

CHAPTER 211F
HAWAII STRATEGIC DEVELOPMENT CORPORATION

Part I. General Provisions

Section

- 211F-1 Definitions
- 211F-2 Establishment of Hawaii strategic development corporation; purpose
- 211F-3 Board of directors; composition
- 211F-4 Powers of corporation
- 211F-5 Hawaii strategic development corporation revolving fund
- 211F-5.5 Repealed
- 211F-5.7 Hydrogen investment capital special fund
- 211F-6 Contracts for services necessary for management and operation of corporation
- 211F-7 Actions of corporation; guidelines
- 211F-8 Business and industry evaluation and priorities for job opportunity and economic development
- 211F-9 Meetings of the board
- 211F-10 Confidentiality of trade secrets or the like; disclosure of financial information
- 211F-11 Requests for assistance from corporation; procedure
- 211F-12 Private sector financial support
- 211F-13 Limitations on debt owed to corporation
- 211F-14 Limitation on liability
- 211F-15 Annual report
- 211F-15.5 HI growth initiative; report to legislature
- 211F-16 Annual audit
- 211F-17 Cooperation with corporation by state agencies
- 211F-18 Construction of chapter

Part II. Program for Seed Capital Assistance

- 211F-21 Establishment
- 211F-22 Seed capital investments
- 211F-23 Purposes and terms of investments

Part III. Program for Venture Capital Assistance

- 211F-31 Establishment
- 211F-32 Venture capital investments
- 211F-33 Purposes and terms of investments

Part IV. Program for Capital Access

- 211F-41 Establishment
- 211F-42 Financial assistance
- 211F-43 Purposes and priorities required in the procuring of insurance, loan guarantees, or letters of credit

- 211F-44 Conditions for procuring of insurance, loan guarantees, or letters of credit
- 211F-45 Program for capital access participation agreements
- 211F-46 Establishment of special funds to secure loan insurance obligations; source of funds

Part V. Hawaii Technology Investment Program

- 211F-51 Definitions
- 211F-52 Formation of Hawaii technology investment program
- 211F-53 Limitation of liability

Note

Research and development follow-on funding program through the Hawaii Technology Development Venture or the National Defense Center of Excellence for Research in Ocean Sciences (reports to Hawaii strategic development corporation until funds expended). L 2007, c 267.

Venture accelerator funding program; reports to legislature. L 2012, c 170.

Revision Note

In this chapter, department or director of business and economic development changed to department or director of business, economic development, and tourism.

"PART I. GENERAL PROVISIONS"

§211F-1 Definitions. As used in this chapter:

"Board" means the board of directors of the Hawaii strategic development corporation.

"Corporation" means the Hawaii strategic development corporation, except where the context clearly indicates another meaning.

"Direct investment" means an investment by the corporation in qualified securities of an enterprise to provide capital to an enterprise.

"Economic development project" means an endeavor related to industrial, commercial, or advanced technology-based agricultural enterprise. Economic development project shall not include that portion of an endeavor devoted to the construction of housing.

"Enterprise" means a person with a place of business in Hawaii which is, or proposes to be, engaged in business in Hawaii, provided that the endeavor shall not be devoted to the sale of goods at retail, construction of housing, or tourism-related services.

"Minority-owned businesses" means businesses at least fifty per cent owned, controlled, and managed by socially or economically disadvantaged persons.

"Person" means a sole proprietorship, partnership, joint venture, corporation, or other association of persons organized for commercial or industrial purposes.

"Professional investor" means any bank, bank holding company, savings institution, trust company, insurance company, investment company registered under the Federal Investment Company Act of 1940, financial services loan company, pension or

profit-sharing trust or other financial institution or institutional buyer, licensee under the Federal Small Business Investment Act of 1958, or any person, partnership, or other entity of whose resources a substantial amount is dedicated to investing in securities or debt instruments and whose net worth exceeds \$250,000.

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing.

"Seed capital" means financing provided for the earliest stage of business development, including but not limited to developing a working prototype, preparing a business plan, performing an initial market analysis, or organizing a management team.

"Venture capital investment" means any of the following investments in a business:

- (1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
- (2) A right to purchase stock or equity securities;
- (3) Any debenture or loan, whether or not convertible or having stock purchase rights, which are subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders, and that is for a term of not less than three years, and that has no part amortized during the first three years; and
- (4) General or limited partnership interests. [L 1990, c 110, pt of §3; am L 1994, c 264, §4; am L 1997, c 64, §1]

" **[§211F-2] Establishment of Hawaii strategic development corporation; purpose.** (a) There is established the Hawaii strategic development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The corporation shall be placed within the department of business, economic development, and tourism for administrative purposes only.

