

JAN 25 2006

S.B. NO. 2547

A BILL FOR AN ACT

RELATING TO CAPITAL INVESTMENTS.

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

1 SECTION 1. The legislature finds that a shortage of
2 venture capital resources is impairing the growth of commerce in
3 the State. According to *A Turning Point in Capital Formation,*
4 *Assessing Hawaii's Strategic Options* published by Enterprise
5 Honolulu, nearly sixty per cent of Hawaii's small growth
6 businesses in 2003 anticipated an increase in sales and required
7 capital investments to meet its full potential. In 2003, Hawaii
8 ranked only forty-first in the nation for venture capital
9 activity. The capital investment shortage is undermining
10 financial growth, decreasing the rate of return that local
11 venture capitalists receive, and forcing local entrepreneurs to
12 leave the State and find capital investments elsewhere.

13 In 2004, the legislature made significant advances in the
14 capital formation for Hawaii's emerging technology firms and
15 expansion-oriented companies through Act 215, Session Laws of
16 Hawaii 2004. The Hawaii strategic development corporation was
17 authorized to use tax credits issued from the State and transfer
18 them to taxpayers to reduce their tax liability. Additionally,



1 the corporation was authorized to solicit investment plans from
2 investment groups that will generate and deploy investment
3 capital and resources in the State.

4 The purpose of this Act is to:

- 5 (1) Increase the total amount of tax credits to
- 6 \$120,000,000;
- 7 (2) Add insurance premium taxes to the list of taxes
- 8 imposed on a taxpayer that can be reduced by a tax
- 9 credit;
- 10 (3) Ensure that the credits will be invested in Hawaii
- 11 companies; and
- 12 (4) Authorize the corporation to use refundable credits to
- 13 support technology industry development in Hawaii.

14 SECTION 2. Section 211G-1, Hawaii Revised Statutes, is
15 amended by amending the definition of "tax credits" to read as
16 follows:

17 "Tax credits" means tax credits issued or transferred
18 pursuant to this chapter and available against liabilities
19 imposed [by] under chapter 235 [~~o~~], 241[-], or 431."

20 SECTION 3. Section 211G-1, Hawaii Revised Statutes, is
21 amended by amending the definition of "taxpayer" to read as
22 follows:



1 "Taxpayer" means a person subject to a tax imposed [by]
2 under chapter 235 [~~or~~], 241 [-], or 431."

3 SECTION 4. Section 211G-12, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[+]~~ §211G-12 [~~+~~] **Tax credits.** (a) The State shall issue
6 tax credits to the corporation that may be transferred or
7 otherwise used to reduce the tax liability of any taxpayer
8 pursuant to chapter 235 [~~or~~], 241 [-], or 431. The total amount
9 of tax credits that may be issued, and which may be transferred
10 pursuant to this chapter by the corporation is [~~\$36,000,000~~
11 \$120,000,000. Upon compliance with subsection (b), the credits
12 shall be freely transferable by the corporation to transferees
13 and by transferees to subsequent transferees; however, the tax
14 credits so transferred by the corporation shall not be
15 exercisable before July 1, 2005, nor after July 1, 2030. The
16 corporation shall not transfer tax credits except in conjunction
17 with a legitimate call on a corporation guarantee. The
18 corporation shall immediately notify the president of the
19 senate, the speaker of the house of representatives, and the
20 governor in writing if any tax credit is transferred by the
21 corporation in conjunction with a legitimate call on a
22 corporation guarantee; provided that the corporation shall not



1 be required to make that notification for transfers to
2 subsequent transferees.

3 (b) Subject to the [~~annual~~] authorization by the
4 legislature, the corporation may transfer tax credits under this
5 section up to the annual amount allowed under subsection (c).
6 Legislative authorization for the tax credits shall be by a
7 separate legislative act.

