

2005 Montana Legislature[About Bill -- Links](#)

SENATE BILL NO. 133
INTRODUCED BY MANGAN, MCKENNEY
BY REQUEST OF THE STATE AUDITOR

AN ACT CREATING THE MONTANA EQUITY CAPITAL INVESTMENT ACT; PROVIDING CONTINGENT, DEFERRED TAX CREDITS TO INVESTORS OR THEIR ASSIGNEES; ESTABLISHING AND PROVIDING THE DUTIES OF A MONTANA EQUITY CAPITAL INVESTMENT BOARD; PROVIDING FOR PRIVATE SECTOR ORGANIZATION AND MANAGEMENT OF THE MONTANA EQUITY FUND; PROVIDING FOR REGISTRATION AND VERIFICATION OF TAX CREDIT USE OR TRANSFER; REQUIRING AN ANNUAL FEE FOR THE DESIGNATED INVESTOR GROUP; SETTING TERMS FOR TAX CREDIT REDEMPTION; SETTING CONTRACT TERMS FOR DESIGNATED INVESTOR GROUP INVESTMENTS AND THE DISTRIBUTION OF PROCEEDS; PROVIDING FOR TRANSFER AND TERMINATION OF THE MONTANA EQUITY FUND AND MONTANA EVERGREEN FUND; RESTRICTING CERTAIN INVESTMENTS; REQUIRING AN ANNUAL AUDIT AND AN ANNUAL REPORT; MAKING INVESTMENT IN THE MONTANA EQUITY FUND A PERMISSIBLE INVESTMENT FOR CERTAIN ENTITIES; REQUIRING AN APPLICATION FOR A SECURITIES EXEMPTION; INCORPORATING EQUITY CAPITAL INVESTMENT INTO STATE POLICY; AMENDING SECTIONS 33-2-705 AND 90-1-112, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Short title. [Sections 1 through 15] may be cited as the "Montana Equity Capital Investment Act".

Section 2. Purpose. The purpose of [sections 1 through 15] is to benefit Montana by attracting out-of-state venture investment funds interested in providing equity capital and near-equity capital to Montana entrepreneurs and economic innovators in Montana. Through investment incentives, the state seeks to nourish creation of a

private seed and venture capital industry in Montana to fund academic, technological, and innovative startup companies and other companies that are expanding or restructuring. A further purpose is to encourage lead local investors with which out-of-state venture investors can partner in a way that strengthens the state's economy and builds a significant, permanent capital resource available to serve the needs of Montana businesses in a way that minimizes the use of state funds or tax credits.

Section 3. Definitions. As used in [sections 1 through 15], unless the context requires otherwise, the following definitions apply:

(1) "Board" means the Montana capital investment board provided for in [section 4].

(2) "Capitalize" means to acquire or provide debt, equity, or a combination of debt and equity.

(3) "Certificate" means the document authorized by the board for which contingent, deferred tax credits may be available pursuant to a contract between the board and the designated investor group.

(4) "Certificate holder" means the person to whom a tax credit initially is allowed pursuant to [section 8] and any person who receives a tax credit allocated under [section 8] under a transfer agreement that meets the registration and verification requirements provided for in [section 6].

(5) "Designated investor group" means the investor group selected by the board pursuant to [section 5].

(6) "Equity capital" means cash invested in common or preferred stock, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.

(7) "Investor" means an individual, corporation, partnership, limited liability company, or other legal entity organized under state or federal laws that has contracted with the designated investor group and that has capitalized the Montana equity fund.

(8) "Montana business or project" means an entity with at least 50% of its employees or assets located in Montana.

(9) "Montana equity fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group pursuant to [section 10].

(10) "Montana evergreen fund" means the private investment fund to be organized, capitalized, and administered by the designated investor group as a subfund of the Montana equity fund with investments to be made in primary sector businesses as defined in 39-11-103. These businesses must be headquartered in Montana or have 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location.

(11) "Near-equity capital" means cash invested in unsecured, undersecured, subordinated, or convertible loans or debt securities.

(12) "Person" means a taxpayer as defined in 15-30-101 or a corporation as described in 15-31-101.

(13) "Proceeds" means revenue arising from the designated investor group's investments after deducting contractual obligations to the designated investor group's investors and the Montana equity fund's investors. Contractual obligations include but are not limited to fees, reimbursement of expenses, and up to 10% of net realized gains that may be allocated and contractually obligated to the designated investor group and specified Montana equity fund investors.

(14) "Tax credits" means credits allowed pursuant to [section 8] and available to a certificate holder against tax liabilities imposed by Title 15, chapter 30 or 31, or by 33-2-705.

