

JAN 21 2010

---

---

# A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

1           SECTION 1. Following the 2009 legislative session, the  
2 chairs of the Senate Committee on Economic Development and  
3 Technology and the House Committee on Economic Revitalization,  
4 Business, and Military Affairs convened a technology caucus work  
5 group to bring together industry stakeholders and interested  
6 policymakers to develop recommendations for legislation to  
7 enhance Hawaii's struggling economy. The work group provided a  
8 forum to review the current status of Hawaii's science and  
9 technology industry, identify state or county actions that  
10 impede long-term growth and expansion of technology companies,  
11 and develop recommendations to address these impediments. The  
12 work group also identified best practices supporting the growth  
13 and development of science and technology industries in other  
14 jurisdictions to aid in developing proposed suggestions for  
15 future legislation.

16           This Act implements the recommendations of the Technology  
17 Caucus Work Group.



1           SECTION 2. The Legislature finds that the State's past  
2 efforts to diversify Hawaii's economy are bearing fruit. A  
3 recent report on the innovation and technology sector of  
4 Hawaii's economy published in October, 2008, by the Hawaii  
5 Science and Technology Council, shows that in 2007 this sector  
6 had the same impact on Hawaii's gross state product as the  
7 accommodations industry, contributing \$3,000,000,000, or five  
8 percent of the State's \$61,000,000,000 economy. Combined public  
9 and private tech-sector employment totaled 31,106 workers,  
10 nearly a three percent increase from 2002. The average annual  
11 salary for tech workers was \$68,935 -- a salary 57 percent  
12 higher than the state average of \$43,963.

13           The heavy impact of the current recession on Hawaii's  
14 tourism industry highlights the critical need to continue  
15 efforts to broaden the State's economic base. However, the  
16 current economy is making it increasingly difficult for the  
17 State to support measures such as Act 221, a tax-credit based  
18 initiative designed to stimulate tech industry growth. In  
19 addition, questions have been raised about whether Act 221  
20 included an adequate mechanism for selecting companies to be  
21 funded, and whether the companies funded by Act 221 -- which  
22 provided funding for early-stage startups but lacked venture



1 capital resources for further company growth -- were  
2 sustainable.

3 In 2003, the State of Utah, facing its own shortage of  
4 venture capital resources and the relocation out-of-state of a  
5 number of Utah's tech companies, successfully responded by  
6 enacting the Utah Fund of Funds Program. Iowa, Michigan,  
7 Oklahoma, and Ohio each implemented similar programs to improve  
8 the capital availability within their state and as a means to  
9 generate revenue.

10 The \$300,000,000 in financing for the Utah Fund of Funds  
11 Program is invested in venture capital firms (vc firms). To  
12 ensure profitable investments and the continued success of the  
13 program the fund does not require investments in Utah companies  
14 or that vc firms be located in Utah. Instead, it invests in vc  
15 firms that are interested in looking for investment  
16 opportunities in Utah and commit their senior staff to working  
17 closely with Utah companies and entrepreneurs.

18 Financing for the Utah Fund of Funds Program was provided  
19 by a large institutional bank, and is backed by refundable,  
20 transferable, contingent tax credits approved by the Utah  
21 Legislature. The program is structured to be financially self-  
22 sustaining, with profits from investments paying back



1 financiers. Only in the case of a shortfall would the state be  
2 required to place tax credit funds into the Utah Fund of Funds.

3 To date, 28 Utah companies have received investments from  
4 funds in the Utah Fund of Funds portfolio, resulting in over  
5 1,000 high paying jobs. These companies have raised over  
6 \$385,000,000 from investors, \$135,000,000 directly from funds in  
7 the Utah Fund of Funds portfolio. Finally, over 375 Utah  
8 companies have had the opportunity to work with vc firms in the  
9 Utah Fund of Funds portfolio.

10 This Act is based on the Utah Fund of Funds model, and  
11 amends the State Private Investment Fund, Chapter 211G, Hawaii  
12 Revised Statutes, to more closely conform to key aspects of the  
13 model. Important components of this Act include:

14 (1) The deferral of State liability for the cost of the  
15 program. Program capital will be obtained from  
16 investors or a loan, and state tax credits will be  
17 used as collateral and as a guarantee of investment or  
18 loan obligations;

19 (2) The minimization of potential State liability for the  
20 program. The private-sector focus in investment is  
21 retained, allowing diversification and profitability  
22 of investments;



1 (3) The requirement that those overseeing and managing the  
2 program possess expertise in venture capital  
3 investment, investment management, and supervision of  
4 investment managers and investment funds;

5 (4) Giving State Private Investment Fund managers the  
6 flexibility to invest for profit by giving priority to  
7 investments in high quality vc firms that have  
8 demonstrated a commitment to the state;

9 (5) Ensuring that Hawaii's companies are exposed to high  
10 level managers of funds in the State Private  
11 Investment Fund portfolio and learn to become good  
12 fundraisers; and

13 (6) Using private vc firms to vet and select potentially  
14 successful businesses in which to invest.

