

Miller

94LSO-0268

SENATE FILE

0080

#3

SENATE FILE 0080

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SF0080FT01

AN ACT to create W.S. 39-8-101 through 39-8-107 relating to taxation and revenue; providing for the creation of capital resource companies to make qualified investments in domestic Wyoming companies as specified; providing definitions; providing a severance tax credit as specified; providing for the organization and certification of capital resource companies as specified; providing for administration, oversight and auditing as specified; providing for annual reports; and providing for an effective date.

*And Miller*

Introduced by:

SENATE ACTION ON SENATE FILE

- 2125  Introduced  
Aye 24 No 4 Ex 2 Ab 0
- Read First Time and Ref. to Committee No. 3
- Failed Introduction  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_
- 317 Returned from Committee No. 3  
with Recommendation:  
 Do Pass;  Amend & Do Pass;  Do Not Pass;  
 W/O Recomm;  Re-Refer to Committee No. \_\_\_
- Re-referred to Committee No. \_\_\_
- Returned from Committee No. \_\_\_  
with Recommendation:  
 Do Pass;  Amend & Do Pass;  Do Not Pass;  
 W/O Recomm;  Re-Refer to Committee No. \_\_\_
- Considered in Comm. of Whole  
 Amended  
 Recommended Do Pass  
 Failed Comm. of Whole  
 Indefinitely Postponed  
 Other: \_\_\_\_\_
- Read Second Time  
 Amended  
 Do Pass  
 Do Not Pass  
 Accelerated to 3rd Rdg.
- Read Third Time  
 Amended  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
 Held for Reconsideration  
 Motion to Reconsider  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
 Third Reading Vote  
(On Reconsideration)  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_
- Sent to House (No Amendments)
- Sent to LSO for Engrossing  
 ENGROSSED  
 Sent to House

HOUSE ACTION ON SENATE FILE

- Received. Read First Time.  
Referred to Committee No. \_\_\_
- Returned from Committee No. \_\_\_  
with Recommendation:  
 Do Pass;  Amend & Do Pass;  Do Not Pass;  
 W/O Recomm;  Re-Refer to Committee No. \_\_\_
- Re-referred to Committee No. \_\_\_
- Returned from Committee No. \_\_\_  
with Recommendation:  
 Do Pass;  Amend & Do Pass;  Do Not Pass;  
 W/O Recomm;  Re-Refer to Committee No. \_\_\_
- Considered in Comm. of Whole  
 Amended  
 Recommended Do Pass  
 Failed Comm. of Whole  
 Indefinitely Postponed  
 Other: \_\_\_\_\_
- Read Second Time  
 Amended  
 Do Pass  
 Do Not Pass  
 Accelerated to 3rd Rdg.
- Read Third Time  
 Amended  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
 Held for Reconsideration  
 Motion to Reconsider  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_  
 Third Reading Vote  
(On Reconsideration)  
 Passed  Failed  
Aye \_\_\_ No \_\_\_ Ex \_\_\_ Ab \_\_\_
- Sent to Senate
- Sent for Enrolling  
SEA No. \_\_\_
- Signed by President
- Signed by Speaker
- Approved by Governor
- Chapter No. \_\_\_

# SENATE ROLL CALL - FIFTY-SECOND WYOMING LEGISLATURE

Date 2-25-94 Bill # SF 80 Intro X 3rd Rdg \_\_\_\_\_ Concur \_\_\_\_\_ Rules/Susp \_\_\_\_\_

Other Action: \_\_\_\_\_ JCC# \_\_\_\_\_  
 Moved by: Sen. Miller Seconded by: \_\_\_\_\_

