credits were issued prior to 1991, less than the \$7.9 million allowed. In 1995 another \$750,000 in tax credits were allowed.</p>	<p>1) \$37,000 the first year for operations, and \$12,000 in year two. 2) Fiscal note says likely reduction in revenues due to tax credits of \$200,000 to \$300,000/yr.</p>	<p>1) \$185,000 first year and \$99,000 second year from operational costs. 2) State may see revenues fall if deferred tax credits are exercised.</p>
<p><i>Comments</i></p>	<p><i>1987 amendment limited tax credits between July 1, 1987 and June 30, 1989, to \$3 million, plus whatever credits were promised prior to 6/30/87.</i></p>	<p><i>1) No limit put on tax credits. Complicates projection of revenues. 2) Operational costs not covered by fees.</i></p>	<p><i>1) Limit of \$10 million in deferred tax credits per year; \$50 million total. After all tax credits obligated, no funding mechanism provided for the Board. 2) Operational costs not fully covered unless \$28.8 million invested each year in Fund of Funds.</i></p>

<p>What measure of benefits to state?</p>	<p>Reports required of investors' names and amount of investments.</p>	<p>1) Reports required of investors' names, amount of investments and auditor's opinion of methods of operation of venture capital company. 2) Dept of Commerce to report biennially on amount of investments and jobs created.</p>	<p>1) Annual Board report on Fund of Funds assets. 2) Five-year progress report on goals of act, including creation of venture capital offices in MT and investment in Montana businesses. 3) Board review required of MT Capital Investment Corp. every 3 years. Annual audit required.</p>
<p><i>Comments</i></p>	<p><i>No data required on job creation or indication of ventures' success/failure.</i></p>		
<p>What complaints?</p>	<p>Fiscal review in 1990 was critical of: 1) tax credits for investments likely to occur without incentives. 2) capital companies owned by individuals who used investments for other businesses they owned. 3) investments going to businesses that could have obtained conventional loans. Report said by 1990 investments had done little to stabilize MT economy or create jobs and business opportunities. Conflict of interest issue handled in 1991 legislation. 1993 legislation reserved remaining credits to statewide venture fund. 4) Tax credits no longer available.</p>	<p>1) Tax credits can be made available to out-of-state investors. 2) Venture fund typically uses forgivable loan, which means a business must qualify for a loan, often difficult for newbie. 3) Fiscal note questioned: a) language regarding the investor's option for a 10% tax credit or another confusingly defined sum; b) definition of affiliates; c) some of the regulatory sections; and d) the requirement that a certified investor return tax credits if the venture firm is in noncompliance.</p>	<p>1) Tax credits can be made available to out-of-state investors. 2) Venture fund typically uses equity instrument, which has higher risk associated with expectation that venture firm seeks IPO (initial public offering) or sale to larger firm. 3) Fiscal note concerns are included in earlier sections.</p>

Can a venture capital program be structured as a win-win program for investors, new businesses and the state?

This depends on the state's goals, the program structure, and expectations by investors and new businesses.

What Other Economic Development Programs Provide Capital/Assistance (See links below. These examples typically are debt-related rather than equity-based):

- 1) Certified Regional Economic Development Corporations (under HB 76, passed in 2003).
- 2) Growth through Agriculture Program (a grant-loan program)
- 3) Community Development Block Grants
- 4) Community Reinvestment Act (handled by banks, focused typically on housing but also for community development.)
- 5) Montana Board of Investments Business Programs funded from the Coal Tax Trust
- 6) Microbusiness Development Corporations (located in Kalispell, Havre, Missoula, Butte, Billings, Helena, Lewistown and Wolf Point)
- 7) Montana Research and Commercialization Board

Where can someone go for more information on current programs?

General information for financial assistance: <http://www.mtfinanceonline.com>
 Microbusiness Development Corporations - Commerce - http://commerce.mt.gov/brd/BRD_MBFP.html
 Board of Investment Programs - http://www.investmentmt.com/BOIprograms_instate.htm
 Community Development Block Grant Program - federal grants, managed by state
http://commerce.mt.gov/CDD/CDD_CDBG.html
 National Community Capital Association <http://www.communitycapital.org/>
 Inland Northwest Economic Adjustment Strategy: <http://www.inlandnwregion.org>

What other state-activated benefits also assist economic development?

- 1) Infrastructure opportunities
- 2) Stability, consistency of regulatory and tax environments

OTHER QUESTIONS TO CONSIDER IN STRUCTURING OR ADOPTING LEGISLATION:

Who can get assistance?

- 1) New businesses under x amount of capitalization
- 2) Expanding businesses under x amount of capitalization
- 3) Large, expanding businesses over x amount of capitalization
 - Among large businesses being recruited, what terms do they seek?

What is the need among Montana companies?

Research from the Montana Department of Commerce indicates that there is a deep pool in every region (and most counties) of businesses that are in the prime funding area for venture or equity capital: those with values of between \$500,000 and \$25 million. (This is the range reportedly identified by Oklahoma of companies as being most in need of venture/equity capital in that state. Montana may need to compile its own data.)