15 The purpose of this Act is to implement the  
16 recommendations of the Technology Caucus Work Group, and  
17 increase the availability of venture capital for the State's  
18 emerging industries while minimizing State liability for program  
19 costs by, among other things:

20 (1) Amending chapter 211G, Hawaii Revised Statutes, the  
21 State Private Investment Fund, to incorporate key  
22 components of the Utah Fund of Funds model;



- 1           (2) Including insurance companies as potential investors
- 2                   along with banks, individuals, and corporations, by
- 3                   providing that the tax credits to be used by the State
- 4                   private investment fund as a guarantee, may be used to
- 5                   offset insurance premium taxes; and
- 6           (3) Providing the separate authorization of tax credits,
- 7                   including credits to be used against insurance premium
- 8                   taxes, necessary for the State Private Investment
- 9                   Fund to accomplish this purpose.

10           SECTION 3. Chapter 211G, Hawaii Revised Statutes, is

11 amended by adding six new sections to be appropriately

12 designated and to read as follows:

13           "§211G-A State private investment fund. (a) There is

14 established the State private investment fund. The State

15 private investment fund shall make investments in private seed

16 and venture capital partnerships or entities to:

- 17           (1) Encourage the availability of equity and near-equity
- 18                   capital for investment in a broad variety of venture
- 19                   capital partnerships in diversified industries, with
- 20                   an emphasis on the State's emerging high technology
- 21                   and performing arts products industries;



1        (2) Retain the private sector culture of focusing on rate  
2        of return in the investing process;  
3        (3) Secure the services of high quality managers in the  
4        venture capital industry; and  
5        (4) Enhance the venture capital culture and infrastructure  
6        in the state so as to increase venture capital  
7        investment and promote venture capital investing  
8        within the state,  
9        and accomplish the foregoing in a return-driven manner while  
10       minimizing the transfer of tax credits.

11       (b) The State private investment fund shall provide for:

12       (1) Equity interests for designated investors which  
13       provide for a scheduled rate of return and scheduled  
14       redemption; and

15       (2) Loans by or the issuance of debt obligations to  
16       investors which provide for payments of principal,  
17       interest, or interest equivalent.

18       (c) Public money shall not be invested in the State  
19       private investment fund; provided that startup costs for the  
20       State private investment fund shall be funded by the corporation  
21       for the first \$ \_\_\_\_\_, and then by the general fund for up to  
22       an additional \$ \_\_\_\_\_.



1        (d) The State private investment fund shall have all of  
2 the powers necessary to carry out its purposes and may exercise  
3 any powers of a corporation organized under the laws of the  
4 State. The State private investment fund may make any contract,  
5 execute any document, charge reasonable fees for services  
6 rendered, perform any act or enter into any financial or other  
7 transaction necessary to carry out its mission. The State  
8 private investment fund may employ necessary staff as may be  
9 required for the proper implementation of this chapter, the  
10 management of its assets, or the performance of any function  
11 authorized or required by this chapter necessary for the  
12 accomplishment of any such function. Staff shall be selected  
13 based upon outstanding knowledge and leadership in the field in  
14 which the person will be performing services.

15        (e) If the State private investment fund purchases any  
16 security pursuant to an agreement with an investor group, the  
17 fund shall acquire the securities and may invest, manage,  
18 transfer, or dispose of the securities in accordance with  
19 policies for the management of assets adopted by the State  
20 private investment fund.

21        (f) In carrying out the mission of the State private  
22 investment fund, as authorized in this chapter, neither the





1 State private investment fund, nor the officers, board members,  
2 or employees of the State private investment fund shall be  
3 considered to be broker-dealers, agents, investment advisors, or  
4 investment adviser representatives under chapter 485A. Tax  
5 credits issued or transferred pursuant to this chapter shall not  
6 be considered securities under chapter 485A.