	Ayes	Noes	Excused	Absent
APPLEGATE	✓			
CAMERON	✓			
CATHCART	✓			
COE	✓			
CUBIN	✓			
<del>DIXON</del>				
EDDINS		✓		
ENZI	✓			
GEIS	✓			
GERINGER	✓			
GILBERTZ		✓		
GRIEVE	✓			
HARRIS	✓			
KINNEY	✓			
KINNISON	✓			
KUNZ		✓		
LALONDE	✓			
LUMMIS	✓			
MACGUIRE		✓		
MALDONADO	✓			
MAXFIELD	✓			
MILLER	✓			
PECK	✓			
PHILLIPS	✓			
PREVEDEL	✓			
SCHIFFER	✓			
SCOTT	✓			
TWIFORD	✓			
VINICH	✓			
ZIMMERMAN <i>Exc.</i>			✓	
MR. PRESIDENT <i>Exc.</i>			✓	

PRESENT \_\_\_\_\_ AYES 24  
 NOES 4  
 EXCUSED 2  
 ABSENT \_\_\_\_\_  
 TOTAL 30

Passed <u>X</u>
Failed _____

House of Intro  
 To Com. No. \_\_\_\_\_  
 Stand Report Do \_\_\_ Amd \_\_\_ Not \_\_\_  
 Com Whole Do \_\_\_ Amd \_\_\_ Not \_\_\_  
 2nd Reading Amd \_\_\_  
 3rd Reading Amd \_\_\_ Pass \_\_\_ Fail \_\_\_

Second House  
 To Com No. \_\_\_\_\_  
 Stand Report Do \_\_\_ Amd \_\_\_ Not \_\_\_  
 Com Whole Do \_\_\_ Amd \_\_\_ Not \_\_\_  
 2nd Reading Amd \_\_\_  
 3rd Reading Amd \_\_\_ Pass \_\_\_ Fail \_\_\_

1994

STATE OF WYOMING

94LSO-0268.01

SENATE FILE NO. 0080

Capital Resource Company Act.

Sponsored by: Senator(s) MILLER



A BILL

for

1 AN ACT to create W.S. 39-8-101 through 39-8-107 relating  
 2 to taxation and revenue; providing for the creation of  
 3 capital resource companies to make qualified investments  
 4 in domestic Wyoming companies as specified; providing def-  
 5 initions; providing a severance tax credit as specified;  
 6 providing for the organization and certification of capi-  
 7 tal resource companies as specified; providing for admin-  
 8 istration, oversight and auditing as specified; providing  
 9 for annual reports; and providing for an effective date.

10 Be It Enacted by the Legislature of the State of Wyoming:

11 Section 1. W.S. 39-8-101 through 39-8-107 are created  
 12 to read:

1

## CHAPTER 8

2

## CAPITAL RESOURCE COMPANIES

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4

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39-8-101. Short title. This act shall be known and may be cited as the "Wyoming Capital Resource Company Act."

6

39-8-102. Definitions.

7

(a) As used in this act:

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(i) "Capital resource company" means a partnership, or its successor, created pursuant to this act for the public purposes described herein;

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(ii) "Director" means the director of the department of revenue;

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(iii) "Person" means an individual, corporation, partnership, limited partnership, association, joint stock company, trust, unincorporated organization or any similar entity;

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(iv) "Qualified investment" means investment in original debt or equity securities issued by a domestic Wyoming company but shall not include:

- 1 (A) Government guaranteed loans;
- 2 (B) Short-term debt or equity securities;
- 3 (C) Debt or equity securities issued by a  
4 Wyoming issuer who has already received five million dol-  
5 lars (\$5,000,000.00) from a capital resource company;
- 6 (D) Debt or equity securities of any issuer  
7 whose business is real estate development, retail sales,  
8 public utility or financial intermediary (stock brokerage  
9 or bank); or
- 10 (E) Investment which exceeds twenty-five  
11 percent (25%) of the capital resource company's capital  
12 into enterprises which are directly or indirectly con-  
13 nected to the extraction of mineral resources.
- 14 (v) "This act" means W.S. 39-8-101 through  
15 39-8-107.
- 16 39-8-103. Capital resource company.
- 17 (a) Any mineral producer who is liable to pay any  
18 severance tax imposed by W.S. 39-6-302, may form a capital  
19 resource company with any other mineral producer who is  
20 liable to pay any severance tax in this state. The capi-

1     tal resource company shall be formed as a limited partner-  
2     ship under the Uniform Limited Partnership Act, W.S.  
3     17-14-201 through 17-14-1104.

