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# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1           SECTION 1. Section 211F-3, Hawaii Revised Statutes, is  
2 amended as follows:

3           1. By amending subsection (a) to read:

4           "(a) The governing body of the corporation shall be a  
5 board of directors consisting of twelve members to be appointed  
6 by the governor for staggered terms pursuant to section 26-34 as  
7 follows:

8           (1) Three to be appointed directly by the governor;

9           (2) Three to be appointed from a list of nominees from the  
10           general public submitted by the president of the  
11           senate; and

12           (3) Three to be appointed from a list of nominees from the  
13           general public submitted by the speaker of the house  
14           of representatives,

15 and shall be selected on the basis of their knowledge, skill,  
16 and experience in the scientific, business, or financial fields.

17 Members of the board shall have knowledge or experience in  
18 venture or seed capital, or investment funds. The director of



1 business, economic development, and tourism, a member from the  
2 board of the high technology development corporation appointed  
3 by the governor, and a member from the board of the natural  
4 energy laboratory of Hawaii authority appointed by the governor,  
5 or their designated representatives, shall serve as ex officio  
6 voting members. Not more than two of the six members of the  
7 board appointed from the lists of nominees submitted by the  
8 president of the senate and the speaker of the house of  
9 representatives, during their term of office on the board, shall  
10 be employees of the State. All appointed members of the board  
11 shall continue in office until their respective successors have  
12 been appointed."

13 2. By amending subsection (e) to read as follows:

14 "(e) A board member shall not participate in any  
15 corporation decision to invest in, purchase from, sell to,  
16 borrow from, loan to, contract with, or otherwise deal with any  
17 person with whom or entity in which the board member has a  
18 substantial financial interest. In addition, no board member  
19 shall vote at any board meeting where the board member has any  
20 other conflict of interest. The board member shall disclose the  
21 conflict of interest, in its general nature, prior to the vote



1 on that matter. The minutes of the meeting shall record the  
2 substance of the disclosure of the conflict of interest."

3 SECTION 2. Section 211G-12, Hawaii Revised Statutes, is  
4 amended as follows:

5 1. By amending subsections (a), (b), and (c) to read:

6 "(a) The State shall issue tax credits to the corporation  
7 that may be transferred or otherwise used to reduce the tax  
8 liability of any taxpayer pursuant to chapter 235 [~~ex~~], 241, or  
9 431:7-202. The total amount of tax credits that may be issued,  
10 and which may be transferred pursuant to this chapter by the  
11 corporation is [~~\$36,000,000~~] \_\_\_\_\_. Upon compliance with  
12 subsection (b), the credits shall be freely transferable by the  
13 corporation to transferees and by transferees to subsequent  
14 transferees; however, the tax credits so transferred by the  
15 corporation shall not be exercisable before [~~July 1, 2005~~]  
16 \_\_\_\_\_, nor after July 1, 2030. The corporation shall not  
17 transfer tax credits except in conjunction with a legitimate  
18 call on a corporation guarantee. The corporation shall  
19 immediately notify the president of the senate, the speaker of  
20 the house of representatives, and the governor in writing if any  
21 tax credit is transferred by the corporation in conjunction with  
22 a legitimate call on a corporation guarantee; provided that the



1 corporation shall not be required to make that notification for  
2 transfers to subsequent transferees.

3 (b) [~~Subject to the annual authorization by the~~  
4 ~~legislature, the~~] The corporation may transfer tax credits under  
5 this section up to the annual amount allowed under subsection  
6 (c). [~~Legislative authorization for the tax credits shall be by~~  
7 ~~a 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 chapter 235 [~~or~~],  
14 241, or 431:7-202 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~~] \_\_\_\_\_ 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           2. By amending subsections (f) and (g) to read:

2           "(f) The tax credits issued or transferred pursuant to  
3 this chapter, upon election by the taxpayer at time of use,  
4 shall be treated as a payment or prepayment in lieu of taxes  
5 imposed under chapter 235 [~~or~~], 241, or 431:7-202. Tax credits  
6 used pursuant to this chapter shall be claimed as a payment of  
7 tax or estimated tax for the purposes of chapter 235 [~~or~~], 241,  
8 or 431:7-202.

9           (g) If the tax credits under this section exceed the  
10 taxpayer's income tax liability under chapter 235 [~~or~~], 241, or  
11 431:7-202 for any taxable year, or for any other reason is not  
12 claimed by a taxpayer in whole or in part in any taxable year,  
13 the excess of the tax credit over liability, or the amount of  
14 the unclaimed tax credit, as the case may be, may be carried  
15 over and used as a credit against the taxpayer's income tax  
16 liability in any subsequent year until exhausted, subject to:

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

19           (2) The monetary limit imposed by subsection (c)."