8 (c) The corporation shall determine the amount of
9 individual tax credits to be transferred pursuant to this
10 chapter and may negotiate for the sale of those credits subject
11 only to the limits imposed by this chapter. The corporation
12 shall limit the transfer of tax credits that may be claimed and
13 used to reduce the tax otherwise imposed [~~by~~] under chapter 235
14 [~~or~~], 241, or 431 for one fiscal year (including any tax credits
15 that are carried over by a taxpayer from a prior fiscal year and
16 used to reduce taxes otherwise imposed in the current fiscal
17 year, as permitted in subsection (g)) to not more than an
18 aggregate total of [~~\$12,000,000~~] \$20,000,000 per fiscal year.
19 The board shall clearly indicate on the face of the certificate
20 or other document transferring the tax credit the principal
21 amount of the tax credit and the taxable year or years for which
22 the credit may be claimed.



1 (d) The corporation, in conjunction with the department of
2 taxation, shall develop a system for registration of any tax
3 credits issued or transferred pursuant to this chapter and a
4 system of certificates that permits verification that any tax
5 credit claimed upon a tax return is validly issued, properly
6 taken in the year of claim, and that any transfers of the tax
7 credit are made in accordance with this chapter.

8 (e) The corporation may pay a fee and provide other
9 consideration in connection with the purchase by the corporation
10 of a put option or other agreement pursuant to which a transfer
11 of tax credits authorized by this chapter may be made.

12 (f) The tax credits issued or transferred pursuant to this
13 chapter, upon election by the taxpayer at time of use, shall be
14 treated as a payment or prepayment in lieu of taxes imposed
15 under chapter 235 [~~or~~], 241[-], or 431. Tax credits used
16 pursuant to this chapter shall be claimed as a payment of tax or
17 estimated tax for the purposes of chapter 235 [~~or~~], 241[-], or
18 431.

19 (g) If the tax credits under this section exceed the
20 taxpayer's income tax liability under chapter 235 [~~or~~], 241, or
21 431 for any taxable year, or for any other reason is not claimed
22 by a taxpayer in whole or in part in any taxable year, the

1 excess of the tax credit over liability[, or the amount of the
2 unclaimed tax credit, as the case may be, may be carried over
3 and used as a credit against the taxpayer's income tax liability
4 in any subsequent year until exhausted,] shall be refunded to
5 the taxpayer subject to:

6 (1) The deadline for the exercise of tax credits imposed
7 by subsection (a); and

8 (2) The monetary limit imposed [by] under subsection (c)."

9 SECTION 5. Section 211G-13, Hawaii Revised Statutes, is
10 amended to read as follows:

11 " [{}]**§211G-13 [{}]** **Investment of capital.** (a) The
12 corporation may solicit investment plans from investor groups
13 for the investment of capital in accordance with this chapter.
14 The corporation shall establish criteria for the selection of
15 persons, firms, corporations, or other entities. The criteria
16 shall include the applicant's level of experience, quality of
17 management, investment philosophy and process, probability of
18 success in fundraising, plan for achieving the purposes of this
19 chapter, and such other investment criteria as may be used in
20 professional portfolio management that the corporation deems
21 appropriate. If the corporation decides to engage one or more
22 investor groups to deploy or generate capital, it shall consider



1 and select one or more investment plans and investor groups that
2 the corporation deems qualified to:

- 3 (1) Generate capital for investment with the most
4 effective and efficient use of the guarantee;
- 5 (2) Invest the capital in private seed and venture capital
6 entities in a manner mobilizing a wide variety of
7 equity and near-equity investments in ventures
8 promoting the economic development of the State; and
- 9 (3) Help build a significant, fiscally strong, and
10 permanent resource to serve the objectives expressed
11 in this chapter.

12 An investor group engaged by the corporation shall have a
13 manager who is experienced in design and implementation, as well
14 as the management of seed and venture capital investment
15 programs and in capital formation. The corporation may remove
16 and replace any investor group that has been engaged and effect
17 the assignment of assets, liabilities, guarantees, and other
18 contracts of this program to a new investor group, subject to
19 such terms and conditions as may be set forth in the terms of
20 engagement.