4           (b) The certificate required to be filed by W.S.  
5     17-14-301 shall be submitted to the director who shall  
6     determine whether it complies with the provisions of this  
7     act and other provisions of law. If he so determines, he  
8     shall then endorse his approval thereon and the certifi-  
9     cate shall be filed with the secretary of state at which  
10    time the capital resource company shall be deemed to be  
11    organized.

12           (c) Upon the organization of the capital resource  
13    company as provided in this act and throughout the exis-  
14    tence of the company, the terms of the limited partnership  
15    agreement shall at all times be consistent with the cer-  
16    tificate and this act, provided, however, that amendments  
17    to the certificate may be submitted to the director for  
18    his approval as provided in the case of the original cer-  
19    tificate, pursuant to subsection (b) of this section which  
20    shall after such approval, be filed with the secretary of  
21    state. If the partners elect to continue the capital  
22    resource company beyond the life of this act, submission  
23    to and approval by the director shall not be required

1 prior to the filing of any amended certificate with the  
2 secretary of state.

3 (d) In any case of conflict between the certificate,  
4 the limited partnership agreement or the Uniform Limited  
5 Partnership Act, W.S. 17-14-201 through 17-14-1104, and  
6 any provision of this act or amendments thereto, this act  
7 shall control.

8 (e) Notwithstanding any other provision of this act,  
9 the return to partners of their aggregate cumulative  
10 investment and the return permitted on the investment  
11 shall be as specified in this act as in effect at the time  
12 the investment is made in the partnership and shall be for  
13 all purposes a matter of private contract between the cap-  
14 ital resource company and its partners and not subject to  
15 subsequent statutory amendment.

16 39-8-104. Capital resource company; tax credit. Based  
17 on mineral production on or after the effective date of  
18 this act, any qualified capital resource company shall  
19 receive an annual credit as provided in this section  
20 against any severance tax imposed on mineral production by  
21 W.S. 39-6-302(b). The amount of the credit shall be equal  
22 to fifty percent (50%) of the total qualified annual

1 investment pursuant to this act in accordance with rules  
2 and regulations promulgated by the director. The tax  
3 credit allowed by this section shall expire on January 1,  
4 1997 and no mineral production on or after January 1, 1997  
5 shall qualify for the tax credit. The total credit autho-  
6 rized under this section for all taxpayers during any cal-  
7 endar year shall be one million seven hundred thousand  
8 dollars (\$1,700,000.00), and no additional credit is  
9 authorized or shall be granted once that total credit  
10 amount has been granted during any calendar year. The  
11 credit shall be granted to qualifying applicants in the  
12 order applications are received.

13 39-8-105. Restrictions and limitations contained in  
14 certificate.

15 (a) The certificate referred to in W.S. 39-8-103(b)  
16 shall contain the following specific provisions, restric-  
17 tions and limitations:

18 (i) The character of the partnership business  
19 shall consist of the investment and reinvestment of part-  
20 nership assets exclusively in debt and equity securities  
21 conforming to the investment criteria set forth in this  
22 act;

1           (ii) Funds shall be provided to the partnership  
2 only in cash, and the amount so provided by each partner  
3 in the partner's capacity as a general partner shall be  
4 stated separately from any amounts provided by the partner  
5 as a limited partner;

6           (iii) At least twenty-five percent (25%) of the  
7 capital funds of the partnership shall be provided by min-  
8 eral producers liable to pay any severance tax imposed by  
9 W.S. 39-6-302 acting in their capacity as general part-  
10 ners, the balance shall be provided by the companies in  
11 their capacity as limited partners;

