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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. Chapter 211G, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

4           "§211G-A State private investment fund. (a) The  
5 corporation shall administer the state private investment fund.  
6 The state private investment fund shall invest in private seed  
7 and venture capital partnerships or entities to:

- 8           (1) Encourage the availability of equity and near-equity  
9           capital partnerships in diversified industries, with  
10           an emphasis on the State's emerging high technology  
11           industry;
- 12           (2) Promote the private sector philosophy of focusing on  
13           rate of return in the investment process;
- 14           (3) Secure the services of high quality managers in the  
15           venture capital industry; and
- 16           (4) Enhance the venture capital culture and infrastructure  
17           in the State to increase and promote venture capital  
18           investments in the State;



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

3 (b) The state private investment fund shall be organized  
4 as a limited partnership or limited liability company under  
5 Hawaii law with the corporation as the general partner or  
6 manager to provide for:

7 (1) Equity interests for designated investors that provide  
8 for a scheduled rate of return and scheduled  
9 redemption; and

10 (2) Loans by or the issuance of debt obligations to  
11 investors that provide for payments of principal,  
12 interest, or an interest equivalent.

13 (c) Public money shall not be invested in the state  
14 private investment fund.

15 (d) The governing body of the general partner or manager  
16 of the state private investment fund shall be a board of  
17 directors consisting of six members to be appointed by the board  
18 of the corporation; provided that:

19 (1) Three members shall be appointed directly by the  
20 corporation and shall be selected on the basis of  
21 their knowledge of, or skill and experience in,  
22 venture or seed capital investment, investment



1 management, or supervision of investment managers and  
2 investment funds. The president of the Hawaii  
3 strategic development corporation, the chief  
4 investment officer of the state employees retirement  
5 system, and the executive director of the state  
6 private investment fund formed in this section shall  
7 serve as ex-officio voting members of the board;

8 (2) Appointed board members shall serve four year terms  
9 and shall continue in office until their respective  
10 successors have been appointed. Board members may  
11 serve successive terms;

12 (3) A majority of the board members may remove a board  
13 member for cause;

14 (4) Three members of the board shall represent a quorum  
15 for the transaction of business;

16 (5) Members of the board of directors are:

17 (A) Subject to any restrictions on conflicts of  
18 interest specified in the organizational  
19 documents of the corporation; and

20 (B) May have no interest in any:



1                   (i) Venture capital investment fund allocation  
2                   manager selected by the corporation under  
3                   this part; or

4                   (ii) Investments made by the state private  
5                   investment fund.

6           (e) The state private investment fund may enter into and  
7 execute any contract, execute any document, charge reasonable  
8 fees for services rendered, perform any act or enter into any  
9 financial or other transaction necessary to carry out its  
10 mission. The state private investment fund may employ staff as  
11 necessary to properly implement this chapter, manage its assets,  
12 or perform any function authorized or required by this chapter  
13 necessary to accomplish any of its functions. The fund's staff  
14 shall be selected based upon their knowledge and leadership in  
15 the field in which they will be performing.

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



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

10 (h) Startup costs for the state private investment fund  
11 shall be funded by the corporation for the first \$ and  
12 subsequently the general fund for up to an additional  
13 \$ .

14 **§211G-B Investment capital; guarantees.** (a) With  
15 legislative approval and pursuant to section 211G-19 the state  
16 private investment fund may adopt rules pursuant to chapter 91  
17 to extend one or more guarantees and secure the performance of  
18 THE guarantees in the form of a put option, as well as other  
19 arrangements selected by the corporation.