7 §211G-B Board of directors. (a) The State private  
8 investment fund shall be governed by a board of directors  
9 consisting of six voting members as follows:

- 10 (1) Three members appointed by the board of the  
11 corporation and selected on the basis of their  
12 knowledge of, or skill and experience in, venture or  
13 seed capital investment, investment management, or  
14 supervision of investment managers and investment  
15 funds;
- 16 (2) The president of the Hawaii strategic development  
17 corporation;
- 18 (3) The chief investment officer of the employees'  
19 retirement system of the State of Hawaii; and
- 20 (4) The executive director of the State private investment  
21 fund.



1        (b) Appointed members shall serve four-year terms, may  
2 serve successive terms without limit, and shall continue in  
3 office until their respective successors have been appointed. A  
4 majority of the board members may remove a board member for  
5 cause.

6        (c) Three members shall serve as a quorum for the  
7 transaction of business.

8        (d) Members shall be subject to chapter 84.

9        §211G-C Investment capital; guarantees. (a) The State  
10 private investment fund may extend one or more guarantees and  
11 secure the performance of such guarantees in the form of a put  
12 option, as well as other arrangements selected by the State  
13 private investment fund. Without limiting the foregoing:

14        (1) To generate funds to deploy in a manner consistent  
15 with this chapter the State private investment fund  
16 may guarantee loans, lines of credit, and other  
17 indebtedness and equity investments and may arrange  
18 for, pledge, and assign put options, as well as other  
19 agreements to purchase tax credits on such terms as  
20 the board may approve from time to time;

21        (2) The guarantees of loans, lines of credit, and other  
22 indebtedness may extend up to the principal amount



1 plus interest over the term of the guarantee at a rate  
2 set by board resolution from time to time, in a manner  
3 consistent with this chapter; and

4 (3) Guarantees of equity capital may extend up to the  
5 amount of the investment plus a rate of return set by  
6 board resolution from time to time in a manner  
7 consistent with this chapter.

8 (b) Guarantees, in whatever form negotiated by the State  
9 private investment fund, may be made for any period of time, but  
10 no term shall expire prior to January 1, . The State private  
11 investment fund may charge a reasonable fee for costs and the  
12 fair compensation of risks associated with its guarantee.  
13 Proceeds from the sale of any tax credits may be used to satisfy  
14 the contractual guarantee obligation of the State private  
15 investment fund. The State private investment fund may contract  
16 freely to protect the interest of the State.

17 (c) The guarantees extended by the State private  
18 investment fund shall be payable solely from revenues of the  
19 fund and shall be secured solely by those revenues and by the  
20 pledges and assignments authorized by this chapter. No holders  
21 of guarantees issued under this chapter shall have a right to  
22 compel any exercise of the taxing power of the State to pay the



1 guarantees and no moneys other than the revenues of the State  
2 private investment fund shall be applied to payment thereof.  
3 Each guarantee issued under this chapter shall recite in  
4 substance that the guarantee is not a general obligation of the  
5 State and is payable solely from revenues pledged to the payment  
6 thereof, and that such guarantee is not secured directly or  
7 indirectly by the full faith and credit or the general credit of  
8 the State or by any revenues or taxes of the State other than  
9 the revenues specifically pledged thereto.

10 §211G-D Investments by the State private investment fund.

11 (a) Funds raised or arranged by the State private investment  
12 fund pursuant to this chapter shall be invested in seed capital  
13 and venture capital investments; provided that:

14 (1) The State private investment fund shall not make  
15 direct investments;

16 (2) No more than per cent of the investment capital of  
17 the State private investment fund shall be placed in  
18 seed capital investments;

19 (3) No more than ten per cent of the investment capital of  
20 the State private investment fund may be invested in a  
21 single fund; and



1       (4) The investment of the State private investment fund in  
2           a single fund shall not exceed twenty per cent of the  
3           total investment capital committed to that fund.

4       For the purposes of this subsection:

5       "Direct investment" means an investment in qualified  
6       securities of an enterprise to provide capital to an enterprise.

7       "Seed capital" has the same meaning as provided in section  
8       211F-1.

9       "Venture capital investment" has the same meaning as  
10       provided in section 211F-1.

11       (b) The State private investment fund shall invest funds  
12       principally in high-quality venture capital partnerships and  
13       entities:

14       (1) That have made a commitment to equity investments in  
15       businesses located within the state by agreeing to  
16       invest or cause to be invested in businesses located  
17       within the state an amount equal to or greater than  
18       the State private investment fund's commitment to  
19       their fund;

20       (2) That have committed to maintain a physical presence in  
21       the state;



1       (3) With experienced managers or management teams that  
2           have demonstrated expertise and a successful history  
3           in the investment of venture capital funds; and

4       (4) With demonstrated ability to advise and mentor  
5           entrepreneurs and facilitate follow-on investments.