Section 4. Montana capital investment board. (1) There is a Montana capital investment board. The board has the authority to carry out the activities provided for in [sections 1 through 15].

(2) The board consists of five voting members appointed by the governor. Members must be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members may not have an interest in the designated investor group or in any person to whom a tax credit is allocated and issued by the board.

(3) Board members shall serve staggered 4-year terms as provided in 2-15-124(2).

(4) The board shall meet at least once a year.

(5) The governor shall designate a presiding officer.

(6) The governor may, after a hearing, remove a member for neglect of duty or other just cause.

(7) Vacancies must be filled in the same manner as the appointment of the original members.

(8) Members must be compensated for expenses and mileage, as provided in Title 2, chapter 18, part 5, but members may not receive a director's fee, per diem, or salary for service on the board.

(9) The board is attached to the department of commerce for administrative purposes as provided in 2-15-121.

Section 5. Duties of board -- appointment or termination of designated investor group -- investment plan -- rulemaking. (1) The board may hire and fire staff, engage consultants, expend funds, enter into contracts, or terminate contracts.

(2) (a) The board shall solicit investment plans from investor groups for the raising and investing of equity capital and near-equity capital pursuant to [sections 1 through 15]. An investment plan must address:

(i) the applicant's philosophy and process;

(ii) evidence of probable success in building equity capital;

(iii) past experience and expertise in the design, implementation, and management of venture capital investment programs or in capital formation;

(iv) a plan for achieving the purposes of [section 2]; and

(v) a plan for achieving Montana investment as described in [section 10(2)].

(b) The board shall select, certify as the designated investor group, and contract with the one investor group considered best qualified to:

(i) organize, capitalize, manage, and direct the Montana equity fund and the Montana evergreen fund as provided for in [section 10]; and

(ii) make investments in private seed and venture capital partnerships or entities based on the investment plan provided for in subsection (2)(a).

(c) The designated investor group shall maintain an office in Montana.

(3) The board shall approve the timing of the initial sale of certificates and the implementation of the investment plan provided for in subsection (2) and may terminate the contract of the designated investor group for lack of compliance with the contract, including but not limited to the specifications for Montana investments referred to in [section 10(2)].

(4) The board shall approve the designated investor group's scheduled return of capital and rate of return on capital to the certificate holder. The scheduled rate of return may not exceed the sum of 400 basis points and the return on a U.S. treasury obligation that has a maturity similar to the investment being made by the certificate holder, plus actual tax and other expenses. These rates, whether fixed rates or variable rates, must be reasonable and prudent, based on competitive market rates.

(5) The board, through one of its members, shall, once each calendar quarter while the legislature is not in session, report to the economic affairs interim committee on the board's progress in implementing [sections 1 through 15] and the board's success in achieving the purpose of [sections 1 through 15].

(6) The board may adopt rules to implement [sections 1 through 15].

Section 6. Tax credit registration -- verification system. The board shall develop, in conjunction with the department of revenue, a system for registration of tax credits allowed or transferred under [section 8] and a system that permits verification of the validity of a tax credit or a tax credit transfer pursuant to [section 8].

Section 7. Fee. (1) The board shall charge the designated investor group an annual fee that is reasonable and commensurate with costs for implementation of [sections 1 through 15].

(2) Fees collected under this section must be deposited in an account in the state special revenue fund to the credit of the board. The funds deposited in the state special revenue account may be used only to defray the

expenses of implementing [sections 1 through 15].

Section 8. Contingent, deferred tax credits. (1) (a) A total of \$60 million of tax credits is available to certificate holders. The amount of tax credits certified for use may not exceed \$25 million prior to January 1, 2009. No more than \$12 million of tax credits may be claimed in a year.

(b) In calculating the \$12 million of tax credits that may be claimed in a year, the board shall notify the department of revenue or the state auditor, as applicable, of all tax certificates presented for redemption in each year and the amount of taxes against which the board has determined the tax credits are to be applied.

(c) Tax credits must be allocated on a first-come, first-serve basis.

(d) Expired tax credits do not count against the aggregate calculated in subsection (1)(b).

(2) A tax credit may not be claimed prior to July 1, 2010, or after July 1, 2031.

(3) Tax credits may be claimed or redeemed by a certificate holder only in accordance with conditions set forth in the certificate issued by the board.

(4) The certificate must state the amount of the tax credit and the tax year in which the tax credit may first be claimed or redeemed as provided in [section 9] and this section.

(5) Subject to subsection (2), a tax credit may be carried forward by the holder for up to 12 years.