(b) The purpose of this corporation shall be to encourage economic development and diversification in Hawaii through innovative actions in cooperation with private enterprises. The corporation shall establish programs to stimulate private capital investment in Hawaii toward investments that promote the welfare of citizens in this State, economic growth, employment, and economic diversification. The corporation may use public funds to provide incentives to private investment activity, by co-investing public funds in private financial organizations to increase the impact of the public investment while utilizing the investment acumen of the private sector, and by using public funds to reduce the risks of private investments. The corporation shall have the flexibility to provide various types of financial assistance. When providing financial assistance, the corporation shall make provision for the recovery of its expenditures, as far as possible. [L 1990, c 110, pt of §3]

" **§211F-3 Board of directors; composition.** (a) The governing body of the corporation shall be a board of directors consisting of twelve members to be appointed by the governor for staggered terms pursuant to section 26-34 as follows:

- (1) Three to be appointed directly by the governor;
- (2) Three to be appointed from a list of nominees from the general public submitted by the president of the senate; and
- (3) Three to be appointed from a list of nominees from the general public submitted by the speaker of the house of representatives,

and shall be selected on the basis of their knowledge, skill, and experience in the scientific, business, or financial fields. The director of business, economic development, and tourism, a member from the board of the high technology development corporation appointed by the governor, and a member from the board of the natural energy laboratory of Hawaii authority appointed by the governor, or their designated representatives, shall serve as ex officio[,] voting members. Not more than two of the six members of the board appointed from the lists of nominees submitted by the president of the senate and the speaker of the house of representatives, during their term of office on the board, shall be employees of the State. All appointed members of the board shall continue in office until their respective successors have been appointed.

(b) The director of business, economic development, and tourism shall serve as chairperson of the board until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary.

(c) The members of the board shall serve without compensation, but may be reimbursed for expenses, including travel expenses, incurred in the performance of their duties.

(d) The board shall appoint a president of the corporation who shall serve at the pleasure of the board and shall be exempt from chapter 76. The board shall set the salary and duties of the president.

(e) A board member shall not participate in any corporation decision to invest in, purchase from, sell to, borrow from, loan to, contract with, or otherwise deal with any person with whom or entity in which the board member has a substantial financial interest.

(f) The board may delegate to its president, staff, or others those functions and powers that the board deems necessary or appropriate, including but not limited to the oversight and supervision of employees of the corporation. [L 1990, c 110, pt of §3; am L 1992, c 121, §1; am L 2000, c 253, §150 and c 297, §30; am L 2004, c 215, §4]

Attorney General Opinions

Subsection (a) cited, as a constitutional board and commission statute where members may serve as holdovers until their successors are "appointed", without any reference to the successors being fully "qualified"; an "appointment" properly occurs under the interim appointments provision of article V, §6 of the state constitution. Att. Gen. Op. 16-3.

" **§211F-4 Powers of corporation.** (a) The corporation shall have all of the powers necessary to carry out its purposes which shall include but not be limited to the power to:

- (1) Adopt rules pursuant to chapter 91 to carry out the purposes of this chapter;
- (2) Adopt an official seal;
- (3) Sue and be sued, in its own name;
- (4) Finance, conduct, or cooperate in financing or conducting technological, business, financial, or other investigations that are related to or likely to lead to business and economic development by making and entering into contracts and other appropriate arrangements, including the provision of loans, start-up and expansion capital, and other forms of assistance;
- (5) Solicit, study, and assist in the preparation of business plans and proposals;

- (6) Provide advice and technical and marketing assistance, support, and promotion to enterprises in which investments have been made;
- (7) Coordinate the corporation's programs with any education and training program;
- (8) Carry out specialized programs designed to encourage the development of new products, businesses, and markets;
- (9) Prepare, publish, and distribute such technical studies, reports, bulletins, and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information;
- (10) Organize, conduct, sponsor, or cooperate in and assist in the conduct of conferences, demonstrations, and studies relating to the stimulation and formation of businesses;
- (11) Provide and pay for such advisory services and technical, managerial, and marketing assistance, support, and promotion as may be necessary or desirable to carry out the purposes of this chapter;
- (12) Acquire, hold, and sell qualified securities;
- (13) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the corporation deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the corporation is a party;
- (14) Accept donations, grants, bequests, and devises of money, property, service, or other things of value that may be received from the United States or any agency thereof, any governmental agency, or any public or private institution, person, firm, or corporation, to be held, used, or applied for any or all of the purposes specified in this chapter. Receipt of each donation or grant shall be detailed in the annual report of the corporation. The report shall include the identity of the donor or lender, the nature of the transaction, and any conditions attaching thereto;
- (15) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the State;