6       (c) The State private investment fund shall give priority  
7       to venture capital partnerships and entities that have  
8       demonstrated:

9       (1) A commitment to the state through:

10           (A) A commitment to maintain a physical presence in  
11           the state;

12           (B) The investments they have made in Hawaii-based  
13           entities;

14           (C) The relationships they have established with  
15           Hawaii-based venture capital funds; or

16           (D) The commitment they have made to expand the reach  
17           of expertise within the state by adding  
18           additional investment areas of expertise;

19       and

20       (2) An interest in investing in businesses in the high  
21       technology or performing arts products industries.



1       The State private investment fund may waive the priorities  
2 under this subsection only if necessary to achieve the targeted  
3 investment returns required to attract investors.

4       §211G-E Confidentiality of trade secrets or the like;  
5 disclosure of financial information. Notwithstanding chapter  
6 92, 92F, or any other law to the contrary, any documents or data  
7 made or received by any member or employee of the State private  
8 investment fund to the extent that the material or data consist  
9 of trade secrets, commercial or financial information regarding  
10 the operation of any business conducted by an applicant for, or  
11 recipient of, any investment or form of assistance that the fund  
12 is empowered to render, or regarding the competitive position of  
13 that applicant in a particular field of endeavor, shall not be a  
14 public record; provided that if the State private investment  
15 fund purchases a qualified security from an applicant, the  
16 commercial and financial information, excluding confidential  
17 business information, shall be deemed to become a public record  
18 of the fund. If the information is made or received by any  
19 member or employee of the State private investment fund after  
20 the purchase of the qualified security, it shall become a public  
21 record three years from the date the information was made or  
22 received. Any discussion or consideration of trade secrets or



1 commercial or financial information, shall be held by the board,  
2 or any subcommittee of the board, in executive sessions closed  
3 to the public; provided that the purpose of any such executive  
4 session shall be set forth in the official minutes of the State  
5 private investment fund and business which is not related to  
6 that purpose shall not be transacted, nor shall any vote be  
7 taken during the executive sessions.

8 §211G-F Limitation on liability. Chapters 661 and 662 or  
9 any other law to the contrary notwithstanding, nothing in this  
10 chapter shall create an obligation, debt, claim, cause of  
11 action, claim for relief, charge, or any other liability of any  
12 kind whatsoever in favor of any person or entity, without regard  
13 to whether that person or entity receives any benefits under  
14 this chapter, against the State or its officers and employees.  
15 The State and its officers and employees shall not be liable for  
16 the results of any investment, purchase of securities, loan, or  
17 other assistance provided pursuant to this chapter. Nothing in  
18 this chapter shall be construed as authorizing any claim against  
19 the State private investment fund in excess of any note, loan,  
20 or other specific indebtedness incurred by the State private  
21 investment fund or in excess of any insurance policy acquired  
22 for the State private investment fund or its employees."





1 SECTION 4. Section 211F-3, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§211F-3 Board of directors; composition. (a) [The]  
4 Except as provided in section 211G-11, the governing body of the  
5 corporation shall be a board of directors consisting of twelve  
6 members to be appointed by the governor for staggered terms  
7 pursuant to section 26-34 as 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  
17 fields[-]; provided that three of the members appointed shall  
18 have knowledge of, or skill and experience in, venture or seed  
19 capital investment, investment management, or supervision of  
20 investment managers and investment funds. The director of  
21 business, economic development, and tourism, a member from the  
22 board of the high technology development corporation appointed



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

11 SECTION 5. Section 211G-1, Hawaii Revised Statutes, is  
12 amended as follows:

13 1. By adding the definition of "fund" to read:

14 "Fund" means the State private investment fund."

15 2. By amending the definitions of "board", "tax credits",  
16 and "taxpayer", to read as follows:

17 "Board" means the board of directors of the [corporation.]  
18 State private investment fund."

19 "Tax credits" means tax credits issued or transferred  
20 pursuant to this chapter and available against liabilities  
21 imposed by chapter 235 or 241 [-], or section 431:7-202.



1 "Taxpayer" means a person subject to a tax imposed by  
2 chapter 235 or 241 [-], or section 431:7-202."