12           (iv) No distribution constituting a return of  
13 capital contributed by a person as a general partner shall  
14 be made prior to the filing of the certificate;

15           (v) The general partners may from time to time  
16 admit additional mineral producers as partners;

17           (vi) Upon terms and conditions necessary to  
18 assure compliance with the public purposes of this act,  
19 the capital resource company may form one (1) or more  
20 wholly owned subsidiaries through which funds of the capi-  
21 tal resource company may be invested, provided, however,  
22 that the subsidiary shall be subject to all appropriate

1 provisions of this act consistent, in the case of any sub-  
2 sidiary which is a small business investment company, with  
3 requirements of federal law;

4 (vii) With the prior written approval of the  
5 director and upon the terms and conditions as may be  
6 deemed necessary to assure compliance with the public pur-  
7 poses of this act, to assure the continuation of the capi-  
8 tal resource company and to assure the continuation of the  
9 investment policies and restrictions set forth in this  
10 act, the capital resource company may incorporate under  
11 the laws of this state.

12 39-8-106. Inspection and examination by director;  
13 procedure to determine questionable qualified investment.

14 (a) The director of the department of audit shall  
15 have the power to inspect and examine the affairs of the  
16 capital resource company, and to require statements and  
17 reports he deems necessary, to determine its financial  
18 condition, its ability to fulfill its obligations and  
19 whether it is in compliance with this act. The capital  
20 resource company shall pay the charges incurred in the  
21 examination including the expenses of the director or his  
22 examiners and the expenses and compensation of any disin-

1     terested experts which the director shall reasonably deem  
2     advisable to complete his examination. The director or  
3     the person authorized by him to make examinations provided  
4     for by this section shall have free access to all of the  
5     assets of the capital resource company for purpose of ver-  
6     ification and to all the books and papers relating to its  
7     business. The director or the person authorized by him  
8     may summon and examine under oath any person who, he  
9     believes, has knowledge of the affairs, transactions or  
10    circumstances being examined. The director may apply to  
11    the district court for an order compelling compliance  
12    whenever any person without justifiable cause neglects  
13    upon due summons to appear or testify before the director  
14    or his authorized representative, or whenever any person  
15    unlawfully obstructs the director or his representative in  
16    making examinations.

17           (b) If the director of the department of audit, upon  
18    his examination of the capital resource company as autho-  
19    rized by subsection (a) of this section, has reasonable  
20    cause to believe that any investment reported by the capi-  
21    tal resource company as a qualified investment as defined  
22    in this act is in fact not properly characterized as a  
23    qualified investment, he may hold a public hearing, con-

1 ducted in accordance with the provisions of the Wyoming  
2 Administrative Procedure Act, W.S. 16-3-101 through  
3 16-3-115, to determine whether the investment is a quali-  
4 fied investment. Any action brought by the director to  
5 determine the status of an investment as a qualified  
6 investment shall be commenced not later than six (6)  
7 months following notice that the investment may not be  
8 qualified. Upon a final determination, which shall be the  
9 later of the director's order or a final judicial determi-  
10 nation, that an investment is not a qualified investment,  
11 the following remedial action shall be taken:

12 (i) The director of the department of audit  
13 shall promptly notify the director of the department of  
14 revenue. The director of the department of revenue shall  
15 promptly proceed to recover from each partner of the capi-  
16 tal resource company an amount equal to the total tax  
17 credit specified in W.S. 39-8-104 which the partner has  
18 received in respect to any investment so determined not to  
19 be qualified, and shall subtract the amount of the invest-  
20 ment from the sum of the aggregate of the qualified  
21 investments made by the capital resource company, pro-  
22 vided, however, that any final determination shall affect  
23 the reduction in the rate of additional severance tax pay-

1     able only in taxable years subsequent to the year in which  
2     the final determination was made;