- (16) Acquire real property, or an interest therein, by purchase or foreclosure, where that acquisition is necessary or appropriate to protect or secure any investment or loan in which the corporation has an interest; sell, transfer, and convey the property to a buyer and if the sale, transfer, or conveyance cannot be effected with reasonable promptness or at a reasonable price, to lease the property to a tenant;
- (17) Acquire, own, hold, dispose of, and encumber personal property of any nature, or any interest therein;
- (18) Enter into agreements or other transactions with any federal, state, or county agency;
- (19) Make contracts and execute all instruments necessary or convenient for the carrying on of its business;
- (20) Appear in its own behalf before state, county, or federal agencies;
- (21) Procure insurance as may be necessary;
- (22) Appoint officers, employees, consultants, agents, and advisors who shall not be subject to chapter 76, and prescribe their duties and fix compensation within the limitations provided by law;
- (23) Appoint advisory committees as deemed necessary; and
- (24) Exercise any other powers of a corporation organized under the laws of the State.

(b) The corporation shall not promise to answer for the debts of any other person. [L 1990, c 110, pt of §3; am L 2000, c 253, §150; am L 2004, c 215, §5; am L 2015, c 237, §30]

" **§211F-5 Hawaii strategic development corporation revolving fund.** There is established the Hawaii strategic development corporation revolving fund. The following moneys shall be deposited into the Hawaii strategic development corporation revolving fund and shall not be considered part of the general fund: all moneys appropriated by the legislature, received as repayments of loans, earned on investments, received pursuant to a venture agreement, received as royalties, received as premiums or fees charged by the corporation, or otherwise received by the corporation. [L 1990, c 110, pt of §3]

Note

Repeal of section by L 2003, c 178, §8 deleted by L 2004, c 215, §12(2).

" **§211F-5.5 REPEALED.** L 2015, c 144, §3.

" **§211F-5.7 Hydrogen investment capital special fund.** (a) There shall be established the hydrogen investment capital special fund, into which shall be deposited:

- (1) Appropriations made by the legislature to the fund;
- (2) All contributions from public or private partners;
- (3) All interest earned on or accrued to moneys deposited in the special fund; and
- (4) Any other moneys made available to the special fund from other sources.

(b) Moneys in the fund shall be expended by the corporation to:

- (1) Provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-10; and
- (2) For any other purpose deemed necessary to carry out the purposes of section 196-10. [L 2006, c 240, §7; am L 2012, c 240, §4]

" **[\$211F-6] Contracts for services necessary for management and operation of corporation.** The corporation may contract with others, public or private, for the provision of all or a portion of the services necessary for the management and operation of the corporation. The corporation shall have the power to use all appropriations, grants, contractual reimbursements, and all other funds not appropriated for a designated purpose to pay for the proper general expenses and to carry out the purposes of the corporation. [L 1990, c 110, pt of §3]

" **§211F-7 Actions of corporation; guidelines.** (a) All actions taken by the corporation shall be necessary to achieve the purposes and objectives of this chapter. The corporation shall evaluate all programs after three years to determine their effectiveness. The corporation shall establish rules to assure equal opportunity to minority-owned businesses, and shall encourage the development of minority-owned businesses. The corporation shall support and encourage participation by Hawaii companies in federal grant programs, such as the Small Business Innovation Research Program.

(b) Financial participation shall be made on the condition that the recipient of the assistance shall utilize the money to assist economic development projects within the State that have potential for creating new jobs or retaining current jobs within the State.

(c) Financial participation by the corporation in private financial investment funds shall be made with the provision that

the private fund shall make investments in Hawaii in amounts at least equal to the amount of state participation.