Shown in examples below, based on a search of the *2003 Harris Directory of Montana Businesses* by the Department of Commerce of Montana's 3,446 companies, the following selected counties have companies whose sales are valued between \$500,000 and \$25 million (out of a total of 2,020 companies statewide with sales in the same range):

Cascade County	141
Flathead County	204

Gallatin County	171
Jefferson County	9
Lake County	40
Lewis and Clark County	121
Missoula County	252
Powell County	4 (The old Louisiana Pacific mill is valued at over \$25 million)
<u>Silver Bow County</u>	<u>78</u>
Subtotal, selected counties	1,020

What range of assistance was provided under the Montana Capital Company Act?

In the first of the following three tables are sample investments made by the venture capital companies certified and qualified under the Montana Capital Company Act (Title 90, Chapter 8) prior to 1991 when a conflict of interest statute was passed. The second table lists companies and jobs funded by Glacier Venture Fund between 1995 and 2002. Glacier Venture Fund was the last of the venture funds to qualify under the Montana Capital Company Act. The third table lists the venture capital companies that received tax credits under the Act and distributed them to investors. Companies qualified before 1987 could receive as tax credits up to 25% of their total capitalization. After 1987, companies could receive as tax credits 50% of the capital they had raised for venture investments. Language in 90-8-204, MCA, basically sets a cut-off date in 1995 for venture capital fund formation and designation of tax credits under this act.

Qualified investments by venture capital funds and jobs reported between FY 1984-1990*

Business Type	Amount of Investment	Jobs Reported	Comments
Motel	\$750,000	20	
Taxicab company	\$250,000	19	Existing business
Convenience/Gas Store	\$214,000	10	
Telecommunications	\$190,803	6	
Delivery company	\$150,000	5	Existing business
Computer repair & maintenance	\$125,000	9	No growth in workers, 1987-89
Landscape architect	\$120,000	15	
Pet products manufacturing	\$120,000	7	5 new employees in 2 yrs
Marketing	\$94,194	14	Bankrupt
Manufacturer	\$75,000	12	Bankrupt
Cattle ranch	\$75,000	1	
Equipment manufacturing	\$65,000	1	
Equipment developer	\$54,134	4	

Furniture manufacturing	\$52,000	51	Also, SBA, CDBG, etc. funding
Dental equip. manufacturing	\$50,000	23	Existing business
Health Club	\$50,000	14	Closed
Software development	\$47,000	0	No new employees 1987-90
Mining equipment broker	\$30,000	0	No new employees 1987-90
Importer	\$40,000	2	
Software developer	\$29,123	3	
Pipeline testing	\$20,000	1	
Printing	\$5,300	2	
Literary magazine	\$5,000	1	

*Information is from Table 10 in "The Montana Capital Company Act," A report prepared by Teresa Olcott Cohea for the Legislative Finance Committee, August 3, 1990.

Glacier Venture Fund Investments Tied to Tax Credits by Firm, Location, Jobs Reported*

Company	Location	When V. Capital Received		2004, Estimated	
		Jobs	Sales	Jobs	Sales
Ligocyte Pharmaceuticals	Bozeman	1999 - 6	\$600,000	43	\$3.2 million
PrintingForLess.com	Livingston	1997 - 9	not available	76	More than \$12 mil.
Implemax Equipment Co.	Bozeman	1998 - 4	not available	9**	not available
Phillips Environmental Products	Belgrade	2000 - 2	\$200,000	14	\$1.2 million

*Information from the Montana Department of Commerce and Glacier Venture Fund. **Assumes that \$750,000 in new capital becomes available in 2004.

Venture Capital Firms that Received Tax Credits via the Montana Capital Company Act*

Venture Capital Company	Capitalized	Tax Credits Received
Development Corp. of Montana	\$736,300	\$184,075
Great Falls Capital Corp. (1986)	\$510,000	\$127,500
Great Falls Capital Corp. (1987)	\$1,381,000	\$690,500
First Montana Capital Corp. (Missoula)	\$200,000	\$100,000
Treasure State Capital Ltd. Partners (Billings) 1988	\$1,000,000	\$500,000
Treasure State Capital Ltd. Partners (Billings) 1989	\$650,000	\$325,000
SW Montana Development Co. (Butte)	\$319,077.50	\$159,538.75

The Glacier Springs Co. (Great Falls)	\$1,300,000	\$650,000
KBK Venture Capital Co. of Montana (Billings)	\$210,000	\$105,000
MT Progress Capital Investments Ltd. Partners (Butte)	\$3,000,000	\$1,500,000
Renaissance Capital Ltd. Partners (Billings)	\$202,000	\$101,000
Big Sky Opportunities Ltd. Partners (Butte)	\$3,000,000	\$1,500,000
Glacier Venture Fund (Polson)	\$1,500,000**	\$750,000

*Information from the Montana Department of Commerce ** Actual capitalization was \$2.55 million but only \$1.5 million qualified for tax credits.

What types of assistance are to be made available?

- 1) Loans
- 2) Grants
- 3) Tax incentives (including venture capital, property tax waivers, etc.)
- 4) Training programs
 - which programs serve small businesses more effectively (and, conversely, large firms)?
 - which serve rural businesses more effectively? (and, conversely, urban firms)?

What other concerns exist for developing legislation on venture capital?

- 1) State under current constitution has constraints on debt and equity partnerships.
- 2) Legislation may be needed to allow state to hold co-patenting rights.
- 3) Return on investment - is this something the state wants if state money is involved?
- 4) Will the state attempt to direct investments geographically, by industry or by job benefits?
- 5) The more complex a program is, the more room there is for loopholes and the more potential need for reporting and oversight, which suggests the need to address the cost of regulation.