3 SECTION 6. Section 211G-3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[+] §211G-3 [+] **Findings and purpose.** A critical shortage  
6 of seed and venture capital resources exists in the [State]  
7 state and that shortage is impairing the growth of commerce in  
8 the [~~State.~~] state. A need exists to increase the availability  
9 of venture equity capital for emerging, expanding, relocating,  
10 and restructuring enterprises in the [~~State, and an~~] state  
11 particularly those enterprises in the State's growing high  
12 technology and performing arts products industries. An increase  
13 in return-driven, venture capital investments in such  
14 enterprises in the [State] state will help to diversify the  
15 State's economic base. Accordingly, this chapter is enacted to:

16 (1) Mobilize equity and near-equity capital for investment  
17 in a broad variety of venture capital partnerships in  
18 diversified industries[+], with an emphasis on the  
19 State's emerging high technology and performing arts  
20 products industries;

21 (2) Retain the private sector culture of focusing on rate  
22 of return in the investing process;



- 1 (3) Secure the services of high quality managers in the
- 2 venture capital industry;
- 3 (4) Enhance the venture capital culture and infrastructure
- 4 in the [State] state so as to increase venture capital
- 5 investment and promote venture capital investing
- 6 within the [~~State,~~] state; and
- 7 (5) Accomplish the foregoing purposes in a return-driven
- 8 manner with the goal of minimizing any adverse impact
- 9 on state tax revenues.

10 The legislature finds that the creation of a State private  
11 investment fund, as provided under this chapter, serves an  
12 important public purpose by answering the need to increase  
13 venture capital and expand the growth of commerce in the State."

14 SECTION 7. Section 211G-4, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[+] §211G-4[+] Mission of the [~~corporation,~~] State private  
17 investment fund. The mission of the [~~corporation,~~] State  
18 private investment fund pursuant to this chapter [~~and in~~  
19 ~~addition to those set forth in chapter 211F,~~] shall be to  
20 mobilize equity and near-equity capital for investment in such a  
21 manner that will result in a significant potential to diversify  
22 and stabilize the economy of the State. [~~Notwithstanding~~



1 ~~anything to the contrary in chapter 211F or otherwise, the~~  
2 ~~corporation shall carry out the purposes, mission, and~~  
3 ~~provisions of this chapter.] "~~

4 SECTION 8. Section 211G-11, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[+] §211G-11 [+] **Business plan.** [~~To fulfill its mission as~~  
7 ~~the mobilizer of equity and near equity capital, the~~  
8 ~~implementation of this chapter by the corporation shall be~~  
9 ~~subject to the supervision of the board.] The [corporation]  
10 State private investment fund and the investment manager  
11 selected pursuant to section 211G-13 shall develop an annual  
12 business plan for the implementation of this chapter. The  
13 business plan shall be submitted to the board for its approval  
14 and shall be included in its annual report, which shall be  
15 published as provided in section 211G-15."~~

16 SECTION 9. Section 211G-12, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "[+] §211G-12 [+] **Tax credits.** (a) The State shall issue  
19 tax credits to the [corporation] State private investment fund  
20 that may be transferred or otherwise used to reduce the tax  
21 liability of any taxpayer pursuant to chapter 235 or 241[-], or  
22 section 431:7-202. The total amount of tax credits that may be



1 issued, and which may be transferred pursuant to this chapter by  
2 the [~~corporation~~] fund is [~~\$36,000,000.~~] \_\_\_\_\_.

3       **(b)** Upon compliance with subsection [~~(b)~~], (c), the tax  
4 credits issued to the State private investment fund shall be  
5 freely transferable by the [~~corporation~~] fund to transferees and  
6 by transferees to subsequent transferees; [~~however,~~] provided  
7 that the tax credits so transferred by the [~~corporation~~] fund  
8 shall not be exercisable before July 1, [~~2005,~~] \_\_\_\_\_, nor after  
9 July 1, [~~2030.~~] \_\_\_\_\_. The [~~corporation~~] State private  
10 investment fund shall not transfer tax credits except in  
11 conjunction with a legitimate call on a [~~corporation~~] fund  
12 guarantee. The [~~corporation~~] State private investment fund  
13 shall immediately notify the president of the senate, the  
14 speaker of the house of representatives, and the governor in  
15 writing if any tax credit is transferred by the [~~corporation~~]  
16 fund in conjunction with a legitimate call on a [~~corporation~~]  
17 fund guarantee; provided that the [~~corporation~~] State private  
18 investment fund shall not be required to make that notification  
19 for transfers to subsequent transferees.

