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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. (a) Following the 2009 legislative session,  
2 the 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 (b) The legislature finds that the State's past efforts to  
2 diversify Hawaii's economy are bearing fruit. A recent report  
3 on the innovation and technology sector of Hawaii's economy  
4 published in October, 2008, by the Hawaii Science and Technology  
5 Council, shows that in 2007 this sector had the same impact on  
6 Hawaii's gross state product as the accommodations industry,  
7 contributing \$3,000,000,000, or five per cent of the State's  
8 \$61,000,000,000 economy. Combined public and private tech-  
9 sector employment totaled 31,106 workers, nearly a three per  
10 cent increase from 2002. The average annual salary for tech  
11 workers was \$68,935 -- a salary fifty-seven per cent higher than  
12 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, Session Laws of  
18 Hawaii 2001, a tax credit-based initiative designed to stimulate  
19 tech industry growth. In addition, questions have been raised  
20 about whether Act 221 included an adequate mechanism for  
21 selecting companies to be funded, and whether the companies  
22 funded by Act 221 -- which provided funding for early-stage

1 startups but lacked venture capital resources for further  
2 company growth -- were 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 states 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, twenty-eight Utah companies have received  
4 investments from funds in the Utah Fund of Funds portfolio,  
5 resulting in over one thousand high paying jobs. These  
6 companies have raised over \$385,000,000 from investors,  
7 \$135,000,000 directly from funds in the Utah Fund of Funds  
8 portfolio. Finally, over three hundred seventy-five Utah  
9 companies have had the opportunity to work with vc firms in the  
10 Utah Fund of Funds portfolio.

11 This Act is based on the Utah Fund of Funds model, and  
12 amends the state private investment fund, chapter 211G, Hawaii  
13 Revised Statutes, to more closely conform to key aspects of the  
14 model. Important components of this Act include:

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

20 (2) The minimization of potential State liability for the  
21 program. The private-sector focus in investment is

1 retained, allowing diversification and profitability  
2 of investments;

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

7 (4) Giving state private investment fund managers the  
8 flexibility to invest for profit by giving priority to  
9 investments in high quality vc firms that have  
10 demonstrated a commitment to the state;

11 (5) Ensuring that Hawaii's companies are exposed to high  
12 level managers of funds in the state private  
13 investment fund portfolio and learn to become good  
14 fundraisers; and

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

17 (c) The purpose of this Act is to implement the  
18 recommendations of the technology caucus work group, and  
19 increase the availability of venture capital for the State's  
20 emerging industries while minimizing State liability for program  
21 costs by, among other things:

- 1 (1) Amending chapter 211G, Hawaii Revised Statutes, the
- 2 state private investment fund, to incorporate key
- 3 components of the Utah Fund of Funds model;
- 4 (2) Including insurance companies as potential investors
- 5 along with banks, individuals, and corporations, by
- 6 providing that the tax credits to be used by the state
- 7 private investment fund as a guarantee, may be used to
- 8 offset insurance premium taxes; and
- 9 (3) Providing the authorization of tax credits, including
- 10 credits to be used against insurance premium taxes,
- 11 necessary for the state private investment fund to
- 12 accomplish this purpose.

13 SECTION 2. Chapter 211G, Hawaii Revised Statutes, is  
 14 amended by adding six new sections to be appropriately  
 15 designated and to read as follows:

16 **"§211G-A State private investment fund.** (a) The  
 17 corporation shall administer the state private investment fund.  
 18 The state private investment fund shall invest in private seed  
 19 and venture capital partnerships or entities to:

- 20 (1) Encourage the availability of equity and near-equity
- 21 capital for investment in a broad variety of venture
- 22 capital partnerships in diversified industries, with

1 an emphasis on the State's emerging high technology  
2 and performing arts products industries;

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

5 (3) Secure the services of high quality managers in the  
6 venture capital industry; and

7 (4) Enhance the venture capital culture and infrastructure  
8 in the state so as to increase venture capital  
9 investment and promote venture capital investing  
10 within the State,

11 and accomplish the foregoing in a return-driven manner while  
12 minimizing the transfer of tax credits.

13 (b) The state private investment fund shall provide for:

14 (1) Equity interests for designated investors that provide  
15 for a scheduled rate of return and scheduled  
16 redemption; and

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

20 (c) Public money shall not be invested in the state  
21 private investment fund; provided that startup costs for the  
22 state private investment fund shall be funded by the corporation

1 for the first \$ \_\_\_\_\_, and then by the general fund for up  
2 to an additional \$ \_\_\_\_\_.