3             (ii) The capital resource company shall dispose  
4     of any investment finally determined not to be a qualified  
5     investment to one (1) or more partners of the capital  
6     resource company or to any outside party within a reason-  
7     able time following a final determination, or, within  
8     ninety (90) days of the final determination, the partners  
9     shall make additional partnership capital contributions to  
10    the capital resource company equal to the face amount of  
11    outstanding debt and the cost of all equity securities  
12    involved. In the event of any disposition, to the extent  
13    that the amount of funds received by the capital resource  
14    company is less than the face amount of all outstanding  
15    debt and the cost of all equity securities involved, the  
16    difference shall be restored to the capital resource com-  
17    pany by the partners as additional partnership capital  
18    contributions within ninety (90) days of the disposition.  
19    No final disposition, nor any obligation of the partners  
20    to make additional partnership capital contributions,  
21    shall have any effect in respect to any other section of  
22    this act. Notwithstanding and without affecting any other  
23    provision of this act, any investment finally determined

1 not to be a qualified investment as to which additional  
2 capital contributions have been made may be distributed by  
3 the capital resource company to the partners at any time.

4 (c) The director of the department of revenue may  
5 issue rules and regulations as he deems necessary to  
6 assist him in carrying out his duties under this section.

7 (d) At the request of the director of the department  
8 of audit or the director of the department of revenue, the  
9 attorney general shall maintain and prosecute an action  
10 against the capital resource company, its officers, direc-  
11 tors, partners, trustees or agents, for the purpose of  
12 obtaining an injunction restraining any person from doing  
13 any acts in violation of the provisions of this act or any  
14 lawful orders of the director.

15 (e) Any finding, ruling, order or decision under  
16 authority of this section shall be subject to review in  
17 district court pursuant to the Wyoming Administrative Pro-  
18 cedure Act, W.S. 16-3-101 through 16-3-115. The filing of  
19 an appeal shall act as a stay of any finding, ruling,  
20 order or decision unless the court shall determine other-  
21 wise.

22 39-8-107. Annual report.

1           (a) Any qualified capital resource company shall file  
2 an annual report to the governor, legislature and the  
3 department of revenue not later than March 1 following  
4 each taxable year which shall include the following infor-  
5 mation:

6           (i) For the years 1994 to 1996, inclusive, the  
7 total amount of partnership capital contributions made in  
8 the capital resource company during the year and the  
9 aggregate cumulative investment in the capital resource  
10 company as of December 31;

11           (ii) For the initial cost of all qualified  
12 investments made by the capital resource company as of  
13 December 31;

14           (iii) For all years during which the capital  
15 resource company is subject to the provisions of this act,  
16 the cost of equity securities and the outstanding princi-  
17 pal balance of all debt securities which constitute quali-  
18 fied investments of the capital resource company as of  
19 December 31 and the proportionate share of each partner of  
20 the capital resource company as of that date;

21           (iv) The number of direct jobs reasonably  
22 expected to be created or maintained as a result of the

1 qualified investments as defined in this act and not pre-  
2 viously reported pursuant to this section. The capital  
3 resource company shall supply the department with any  
4 additional information relative to direct jobs which the  
5 department deems necessary.

6 Section 2. This act is effective immediately upon  
7 completion of all acts necessary for a bill to become law  
8 as provided by Article 4, Section 8 of the Wyoming Consti-  
9 tution.

10

(END)

FISCAL NOTE

Fiscal impact is undeterminable due to insufficient time to complete the fiscal note process.

SF 80

THE LEGISLATURE OF THE STATE OF WYOMING

Senate

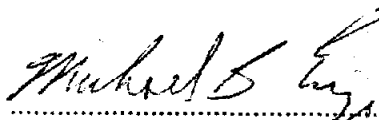
Cheyenne, March 7, 1994

Mr. President:

Your Committee No. <sup>3</sup> on REVENUE  
~~SF~~ to whom was referred ~~0002~~  
SF No. 0080

respectfully reports same back to the Senate with the recommendation that  
without recommendation.

AYES: Senators Enzi, Applegate, Cubin, Maldonado, Peck



MICHAEL B. ENZI

Chairman