21 (b) With legislative approval pursuant to section 211G-14,
22 the corporation may extend one or more guarantees and secure the

1 performance of such guarantees in the form of a put option, as
2 well as other arrangements selected by the corporation. Without
3 limiting the foregoing:

4 (1) The corporation may guarantee loans, lines of credit,
5 and other indebtedness and equity investments and may
6 arrange for, pledge, and assign put options, as well
7 as other agreements to purchase tax credits on such
8 terms as the board may approve from time to time, in
9 order to generate funds to deploy in a manner
10 consistent with this chapter;

11 (2) The guarantees of loans, lines of credit, and other
12 indebtedness may extend up to the principal amount
13 plus interest over the term of the guarantee at a rate
14 set by board resolution from time to time, a guarantee
15 of a loan, lines of credit, or other indebtedness in a
16 manner consistent with this chapter; and

17 (3) Guarantees of equity capital may extend up to the
18 amount of the investment plus a rate of return set by
19 board resolution from time to time in a manner
20 consistent with this chapter.

21 Guarantees, in whatever form negotiated by the corporation,
22 may be made for any period of time, but no term shall expire



1 prior to January 1, 2006. The corporation may charge a
2 reasonable fee for costs and the fair compensation of risks
3 associated with its guarantee. Proceeds from the sale of any
4 tax credits may be used to satisfy the contractual guarantee
5 obligation of the corporation. The corporation may contract
6 freely to protect the interest of the State.

7 (c) If the corporation purchases any security pursuant to
8 an agreement with an investor group, the corporation shall
9 acquire the securities and may invest, manage, transfer, or
10 dispose of the securities in accordance with policies for the
11 management of assets adopted by the corporation.

12 (d) The corporation may make any contract, execute any
13 document, charge reasonable fees for services rendered, perform
14 any act or enter into any financial or other transaction
15 necessary to carry out its mission. The corporation may employ
16 necessary staff as may be required for the proper implementation
17 of this chapter, the management of its assets, or the
18 performance of any function authorized or required by this
19 chapter necessary for the accomplishment of any such function.
20 Staff shall be selected by the corporation based upon
21 outstanding knowledge and leadership in the field for which the
22 person performs services for the board.



1 (e) In carrying out the mission of the corporation, as
2 authorized in this chapter, neither the corporation nor its
3 officers, board members, or employees shall be considered to be
4 broker-dealers, agents, investment advisors, or investment
5 adviser representatives under chapter 485. The tax credits
6 issued or transferred pursuant to this chapter shall not be
7 considered securities under chapter 485.

8 (f) Funds raised or arranged by the corporation pursuant
9 to this chapter shall be invested in seed capital and venture
10 capital investments, as such terms are defined in chapter 211F,
11 which, to the extent consistent with this chapter, shall be
12 governed by applicable provisions of chapter 211F.

13 (g) The guarantees extended by the fund shall be payable
14 solely from revenues of the fund and shall be secured solely by
15 those revenues and by the pledges and assignments authorized by
16 this chapter. No holders of guarantees issued under this
17 chapter shall have a right to compel any exercise of the taxing
18 power of the State to pay the guarantees and no moneys other
19 than the revenues of the fund shall be applied to payment
20 thereof. Each guarantee issued under this chapter shall recite
21 in substance that the guarantee is not a general obligation of
22 the State and is payable solely from revenues pledged to the



1 payment thereof, and that such guarantee is not secured directly
2 or indirectly by the full faith and credit or the general credit
3 of the State or by any revenues or taxes of the State other than
4 the revenues specifically pledged thereto.

5 (h) Financial commitments with private financial
6 investment funds shall be made by the corporation on the
7 condition that the private fund shall cause investments to be
8 made in Hawaii companies in amounts at least equal to state
9 participation.

10 (i) \$250,000 of the amount raised by the corporation using
11 the refundable credits under this program shall be used by the
12 corporation to support technology industry trade groups in their
13 technology development efforts in Hawaii."

14 SECTION 6. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.
17

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18



SB. NO. 2547

Report Title:

State Private Investment Fund

Description:

Increases the total amount of issued and transferable tax credits. Adds insurance premium taxes to the list of applicable taxes. Ensures that tax credits will be invested in Hawaii companies. Authorizes the corporation to use refundable credits to support technology industry development efforts.