3 (d) The state private investment fund shall have all of  
4 the powers necessary to carry out its purposes and may exercise  
5 any powers of a corporation organized under the laws of the  
6 State. The state private investment fund may make any contract,  
7 execute any document, charge reasonable fees for services  
8 rendered, perform any act or enter into any financial or other  
9 transaction necessary to carry out its mission. The state  
10 private investment fund may employ necessary staff as may be  
11 required for the proper implementation of this chapter, the  
12 management of its assets, or the performance of any function  
13 authorized or required by this chapter necessary for the  
14 accomplishment of any such function. Staff shall be selected  
15 based upon outstanding knowledge and leadership in the field in  
16 which the person will be performing services, and shall be  
17 exempt from chapter 76.

18 (e) If the state private investment fund purchases any  
19 security pursuant to an agreement with an investor group, the  
20 fund shall acquire the securities and may invest, manage,  
21 transfer, or dispose of the securities in accordance with



1 policies for the management of assets adopted by the state  
2 private investment fund.

3 (f) In carrying out the mission of the state private  
4 investment fund, as authorized by this chapter, neither the  
5 corporation or state private investment fund, nor the officers  
6 board members, or employees of the corporation or state private  
7 investment fund shall be considered to be broker-dealers,  
8 agents, investment advisors, or investment adviser  
9 representatives under chapter 485A. Tax credits issued or  
10 transferred pursuant to this chapter shall not be considered  
11 securities under chapter 485A.

12 **§211G-B Board of directors.** (a) The state private  
13 investment fund shall be governed by a board of directors  
14 consisting of six voting members as follows:

15 (1) Four members recommended by the board and selected on  
16 the basis of their knowledge of, or skill and  
17 experience in, venture or seed capital investment,  
18 investment management, or supervision of investment  
19 managers and investment funds;

20 (2) The president of the Hawaii strategic development  
21 corporation; and

1       (3) The chief investment officer of the employees'  
2           retirement system of the State of Hawaii.

3       (b) The state private investment fund board members shall  
4 serve four-year terms, may serve up to two successive terms, and  
5 shall continue in office until their respective successors have  
6 been appointed. A majority of the board members may remove a  
7 board member for cause.

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

10       (d) Members shall be subject to chapter 84. Members shall  
11 serve without compensation, but may be reimbursed for expenses  
12 incurred in the performance of their duties, including travel  
13 expenses.

14       **§211G-C Investment capital; guarantees.** (a) The state  
15 private investment fund may extend one or more guarantees and  
16 secure the performance of such guarantees in the form of a put  
17 option, as well as other arrangements selected by the state  
18 private investment fund. Without limiting the foregoing:

19       (1) To generate funds to deploy in a manner consistent  
20 with this chapter, the state private investment fund  
21 may guarantee loans, lines of credit, and other  
22 indebtedness and equity investments and may arrange

1           for, pledge, and assign put options, as well as other  
2           agreements to purchase tax credits on such terms as  
3           the board may approve from time to time;  
4        (2) The guarantees of loans, lines of credit, and other  
5           indebtedness may extend up to the principal amount  
6           plus interest over the term of the guarantee at a rate  
7           set by board resolution from time to time, in a manner  
8           consistent with this chapter; and  
9        (3) Guarantees of equity capital may extend up to the  
10           amount of the investment plus a rate of return set by  
11           board resolution from time to time in a manner  
12           consistent with this chapter.  
13        (b) Guarantees, in whatever form negotiated by the state  
14 private investment fund, may be made for any period of time, but  
15 no term shall expire prior to January 1, \_\_\_\_\_ . The state  
16 private investment fund may charge a reasonable fee for costs  
17 and the fair compensation of risks associated with its  
18 guarantee. Proceeds from the sale of any tax credits may be  
19 used to satisfy the contractual guarantee obligation of the  
20 state private investment fund. The state private investment  
21 fund may contract freely to protect the interest of the State.

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

16        **§211G-D Investments by the state private investment fund.**

17        (a) Funds raised or arranged by the state private investment  
18 fund pursuant to this chapter shall be invested in seed capital  
19 and venture capital investments; provided that:

20        (1) The state private investment fund shall not make  
21        direct investments;

1       (2) No more than            per cent of the investment capital  
2           of the state private investment fund shall be placed  
3           in seed capital investments;

4       (3) No more than ten per cent of the investment capital of  
5           the state private investment fund may be invested in a  
6           single fund; and

7       (4) The investment of the state private investment fund in  
8           a single fund shall not exceed twenty per cent of the  
9           total investment capital committed to that fund.