20       **(c)** Subject to the annual authorization by the  
21 legislature, the [~~corporation~~] State private investment fund may  
22 transfer tax credits under this section up to the annual amount



1 allowed under subsection ~~[(e)-]~~ (d). Legislative authorization  
2 for the tax credits shall be by a separate legislative act.

3 ~~[(e)-]~~ (d) The ~~[corporation]~~ State private investment fund  
4 shall determine the amount of individual tax credits to be  
5 transferred pursuant to this chapter and may negotiate for the  
6 sale of those credits subject only to the limits imposed by this  
7 chapter. The ~~[corporation]~~ State private investment fund shall  
8 limit the transfer of tax credits that may be claimed and used  
9 to reduce the tax otherwise imposed by chapter 235 or 241, or  
10 section 431:7-202 for one fiscal year ~~[(including any tax~~  
11 ~~credits that are carried over by a taxpayer from a prior fiscal~~  
12 ~~year and used to reduce taxes otherwise imposed in the current~~  
13 ~~fiscal year, as permitted in subsection (g)-)]~~ to not more than  
14 an aggregate total of ~~[\$12,000,000]~~ \_\_\_\_\_ per fiscal year.  
15 The board shall clearly indicate on the face of the certificate  
16 or other document transferring the tax credit the principal  
17 amount of the tax credit and the taxable year or years for which  
18 the credit may be claimed.

19 ~~[(d)-]~~ (e) The ~~[corporation,]~~ State private investment  
20 fund, in conjunction with the department of taxation, shall  
21 develop a system for registration of any tax credits issued or  
22 transferred pursuant to this chapter and a system of



1 certificates that permits verification that any tax credit  
2 claimed upon a tax return is validly issued, properly taken in  
3 the year of claim, and that any transfers of the tax credit are  
4 made in accordance with this chapter.

5 ~~[(e)]~~ (f) The ~~[corporation]~~ State private investment fund  
6 may pay a fee and provide other consideration in connection with  
7 the purchase by the ~~[corporation]~~ fund of a put option or other  
8 agreement pursuant to which a transfer of tax credits authorized  
9 by this chapter may be made.

10 ~~[(f)]~~ (g) The tax credits issued or transferred pursuant  
11 to this chapter, upon election by the taxpayer at time of use,  
12 shall be treated as a payment or prepayment in lieu of taxes  
13 imposed under chapter 235 or 241~~[-]~~, or section 431:7-202. Tax  
14 credits used pursuant to this chapter shall be claimed as a  
15 payment of tax or estimated tax for the purposes of chapter 235  
16 or 241~~[-]~~, or section 431:7-202.

17 ~~[(g)]~~ ~~If the tax credits under this section exceed the~~  
18 ~~taxpayer's income tax liability under chapter 235 or 241 for any~~  
19 ~~taxable year, or for any other reason is not claimed by a~~  
20 ~~taxpayer in whole or in part in any taxable year, the excess of~~  
21 ~~the tax credit over liability, or the amount of the unclaimed~~  
22 ~~tax credit, as the case may be, may be carried over and used as~~





1 ~~a credit against the taxpayer's income tax liability in any~~  
2 ~~subsequent year until exhausted, subject to:~~

3 ~~(1) The deadline for the exercise of tax credits imposed~~  
4 ~~by subsection (a); and~~

5 ~~(2) The monetary limit imposed by subsection (c).]~~

6 (h) Tax credits issued under this chapter shall be  
7 refundable and claimed as refundable tax credits."

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

10 "§211G-13 [~~Investment of capital.~~] Investment manager.

11 [~~(a) The corporation may solicit investment plans from investor~~  
12 ~~groups for the investment of capital in accordance with this~~  
13 ~~chapter. The corporation shall establish criteria for the~~  
14 ~~selection of persons, firms, corporations, or other entities.~~

15 ~~The criteria shall]~~ The State private investment fund shall  
16 conduct a national solicitation for investment plan proposals  
17 from qualified venture capital investment fund allocation  
18 managers for the raising and investing of capital by the fund in  
19 accordance with this chapter. The venture capital investment  
20 fund allocation manager selected shall have substantial,  
21 successful experience in the design, implementation, and  
22 management of seed and venture capital investment programs, and



1 in capital formation. Venture capital investment fund  
2 allocation manager applications shall include the applicant's  
3 level of experience, quality of management, investment  
4 philosophy and process, probability of success in fundraising,  
5 plan for achieving the purposes of this chapter, and such other  
6 investment criteria as may be used in professional portfolio  
7 management that the [~~corporation~~] State private investment fund  
8 deems appropriate. If the [~~corporation~~] State private  
9 investment fund decides to engage one or more investor groups to  
10 deploy or generate capital, it shall consider and select one or  
11 more investment plans and investor groups that the [~~corporation~~]  
12 fund deems qualified to:

- 13 (1) Generate capital for investment with the most  
14 effective and efficient use of the guarantee;
- 15 (2) Invest the capital in private seed and venture capital  
16 entities in a manner mobilizing a wide variety of  
17 equity and near-equity investments in ventures  
18 promoting the economic development of the State; and
- 19 (3) Help build a significant, fiscally strong, and  
20 permanent resource to serve the objectives expressed  
21 in this chapter.