20 Without limiting the foregoing, the fund may guarantee  
21 loans, lines of credit, and other indebtedness and equity  
22 investments and may arrange for, pledge, and assign put options;



1 as well as other agreements to purchase tax credits on terms as  
2 the board may approve from time to time; provided that:

3 (1) The guarantee 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, in a manner  
7 consistent with this chapter; and

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

12 (b) Guarantees, in whatever form negotiated by the state  
13 private investment fund, may be made for any period of time, but  
14 no term shall expire prior to January 1, . The state private  
15 investment fund may charge a reasonable fee for their costs and  
16 expenses and the fair compensation of risks associated with its  
17 guarantee. Proceeds from the sale of any tax credits may be  
18 used to satisfy the contractual guarantee obligation of the  
19 state private investment fund. The state private investment  
20 fund may enter into contracts as necessary to protect the  
21 interests 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 are authorized to  
6 exercise any taxing power of the State to pay the guarantees and  
7 no moneys other than the revenues of the state private  
8 investment fund shall be applied to pay the guarantees. Each  
9 guarantee issued under this chapter shall recite in substance  
10 that the guarantee is not a general obligation of the State and  
11 is payable solely from revenues pledged for its payment, and  
12 that the guarantee is not secured directly or indirectly by the  
13 full faith and credit or the general credit of the State or by  
14 any revenues or taxes of the State other than the revenues  
15 specifically pledged for its payment.

16           §211G-C 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 that, to the extent consistent  
20 with this chapter, shall be governed by chapter 211F; provided  
21 that the state private investment fund shall not make direct  
22 investments and shall comply with best practices standards. Not



1 more than per cent of the investments of the state private  
2 investment fund shall be capital investments. Not more than ten  
3 per cent of the state private investment fund may be invested in  
4 a single fund. The state private investment fund's capital  
5 commitment to a single fund shall not exceed twenty per cent of  
6 the total capital committed to that fund; provided that the fund  
7 shall establish a target of thirty per cent for investments to  
8 Hawaii-based businesses.

9 For the purposes of this subsection:

10 "Direct investment" means an investment by the state  
11 private investment fund in qualified securities of an enterprise  
12 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) With experienced managers or management teams that  
21 have demonstrated expertise and a successful history  
22 in the investment of venture capital funds; and





1           (2) With a demonstrated ability to advise and mentor  
2           entrepreneurs and facilitate follow-on investments."

3           SECTION 2. Section 211F-3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) The governing body of the corporation shall be a  
6 board of directors consisting of twelve members to be appointed  
7 by the governor for staggered terms pursuant to section 26-34 as  
8 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 3. Section 211G-1, Hawaii Revised Statutes, is  
13 amended by amending the definitions of "tax credits" and  
14 "taxpayer" to read as follows:

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

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

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



1 " ~~[+]~~ §211G-12 ~~[+]~~ Tax credits. (a) The State shall issue  
2 tax credits to the corporation that may be transferred or  
3 otherwise used to reduce the tax liability of any taxpayer  
4 pursuant to chapter 235 or 241~~[+]~~, or section 431:7-202. The  
5 total amount of tax credits that may be issued, and which may be  
6 transferred pursuant to this chapter by the corporation is  
7 ~~[\$36,000,000.]~~ \$ \_\_\_\_\_.

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



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

6       (c) The tax credits shall be claimed as a refundable tax  
7 credit.

8       ~~[(e)]~~ (d) 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 241  
14 or section 431:7-202 for one fiscal year ~~[(including any tax~~  
15 ~~credits that are carried over by a taxpayer from a prior fiscal~~  
16 ~~year and used to reduce taxes otherwise imposed in the current~~  
17 ~~fiscal year, as permitted in subsection (g))]~~ to not more than  
18 an 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           ~~[(d)]~~ (e) The corporation, in conjunction with the  
2 department of taxation, shall develop a system for registration  
3 of any tax credits issued or transferred pursuant to this  
4 chapter and a system of certificates that permits verification  
5 that any tax credit claimed upon a tax return is validly issued,  
6 properly taken in the year of claim, and that any transfers of  
7 the tax credit are made in accordance with this chapter.