10       For the purposes of this subsection:

11       "Direct investment" means an investment in qualified  
12       securities of an enterprise to provide capital to an enterprise.

13       "Seed capital" has the same meaning as provided in section  
14       211F-1.

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

17       (b) The state private investment fund shall invest funds  
18       principally in high-quality venture capital partnerships and  
19       entities:

20       (1) That have made a commitment to equity investments in  
21           businesses located within the State by agreeing to  
22           invest or cause to be invested in businesses located

1           within the state an amount equal to or greater than  
2           the state private investment fund's commitment to  
3           their fund;

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

7           (3) With demonstrated ability to advise and mentor  
8           entrepreneurs and facilitate follow-on investments.

9           (c) The state private investment fund shall give priority  
10          to venture capital partnerships and entities that have  
11          demonstrated:

12          (1) A commitment to the State through:

13           (A) A commitment to maintain a physical presence in  
14           the State;

15           (B) The investments they have made in Hawaii-based  
16           entities;

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

19           (D) The commitment they have made to expand the reach  
20           of expertise within the State by adding  
21           additional investment areas of expertise; and

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

3       The state private investment fund may waive the priorities  
4 under this subsection only if necessary to achieve the targeted  
5 investment returns required to attract investors.

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

1 record three years from the date the information was made or  
2 received. Any discussion or consideration of trade secrets or  
3 commercial or financial information, shall be held by the board,  
4 or any subcommittee of the board, in executive sessions closed  
5 to the public; provided that the purpose of any such executive  
6 session shall be set forth in the official minutes of the state  
7 private investment fund and business which is not related to  
8 that purpose shall not be transacted, nor shall any vote be  
9 taken during the executive sessions.

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



1 investment fund or in excess of any insurance policy acquired  
2 for the state private investment fund or its employees."

3 SECTION 3. Section 211F-3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) [~~The~~] Except as provided in section 211G-11, the  
6 governing body of the corporation shall be a board of directors  
7 consisting of twelve members to be appointed by the governor for  
8 staggered terms pursuant to section 26-34 as follows:

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

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

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

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

18 fields[-]; provided that three of the members appointed shall  
19 have knowledge of, or skill and experience in, venture or seed  
20 capital investment, investment management, or supervision of  
21 investment managers and investment funds. The director of

22 business, economic development, and tourism, a member from the

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

12 SECTION 4. Section 211G-1, Hawaii Revised Statutes, is  
13 amended as follows:

14 1. By adding a new definition to be appropriately inserted  
15 and to read:

16 "Fund" means the state private investment fund.

17 2. By amending the definitions of "tax credits" and  
18 "taxpayer", to read:

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 5. 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 and  
7 that shortage is impairing the growth of commerce in the State.  
8 A need exists to increase the availability of venture equity  
9 capital for emerging, expanding, relocating, and restructuring  
10 enterprises in the State, ~~[and an]~~ particularly those  
11 enterprises in the State's growing high technology and  
12 performing arts products industries. An increase in return-  
13 driven, venture capital investments in such enterprises in the  
14 State will help to diversify the State's economic base.  
15 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 so as to increase venture capital
- 5           investment and promote venture capital investing
- 6           within the 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 6. Section 211G-12, Hawaii Revised Statutes, is  
 15 amended to read as follows:

16           "~~{}\$211G-12[{}]~~ **Tax credits.** (a) The State shall issue  
 17 tax credits to the corporation that may be transferred or  
 18 otherwise used to reduce the tax liability of any taxpayer  
 19 pursuant to chapter 235 or 241~~[=]~~, or section 431:7-202. The  
 20 total amount of tax credits that may be issued, and which may be  
 21 transferred pursuant to this chapter by the corporation is  
 22 [~~\$36,000,000.~~] \$ \_\_\_\_\_.

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

16        ~~[(b) Subject to the annual authorization by the~~  
17 ~~legislature, the corporation may transfer tax credits under this~~  
18 ~~section up to the annual amount allowed under subsection (c).~~  
19 ~~Legislative authorization for the tax credits shall be by a~~  
20 ~~separate legislative act.]~~

21        (c) The tax credits shall be claimed as a refundable tax  
22 credit.

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

16           ~~[(d)]~~ (e) The corporation, in conjunction with the  
17 department of taxation, shall develop a system for registration  
18 of any tax credits issued or transferred pursuant to this  
19 chapter and a system of certificates that permits verification  
20 that any tax credit claimed upon a tax return is validly issued,  
21 properly taken in the year of claim, and that any transfers of  
22 the tax credit are made in accordance with this chapter.