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

11           ~~[(b) With legislative approval pursuant to section 211C-~~  
12 ~~14, the corporation may extend one or more guarantees and secure~~  
13 ~~the performance of such guarantees in the form of a put option,~~  
14 ~~as well as other arrangements selected by the corporation.~~

15 ~~Without limiting the foregoing:~~

16           ~~(1) The corporation may guarantee loans, lines of credit,~~  
17 ~~and other indebtedness and equity investments and may~~  
18 ~~arrange for, pledge, and assign put options, as well~~  
19 ~~as other agreements to purchase tax credits on such~~  
20 ~~terms as the board may approve from time to time, in~~  
21 ~~order to generate funds to deploy in a manner~~  
22 ~~consistent with this chapter;~~



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

7       ~~(3) Guarantees of equity capital may extend up to the~~  
8           ~~amount of the investment plus a rate of return set by~~  
9           ~~board resolution from time to time in a manner~~  
10          ~~consistent with this chapter.~~

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

19       ~~(c) If the corporation purchases any security pursuant to~~  
20       ~~an agreement with an investor group, the corporation shall~~  
21       ~~acquire the securities and may invest, manage, transfer, or~~



1 ~~dispose of the securities in accordance with policies for the~~  
2 ~~management of assets adopted by the corporation.~~

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

14 ~~(e) In carrying out the mission of the corporation, as~~  
15 ~~authorized in this chapter, neither the corporation nor its~~  
16 ~~officers, board members, or employees shall be considered to be~~  
17 ~~broker-dealers, agents, investment advisors, or investment~~  
18 ~~adviser representatives under chapter 485A. The tax credits~~  
19 ~~issued or transferred pursuant to this chapter shall not be~~  
20 ~~considered securities under chapter 485A.~~

21 ~~(f) Funds raised or arranged by the corporation pursuant~~  
22 ~~to this chapter shall be invested in seed capital and venture~~



1 ~~capital investments, as such terms are defined in chapter 211F,~~  
2 ~~which, to the extent consistent with this chapter, shall be~~  
3 ~~governed by applicable provisions of chapter 211F.~~

4 ~~(g) The guarantees extended by the fund shall be payable~~  
5 ~~solely from revenues of the fund and shall be secured solely by~~  
6 ~~those revenues and by the pledges and assignments authorized by~~  
7 ~~this chapter. No holders of guarantees issued under this~~  
8 ~~chapter shall have a right to compel any exercise of the taxing~~  
9 ~~power of the State to pay the guarantees and no moneys other~~  
10 ~~than the revenues of the fund shall be applied to payment~~  
11 ~~thereof. Each guarantee issued under this chapter shall recite~~  
12 ~~in substance that the guarantee is not a general obligation of~~  
13 ~~the State and is payable solely from revenues pledged to the~~  
14 ~~payment thereof, and that such guarantee is not secured directly~~  
15 ~~or indirectly by the full faith and credit or the general credit~~  
16 ~~of the State or by any revenues or taxes of the State other than~~  
17 ~~the revenues specifically pledged thereto.] "~~

18 SECTION 11. Section 211G-15, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 " [f] §211G-15 [f] Annual reports; evaluation by the board.

21 (a) The [corporation] State private investment fund shall  
22 publish [a separate] an annual report, [in conjunction with its



1 ~~annual audit,~~] and present the report to the governor, the  
2 senate president, and the speaker of the house. The annual  
3 report shall review the mission of the board and programs  
4 implemented according to the objective measures set forth in the  
5 [~~corporation's~~] fund's business plan. The [~~corporation~~] State  
6 private investment fund shall distribute this annual report by  
7 any means that will make it available to the financial  
8 community.

9 (b) The department of business, economic development and  
10 tourism with the assistance of the State private investment fund  
11 shall study the costs and benefits of any programs implemented  
12 under this chapter. The department shall develop appropriate  
13 metrics for this purpose, including measures that recognize both  
14 the direct and secondary economic impacts of a program on the  
15 State's economy.

