

Unofficial Draft Copy

As of: September 3, 2004 (4:03pm)

LC5600

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act creating the Montana Equity Capital Investment Act; creating a Montana Equity Capital Investment Board; providing duties of the board; providing tax credits to investors in the Montana equity fund or their assignees; providing for private-sector organization and management of the Montana equity fund; providing for distribution of proceeds earned from Montana equity fund investments; providing for transfers of tax credits and requiring approval of state securities commissioner for exemption as security; 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:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] must be cited as the "Montana Equity Capital Investment Act".

NEW SECTION. **Section 2. Purpose.** The purpose of [sections 1 through 16] 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. A further purpose is to develop 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.

NEW SECTION. **Section 3. Definitions.** As used in [sections 1 through 16], unless the context requires otherwise, the following definitions apply:

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

(2) "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.

(3) "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].

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

(5) "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.

(6) "Investor" means any 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 invested in the Montana equity fund.**

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

(8) **"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.**

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

(10) "Person" means an individual taxpayer as defined in 15-3-101 or a corporation as defined in 15-31-101.

(11) **"Proceeds" means revenue arising from the designated investor group's investments net of contractual obligations to investors and fees obligated to the designated investor group.**

(11) "Tax credits" mean credits allowed pursuant to [section 8] and available to a certificate holder against tax liabilities

imposed by Title 15, chapter 30 or chapter 31, or by 33-2-705.

NEW SECTION. **Section 4. Montana capital investment board.**

(1) There is a Montana capital investment board. The board has the authority to carry out activities provided 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.

(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) Liability of members of the board is limited as provided

in Title 2, chapter 9, part 1.

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

NEW SECTION. **Section 5. Duties of the board -- appointment or termination of designated investor group -- investment plans - - rulemaking -- public meetings -- exceptions.** (1) The board may hire and fire staff, engage consultants, expend funds, contract, or terminate a contract.

(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 16]. 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 organize, capitalize, manage, and direct the Montana equity fund **and the Montana evergreen fund** and to make investments in private seed and venture capital

partnerships or entities based on the **investment plan provided for** in subsection (2) (a).

(3) The board shall monitor 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 investment in [section 10].

(4) **The board shall approve the designated investor's scheduled rate of return to the certificate holder and the payout periods for the scheduled rate of return. 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. These rates, whether fixed rates or variable rates, must be reasonable and prudent, based on competitive market rates.**

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

(6) (a) Except as provided in subsection (6) (b), the meetings of the board are public.

(b) The board **may close the portion of a meeting that involves information related to trade secrets or proprietary information of investor groups that is protected under Title 30, chapter 14, part 4.**

NEW SECTION. **Section 6. Tax credit registration and 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].

NEW SECTION. **Section 7. Fee -- state special revenue account.** (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 16].

NEW SECTION. **Section 8. Contingent, deferred tax credits.** (1) (a) **A total of \$60 million of tax credits is available to certificate holders. No more than \$10 million of tax credits may be claimed in a year.**

(b) In calculating the \$10 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 current or past tax liabilities, as described in subsection (5), against which the tax credits are to be applied.

(c) Tax credits must be allocated on a first-come, first-served 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 this section and [section 9].

(5) **Subject to subsection (2)** a tax credit may be carried forward by the holder up to 12 years and may be carried **back** against up to 3 years of tax payments made by the certificate holder. Tax credits carried back against a prior year's paid taxes do not generate an interest obligation to the taxpayer by the state.

(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 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) An individual may claim the tax credit of an investor group, including a partnership, limited liability company, C. corporation, S. corporation, estate, or trust electing to have income taxed directly to the individual. An amount claimed by the individual must conform to the provisions of this section and be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, C. corporation, S. corporation, estate, or trust.

NEW SECTION. **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 rate of return 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.

NEW SECTION. **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 investments to occur in businesses that are headquartered in Montana or have 50% of gross sales receipts from products principally produced in Montana or services provided from a Montana location".

(3) **The contract language between the board and the designated investor group also must identify the** investments required in subsection (2) as made:

(a) by the Montana equity fund directly;

(b) by investors in the Montana equity fund **who have invested in the Montana equity fund without receiving a tax credit certificate;** or

(c) **syndicated investment partners of the investors in the Montana equity fund.**

(4) **The designated investor group may receive fees for its 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 will share with the state any proceeds. The board may allocate no more than 10% of the proceeds to the designated investor group exclusive of fees.

(b) the term of the contract, which may exceed 7 years, and the effective date of the terms;

(c) provisions for allocating the proceeds, pursuant to subsection (2); and

(d) the timing of distributions.

(6) Distribution of the proceeds must be as follows: 75% to the Montana evergreen fund; up to 10% to the designated investor group, and the remainder to the general fund.

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

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

NEW SECTION. 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, its affiliates, and its subsidiaries.

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

NEW SECTION. Section 12. Annual audit. (1) Each calendar year, the designated investor group shall provide to the board a financial audit performed by an independent auditor of:

(a) the investments made by the designated investor group through the Montana equity fund and the Montana evergreen fund; and

(b) the redemption of claiming of tax credits available to investors in the Montana equity fund.

(2) The designated investor group shall pay the cost of the audit.

(3) The audit must be delivered to the board, the governor, and the legislative audit committee annually.

(4) The audit must include a valuation of the 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 10].

NEW SECTION. **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 11];

(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.

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

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

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

NEW SECTION. **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 16].

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

"33-2-705. Report on premiums and other consideration -- tax -- tax credit. (1) ~~Each~~ (a) After deductions pursuant to subsection (1)(b), 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:

(i) 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_{7,i}

(ii) charges for payment of premium in installments_{7,i} and

(iii) 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,.

(b) after deducting Deductions are allowed from the total direct premium income for 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

Unofficial Draft Copy

As of: September 3, 2004 (4:03pm)

LC5600

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 16] may redeem the certificate as a credit against the premium tax after excluding the portion of premiums identified in subsection (3).

(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."

{*Internal References to 33-2-705:*

Unofficial Draft Copy

As of: September 3, 2004 (4:03pm)

LC5600

7-21-3710 x 15-31-101x 33-2-311 x 33-2-708 x
33-2-710 x 33-2-724x 33-11-110 x 33-22-1513 x
33-27-118 x }

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 16] 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."

{*Internal References to 90-1-112:*

2-15-218* 90-1-112* 90-1-114* }

NEW SECTION. **Section 20. {standard} 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 15].

(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 16].

NEW SECTION. **Section 21. {standard} 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.

NEW SECTION. **Section 22. {standard} Effective date.** [This act] is effective July 1, 2005.

- END -

{Name : Pat Murdo
Title : Legislative Research Analyst
Agency : Legislative Services Division
Phone : 444-3594
E-Mail : pmurdo@mt.gov }