20           SECTION 3. Section 211G-13, Hawaii Revised Statutes, is  
21 amended as follows:

22           1. By amending subsections (a) and (b) to read:



1           "(a) The corporation may solicit investment plans from  
2 investor groups for the investment of capital in accordance with  
3 this chapter. The corporation shall establish criteria based on  
4 best practices for the selection of persons, firms,  
5 corporations, or other entities. The criteria shall include the  
6 applicant's level of experience, quality of management,  
7 investment philosophy and process, probability of success in  
8 fundraising, plan for achieving the purposes of this chapter,  
9 and such other investment criteria as may be used in  
10 professional portfolio management that the corporation deems  
11 appropriate. If the corporation decides to engage one or more  
12 investor groups to deploy or generate capital, it shall consider  
13 and select one or more investment plans and investor groups that  
14 the corporation deems qualified to:

- 15           (1) Generate capital for investment with the most  
16                 effective and efficient use of the guarantee;
- 17           (2) Invest the capital in private seed and venture capital  
18                 entities in a manner mobilizing a wide variety of  
19                 equity and near-equity investments in ventures  
20                 promoting the economic development of the State; and



1           (3) Help build a significant, fiscally strong, and  
2           permanent resource to serve the objectives expressed  
3           in this chapter.

4           An investor group engaged by the corporation shall have a  
5           manager who is experienced in design and implementation, as well  
6           as the management of seed and venture capital investment  
7           programs and in capital formation. The corporation may remove  
8           and replace any investor group that has been engaged and effect  
9           the assignment of assets, liabilities, guarantees, and other  
10          contracts of this program to a new investor group, subject to  
11          such terms and conditions as may be set forth in the terms of  
12          engagement.

13          (b) With legislative approval pursuant to section 211G-14,  
14          the corporation may extend one or more guarantees and secure the  
15          performance of such guarantees in the form of a put option, as  
16          well as other arrangements selected by the corporation. Without  
17          limiting the foregoing:

18          (1) The corporation may guarantee loans, lines of credit,  
19          and other indebtedness and equity investments and may  
20          arrange for, pledge, and assign put options, as well  
21          as other agreements to purchase tax credits on such  
22          terms as the board may approve from time to time, [~~in~~



1           ~~order~~] to generate funds to deploy in a manner  
2           consistent with this chapter[+]. The corporation  
3           shall not guarantee loans, lines of credit, or equity  
4           capital that exceed the tax credit limit;

5           (2) The guarantees of loans, lines of credit, and other  
6           indebtedness may extend up to the principal amount  
7           plus interest over the term of the guarantee at a rate  
8           set by board resolution from time to time, a guarantee  
9           of a loan, lines of credit, or other indebtedness in a  
10          manner consistent with this chapter; and

11          (3) Guarantees of equity capital may extend up to the  
12          amount of the investment plus a rate of return set by  
13          board resolution from time to time in a manner  
14          consistent with this chapter.

15          Guarantees, in whatever form negotiated by the corporation,  
16          may be made for any period of time, but no term shall expire  
17          prior to January 1, 2006. The corporation may charge a  
18          reasonable fee for costs and the fair compensation of risks  
19          associated with its guarantee. Proceeds from the sale of any  
20          tax credits may be used to satisfy the contractual guarantee  
21          obligation of the corporation. The corporation may contract  
22          freely to protect the interest of the State."





1 2. By amending subsection (d) to read:

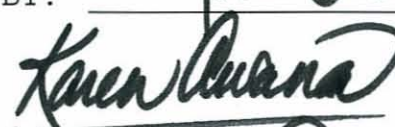


2 "(d) The corporation may make any contract, execute any  
3 document, charge reasonable fees for services rendered, perform  
4 any act or enter into any financial or other transaction  
5 necessary to carry out its mission. The corporation may employ  
6 a discretionary investment manager and other necessary staff as  
7 may be required for the proper implementation of this chapter,  
8 the management of its assets, or the performance of any function  
9 authorized or required by this chapter necessary for the  
10 accomplishment of any such function. Staff shall be selected by  
11 the corporation based upon outstanding knowledge and leadership  
12 in the field for which the person performs services for the  
13 board."

14 SECTION 4. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16 SECTION 5. This Act shall take effect upon its approval.

17 

INTRODUCED BY: 

**Report Title:**

State Private Investment Fund

**Description:**

Amends the State Private Investment Fund by among other things authorizing the Hawaii Strategic Development Corporation to hire a discretionary investment manager; limiting the guarantee of loans, lines of credit, and equity capital to the tax credit limit; removing the annual legislative authorization requirement; and requiring board members to have knowledge or experience in venture or seed capital, or investment funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