16 The State private investment fund shall ensure that the  
17 department has access to appropriate data; provided that trade  
18 secrets and other confidential information obtained under this  
19 chapter shall be protected as provided under section 211G-F.

20 The department of business, economic development, and  
21 tourism shall submit a report of its findings and  
22 recommendations with regard to this chapter, including any



1 proposed legislation, to the legislature no later than twenty  
2 days before the convening of the regular session of , and  
3 every two years thereafter.

4 ~~[-(b)-]~~ (c) Seven years after the ~~[corporation]~~ State  
5 private investment fund has begun operations under this chapter,  
6 the ~~[corporation]~~ fund shall review, analyze, and evaluate the  
7 extent to which the ~~[corporation]~~ State private investment fund  
8 has achieved its statutory mission. The evaluation shall  
9 include~~[7]~~ but not be limited to~~[7]~~ an examination of quantified  
10 results of the ~~[corporation's]~~ State private investment fund's  
11 programs and plans."

12 SECTION 12. Section 211G-16, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+] §211G-16 [+] Capital formation ~~[revolving]~~ fund. (a)  
15 There is established a ~~[revolving]~~ special fund for the  
16 ~~[corporation]~~ State private investment fund to be designated as  
17 the capital formation ~~[revolving]~~ special fund. The following  
18 shall be deposited into the capital formation ~~[revolving]~~  
19 special fund, all moneys:

- 20 (1) Appropriated by the legislature;  
21 (2) Received as repayment of loans;  
22 (3) Earned on investments;





- 1 (4) Received pursuant to a venture agreement;  
2 (5) Received as royalties;  
3 (6) Received as premiums or fees charged by the  
4 [~~corporation;~~] State private investment fund; or  
5 (7) Otherwise received by the [~~corporation.~~] State private  
6 investment fund.

7 (b) The capital formation special fund shall be used to  
8 repay indebtedness or redeem equity interests. Any returns in  
9 excess of those payable to designated investors shall be  
10 deposited in the redemption reserve and held by the State  
11 private investment fund as a first priority reserve for the  
12 redemption of certificates. Any returns received by the State  
13 private investment fund from investment of amounts held in the  
14 redemption reserve shall be added to the redemption reserve  
15 until it has reached a total of \$ \_\_\_\_\_ . If at the end of a  
16 calendar year the redemption reserve exceeds the \$ \_\_\_\_\_  
17 limitation, the State private investment fund shall transfer  
18 per cent of the excess to the University of Hawaii for work  
19 share development as well as agricultural technology programs  
20 and the remaining \_\_\_\_\_ per cent shall be transferred to the  
21 general fund."



1 SECTION 13. Section 211G-17, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+] §211G-17 [+] **Audit; state auditor.** The books and  
4 records of the State private investment fund shall be audited  
5 every year by the state auditor."

6 SECTION 14. Section 211G-14, Hawaii Revised Statutes, is  
7 repealed.

8 ~~["[§211G-14] **Indebtedness; legislative approval.** The~~  
9 ~~corporation shall not incur any indebtedness without legislative~~  
10 ~~approval. Legislative approval for the corporation to incur~~  
11 ~~indebtedness shall be by means of a separate legislative act."]~~

12 SECTION 15. There is hereby authorized \$ in tax  
13 credits to be used by the State private investment fund pursuant  
14 to chapter 211G, Hawaii Revised Statutes.

15 SECTION 16. If any provision of this Act, or the  
16 application thereof to any person or circumstance is held  
17 invalid, the invalidity does not affect other provisions or  
18 applications of the Act, which can be given effect without the  
19 invalid provision or application, and to this end the provisions  
20 of this Act are severable.

21 SECTION 17. In codifying the new sections added by section  
22 2 of this Act, the revisor of statutes shall substitute



1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 18. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 19. This Act shall take effect upon its approval;  
6 provided that section 15 shall take effect on  
7

INTRODUCED BY:

Card Fuernberg  
Arvid J. Jorg  
Ronald H. Baker  
Wm. H. ...  
Arvid J. Jorg  
John ...



**Report Title:**

State private investment fund; Venture Capital; High Tech

**Description:**

Amends the State private investment fund to direct its investment capital to venture capital funds that commit to equity investments in businesses located within the state and demonstrate ability to mentor entrepreneurs; Authorizes \$ in tax credits to be used by the fund as collateral.

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

