OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR

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LT. GOVERNOR

October 27, 2005

Rep. Jim Keane, Chair
Economic Affairs Interim Committee
Capitol Station
Helena, Montana 59620

Dear Chairman Keane:

I understand the Economic Affairs Interim Committee will be discussing the Montana Equity Capital Investment Act ("Act") (SB 133) at its meeting on Friday, October 28. As you know, I have not yet appointed any members to the Montana Capital Investment Board ("Board").

My reluctance to make appointments is based on the fact that SB 133 is an unfunded mandate. The 2005 Legislature, which enacted SB 133, simply appropriated no funds to implement the Act. This means that the Montana Capital Investment Board, established by the Act, has no funds to meet, much less take any action to start up the program created under the Act.

My concern about SB 133 as an unfunded mandate has been complicated by the fact that I received a legal opinion from the state's bond counsel, the law firm of Dorsey and Whitney, concluding that the Act is likely unconstitutional (which opinion I have shared with the Committee). I understand counsel for the legislature has prepared a contrary opinion. Should a future legislature decide to fund the program established under SB 133, I expect the courts will decide the constitutional issues that have been raised about the legislation.

I am still considering whether, and if so when, to appoint members to the Board. As you know, since taking office, I have been carefully reviewing the boards and commissions within the executive branch of government, generally, with an eye to increasing the efficiency of government operations. At this point, given the absence of funding and my interest in making government more efficient, I am unclear as to the purpose that would be served by making the appointments now.

Sincerely,

BRIAN SCHWEITZER
Governor

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