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

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

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



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

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

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

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

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



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

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

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

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



1 ~~the performance of such guarantees in the form of a put option,~~  
2 ~~as well as other arrangements selected by the corporation.~~

3 ~~Without limiting the foregoing:~~

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

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

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

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





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

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

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



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

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

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



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

5 SECTION 6. Section 211G-15, Hawaii Revised Statutes, is  
6 amended by amending subsection (b) to read as follows:

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

14 SECTION 7. Section 211G-16, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "[+]§211G-16[+] Capital formation revolving fund. There  
17 is established a revolving fund for the corporation to be  
18 designated as the capital formation revolving fund. The  
19 following shall be deposited into the capital formation  
20 revolving fund, all moneys:

21 (1) Appropriated by the legislature;

22 (2) Received as repayment of loans;



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

8 SECTION 8. Section 211G-17, Hawaii Revised Statutes, is  
9 amended to read as follows:

10 "[+]§211G-17[+] Audit; state auditor. The books and  
11 records of the state private investment fund shall be audited  
12 every year by ~~[the state auditor.]~~ an independent auditor."

13 SECTION 9. The state private investment fund is authorized  
14 to expend \$ in tax credits pursuant to chapter 211G, Hawaii  
15 Revised Statutes.

16 SECTION 10. The state private investment fund established  
17 pursuant to chapter 211G, Hawaii Revised Statutes, is authorized  
18 to incur indebtedness under chapter 211G, Hawaii Revised  
19 Statutes, that shall not exceed \$ .

20 SECTION 11. If any provision of this Act, or the  
21 application thereof to any person or circumstance is held  
22 invalid, the invalidity does not affect other provisions or



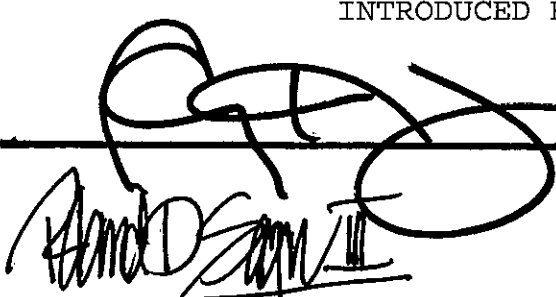

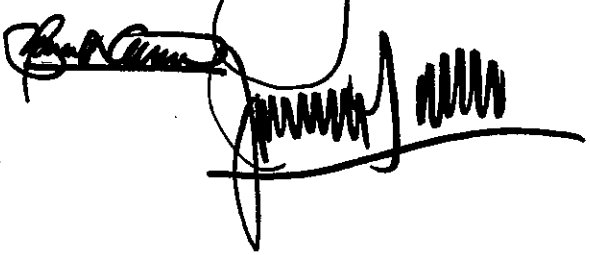
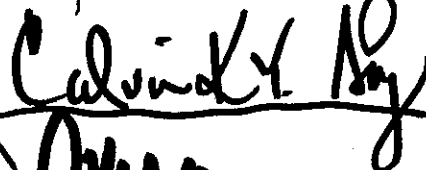



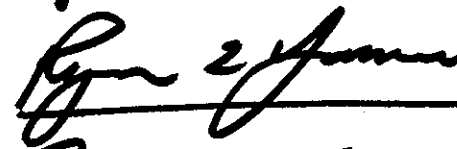
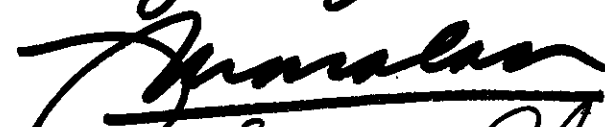

1 applications of the Act, that can be given effect without the  
2 invalid provision or application, and to this end the provisions  
3 of this Act are severable.

4 SECTION 12. In codifying the new sections added by section  
5 1 of this Act; the revisor of statutes shall substitute  
6 appropriate section numbers for the letters used in designating  
7 the new sections in this Act.

8 SECTION 13. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 14. This Act shall take effect upon its approval;  
11 provided that sections 9 and 10 shall take effect on  
12

INTRODUCED BY:

**Report Title:**

State Private Investment Fund; Venture Capital; High Technology

**Description:**

Directs the state private investment fund's investment capital to venture capital funds that commit to equity investments in businesses located within the State and demonstrate an ability to mentor entrepreneurs. Also authorizes an unspecified amount 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.*