1           ~~[(e)]~~ (f) The corporation may pay a fee and provide other  
2 consideration in connection with the purchase by the corporation  
3 of a put option or other agreement pursuant to which a transfer  
4 of tax credits authorized by this chapter may be made.

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

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

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

22           (2) The monetary limit imposed by subsection ~~[(e)-]~~ (d)."

1 SECTION 7. Section 211G-13, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 **"§211G-13 Investment [~~of capital.~~] manager. [(+a)]** The  
4 corporation may solicit investment plans from investor groups  
5 for the investment of capital in accordance with this chapter.  
6 The corporation shall establish criteria for the selection of  
7 persons, firms, corporations, or other entities. The criteria  
8 shall include the applicant's level of experience, quality of  
9 management, investment philosophy and process, probability of  
10 success in fundraising, plan for achieving the purposes of this  
11 chapter, and such other investment criteria as may be used in  
12 professional portfolio management that the corporation deems  
13 appropriate. If the corporation decides to engage one or more  
14 investor groups to deploy or generate capital, it shall consider  
15 and select one or more investment plans and investor groups that  
16 the corporation deems qualified to:

- 17 (1) Generate capital for investment with the most  
18 effective and efficient use of the guarantee;
- 19 (2) Invest the capital in private seed and venture capital  
20 entities in a manner mobilizing a wide variety of  
21 equity and near-equity investments in ventures  
22 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~~  
15 ~~the performance of such guarantees in the form of a put option,~~  
16 ~~as well as other arrangements selected by the corporation.~~  
17 ~~Without 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;~~
- 3 ~~(2) The guarantees of loans, lines of credit, and other~~  
4 ~~indebtedness may extend up to the principal amount~~  
5 ~~plus interest over the term of the guarantee at a rate~~  
6 ~~set by board resolution from time to time, a guarantee~~  
7 ~~of a loan, lines of credit, or other indebtedness in a~~  
8 ~~manner consistent with this chapter; and~~
- 9 ~~(3) Guarantees of equity capital may extend up to the~~  
10 ~~amount of the investment plus a rate of return set by~~  
11 ~~board resolution from time to time in a manner~~  
12 ~~consistent with this chapter.~~

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

21 ~~(c) If the corporation purchases any security pursuant to~~  
22 ~~an agreement with an investor group, the corporation shall~~

1 ~~acquire the securities and may invest, manage, transfer, or~~  
2 ~~dispose of the securities in accordance with policies for the~~  
3 ~~management of assets adopted by the corporation.~~

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

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

1       ~~(f) Funds raised or arranged by the corporation pursuant~~  
2 ~~to this chapter shall be invested in seed capital and venture~~  
3 ~~capital investments, as such terms are defined in chapter 211F,~~  
4 ~~which, to the extent consistent with this chapter, shall be~~  
5 ~~governed by applicable provisions of chapter 211F.~~

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

20       SECTION 8. Section 211G-15, Hawaii Revised Statutes, is  
21 amended by amending subsection (b) to read as follows:

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

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

10           "~~[+]§211G-16[+]~~ **Capital formation revolving fund.** There  
11 is established a revolving fund for the corporation to be  
12 designated as the capital formation revolving fund. The  
13 following shall be deposited into the capital formation  
14 revolving fund, all moneys:

- 15           (1) Appropriated by the legislature;  
16           (2) Received as repayment of loans;  
17           (3) Earned on investments;  
18           (4) Received pursuant to a venture agreement;  
19           (5) Received as royalties;  
20           (6) Received as premiums or fees charged by the  
21           ~~[corporation,]~~ state private investment fund; or

1 (7) Otherwise received by the corporation[~~-~~] or the state  
2 private investment fund."

3 SECTION 10. Section 211G-17, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "~~{}~~**\$211G-17**~~{}~~ **Audit**~~[, state auditor]~~. The books and  
6 records of the fund shall be audited every year by [~~the state~~  
7 ~~auditor.~~] an independent auditor."

8 SECTION 11. There is hereby authorized \$ in tax  
9 credits to be used by the state private investment fund pursuant  
10 to chapter 211G, Hawaii Revised Statutes.

11 SECTION 12. The state private investment fund established  
12 pursuant to chapter 211G, Hawaii Revised Statutes, is authorized  
13 to incur indebtedness under chapter 211G, Hawaii Revised  
14 Statutes, that shall not exceed \$ .

15 SECTION 13. 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 14. 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 15. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 16. This Act shall take effect July 1, 2011.

6

**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 an unspecified amount for tax credits to be used by the fund as collateral. (SD1)

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