(6) (a) The amount of tax credits certified for use by investors in the Montana equity fund is limited to an amount that offsets a shortfall in the scheduled returns of invested capital and returns on invested capital at rates of return in the contract between the designated investor group and the investor as approved by the board.

(b) The certificate must contain the conditions for claiming a tax credit, including:

(i) the scheduled rate of return for the holder and all predecessors of the holder of the certificate;

(ii) the formula by which a shortfall in returns of invested principal and interest is to be calculated;

(iii) the upper limit of tax credits available under the certificate; and

(iv) the dates by which the tax credits may be first redeemed and last redeemed.

(7) A holder of a certificate may transfer the certificate and the associated tax credits.

(8) The tax credit of an investor group that is a partnership, a limited liability company taxed as a partnership, or an S. corporation may be claimed by the partner, member, or shareholder. The tax credit of an investor group that is an estate or trust may be claimed by the beneficiary. The amount of credit claimed by a partner, member, shareholder, or beneficiary must be the partner's, member's, shareholder's, or beneficiary's pro rata share of the earnings of the partnership, limited liability company, S. corporation, trust, or estate.

(9) The certificate must permit a person claiming an interest in a tax credit to record that interest.

(10) (a) A certificate is binding on the board and the department of revenue once capital is provided to the Montana equity fund.

(b) A certificate may not be modified, rescinded, or terminated, except that redemption as provided in [section 9] terminates a certificate.

Section 9. Redemption of tax credits. (1) When a certificate holder submits a certificate for redemption, the board shall request documentation from the designated investor group regarding a shortfall in the scheduled return of capital and rate of return on capital listed on the certificate. The board shall calculate the amount of the allowable tax credit based upon the specifications in the certificate and the documentation from the designated investor group.

(2) The board shall notify the department of revenue or the state auditor, as applicable, of the maximum amount of a tax credit that may be claimed by a certificate holder who has presented a certificate for redemption.

Section 10. Designated investor group duties -- contract with board. (1) The designated investor group shall organize, capitalize, and administer the Montana equity fund and a Montana evergreen fund pursuant to its contract with the board.

(2) The contract between the board and the designated investor group must contain the following language as part of the designated investor group's implementation plan regarding investments in the Montana equity fund: "For every \$1 invested by the Montana equity fund in its aggregate portfolio of fund investments, the designated investor group shall seek to cause a minimum of \$1 of equity capital or near-equity capital to be invested in Montana businesses or projects or primary sector businesses, as defined in 39-11-103, that are headquartered in Montana or have at least 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location".

(3) The contract between the board and the designated investor group must identify those investments recognized by the designated investor group as meeting the purposes of subsection (2) regarding investments made in Montana businesses or projects or primary sector businesses.

(4) The designated investor group may receive fees for services. Fees paid to the designated investor group may not be used for lobbying, governmental relations, litigation of the contract with the board, or penalty payments to the state.

(5) A contract between the designated investor group and the board must include:

- (a) terms under which the designated investor group or fund partners will share with the state any proceeds;
- (b) the term of the contract, which may exceed 7 years, and the effective date of the contract terms;
- (c) provisions for investing as described in subsection (2) and allocating the proceeds; and
- (d) the timing of distributions.

(6) (a) Proceeds must be reinvested until the Montana equity fund has invested or reserved for investment \$60 million in seed and venture capital partnerships or entities.

(b) Subject to subsection (8), when the condition in subsection (6)(a) is met, distribution of 75% of the proceeds must be made to the Montana evergreen fund and the remainder must be made to the state general fund. When the Montana evergreen fund has invested or reserved for investment \$60 million, distribution of all the proceeds must be made to the state general fund.

(7) The contract must include provisions for the transfer of all investments in the Montana equity fund and the Montana evergreen fund to a new designated investor group upon termination of a contract.

(8) The contract must contain a termination clause for the Montana equity fund and the Montana evergreen fund providing for the liquidation of investments in both funds 50 years after organization of the Montana equity fund. At termination, the proceeds from both funds must be deposited in the general fund.

(9) The designated investor group shall submit to the board for review the contract between the designated investor group and investors.

Section 11. Restrictions on investment. The designated investor group may not, without permission of the board, invest:

(1) more than 25% of the Montana equity fund or the Montana evergreen fund in any one company, that company's affiliates, and that company's subsidiaries; or

(2) in a business venture if the designated investor group's investment in combination with other investments by investors in the Montana equity fund exceeds 49% of the business venture's ownership at the time of the investment decision.

Section 12. Annual audit. (1) The designated investor group shall provide annually to the board, the governor, and the legislative audit committee a financial audit performed each calendar year by an independent auditor.

(2) The audit must include:

(a) the investments made by the designated investor group through the Montana equity fund but may not extend to the audit of individual portfolio companies;

(b) the redemption or claiming of tax credits available to investors in the Montana equity fund, reported in the aggregate; and

(c) a valuation of the aggregate portfolio assets owned by the Montana equity fund and the Montana evergreen fund as of the end of each year and a description of how the designated investor group has implemented the Montana investment plan described in [section 5].

(3) The Montana equity fund shall pay the cost of the audit.

Section 13. Annual report. (1) The designated investor group shall publish an annual report, which must include:

(a) a summary of the annual audit of the Montana equity fund and the Montana evergreen fund conducted pursuant to [section 12];

(b) a review of the designated investor group's progress in implementing its investment plan; and

(c) the number of certificates and the amount of tax credits claimed or redeemed under [section 9].

(2) The designated investor group shall provide copies of the annual report to the governor, an appropriate interim committee of the legislature, and the board.

Section 14. Permissible investments. Investments in the Montana equity fund are permissible investments under applicable state laws for banks, credit unions, and insurance companies.

Section 15. Application for securities exemption. (1) The designated investor group shall apply to the securities commissioner, provided for in 2-15-1901, for an exemption under 30-10-104(11) for any securities transaction undertaken pursuant to [sections 1 through 15].

(2) The tax credits allowed or transferred pursuant to [sections 1 through 15] may not be considered securities under Title 30.

Section 16. Equity capital tax credit. There is allowed a credit against taxes otherwise due under this chapter as provided in [sections 1 through 15].

Section 17. Credit for equity capital investment. There is allowed a credit against taxes otherwise due under this chapter as provided in [sections 1 through 15].

Section 18. Section 33-2-705, MCA, is amended to read:

"33-2-705. Report on premiums and other consideration -- tax. (1) Each authorized insurer and each formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner showing total direct premium income, including policy, membership, and other fees, premiums paid by application of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new or additional or extended or renewed insurance, charges for payment of premium in

installments, and all other consideration for insurance from all kinds and classes of insurance, whether designated as a premium or otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana, with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under policies or contracts covering property, subjects, or risks located or resident in more than one state, after deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings, savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash surrender values of policies. Considerations received on annuity contracts may not be included in total direct premium income and are not subject to tax.

(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire insurance must be separately specified in the report as required by the commissioner, for apportionment as provided by law. When insurance against fire is included with insurance of property against other perils at an undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

(4) With respect to authorized insurers, the premium tax provided by this section must be payment in full and in lieu of all other demands for any and all state, county, city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes payable under 50-3-109.

(5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to [sections 1 through 15] may redeem the certificate under the terms of [section 9] as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).

~~(5)~~(6) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay its taxes as required under this section.

~~(6)~~(7) In addition to the penalty provided for in subsection ~~(5)~~ (6), the commissioner may impose upon an insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount at the annual interest rate of 12%.

~~(7)~~(8) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium tax under this section during the year in which tax liability is accrued."

Section 19. Section 90-1-112, MCA, is amended to read:

"90-1-112. Policy -- purpose. (1) It is the policy of this state to:

(a) strengthen the foundations of the state's business environment and diversify and expand existing economic endeavors to achieve long-term economic stability;

(b) cooperate with business enterprises, local governments, other public organizations, and the federal government and use all practical means and measures, including financial and technical assistance, to:

(i) establish an economic climate in which the state's natural resources and agricultural operations remain constant contributors to the state's economic welfare;

(ii) articulate a coherent economic development vision for the future; and

(iii) take a proactive role to ensure that Montana has the flexibility and resources to be an effective competitor in the changing global marketplace.

(2) The purpose of 2-15-218, 2-15-219, ~~and~~ 90-1-112 through 90-1-114, and [sections 1 through 15] is to provide a vision and a direction through the development of strategies and initiatives to ensure that the state's role in expanding the economy takes place in an orderly and effective manner."

Section 20. Codification instruction. (1) [Sections 1 through 15] are intended to be codified as an integral part of Title 90, and the provisions of Title 90 apply to [sections 1 through 15].

(2) [Section 16] is intended to be codified as an integral part of Title 15, chapter 30, and the provisions of Title 15, chapter 30, apply to [section 16].

(3) [Section 17] is intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [section 17].

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

Section 22. Effective date. [This act] is effective July 1, 2005.

- END -

Latest Version of SB 133 (SB0133.ENR)

Processed for the Web on April 19, 2005 (11:23am)

New language in a bill appears underlined, deleted material appears stricken.

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