(d) The corporation shall not make direct investments in individual businesses except upon a two-thirds vote of the board in each case considered. When deciding whether to enter into a direct investment, the corporation shall consider whether:

- (1) The project is economically sound;
- (2) The project can be successfully completed;
- (3) The project will promote economic diversification;
- (4) The project is located in or will locate in the State and has a reasonable potential to create desirable employment opportunities for residents of the State;
- (5) The project has been unable to obtain sufficient funding on reasonable terms through ordinary means; and
- (6) The project can be partially financed through ordinary means at reasonable terms.

The corporation shall not acquire securities to an extent that would provide the corporation effective voting control of any enterprise after giving effect to the conversion of all outstanding convertible securities of the enterprise.

(e) Investments by the corporation to persons shall be made on the basis of solicitation and a competitive technical review process, subject to the availability of funds allocated to the corporation for making investments. Investments by the corporation shall not be subject to chapter 42F. Any organization applying for an investment shall meet the following standards:

- (1) Have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations;
- (2) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments;
- (3) Comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap; and
- (4) Comply with other requirements as the board may prescribe. [L 1990, c 110, pt of §3; am L 1991, c 335, §5; am L 1997, c 190, §6]

" **[\$211F-8] Business and industry evaluation and priorities for job opportunity and economic development.** The corporation shall develop procedures to set priorities as to which types of businesses and industries are most likely to provide significant

opportunities for economic development and diversification in the State, consistent with the purposes of this chapter. This evaluation shall take into account the guidelines provided by the state plan for economic development. Based on these findings, the corporation shall establish targets by which the operations and programs of the corporation shall be guided. [L 1990, c 110, pt of §3]

" **[\$211F-9] Meetings of the board.** (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise the disclosure of which might be harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4; provided that this authorization to hold closed meetings in accordance with subsection (a) shall be in addition to the exceptions listed in section 92-5, to enable the corporation to respect the proprietary requirements of enterprises with which it has business dealings. [L 1990, c 110, pt of §3]

" **[\$211F-10] Confidentiality of trade secrets or the like; disclosure of financial information.** Notwithstanding chapter 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the corporation, to the extent that the material or data consist of trade secrets, commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render, or regarding the competitive position of that applicant in a particular field of endeavor, shall not be a public record; provided that if the corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the corporation. If the information is made or received by any member or employee of the corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received. Any discussion or consideration of trade secrets or commercial or financial information, shall be held by the board, or any subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the corporation and business which is not related to that purpose shall not be

transacted, nor shall any vote be taken during the executive sessions. [L 1990, c 110, pt of §3]

" **[\$211F-11] Requests for assistance from corporation; procedure.** (a) The board shall approve or disapprove requests for assistance within ninety days of receiving a written application. Upon written request by an applicant, the board may reconsider its denial of an application for assistance or may waive the ninety-day deadline for approving or disapproving an application.

(b) Any person who submits any statement, report, application, or other document to the corporation which is known to the person to be false in any material respect shall be guilty of a class C felony.

(c) The corporation may condition any assistance of any type by placing restrictions on the recipient in regard to the recipient's assets or indebtedness or in any other manner deemed appropriate by the corporation. A recipient who accepts assistance from the corporation shall be deemed to agree to be bound by any conditions or restrictions imposed by the corporation. [L 1990, c 110, pt of §3]

" **[\$211F-12] Private sector financial support.** Significant private sector financial support shall be associated with any economic development project for which the corporation provides assistance. [L 1990, c 110, pt of §3]

" **[\$211F-13] Limitations on debt owed to corporation.** Not more than \$5,000,000 in financial assistance, excluding rights and royalties under a venture capital agreement, shall be provided to any one enterprise at any time. The direct investments of the corporation shall not exceed five per cent of the assets of the corporation, excluding rights and royalties under a venture capital agreement, provided that by a two-thirds vote of the board this amount may be increased to a limit of twenty-five per cent of the total assets of the corporation. [L 1990, c 110, pt of §3]

" **[\$211F-14] Limitation on liability.** Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, without regard to whether that person or entity receives any benefits under this chapter, against the State or its officers and employees. The State and its officers and employees shall not be liable for the results of any investment, purchase of securities, loan, or

other assistance provided pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the corporation in excess of any note, loan, or other specific indebtedness incurred by the corporation or in excess of any insurance policy acquired for the corporation or its employees. [L 1990, c 110, pt of §3]

" **[\$211F-15] Annual report.** The corporation shall submit a complete and detailed report of the corporation's activities to the legislature. The report shall be submitted not later than twenty days before the convening of the regular session of 1991, and every year thereafter. [L 1990, c 110, pt of §3]

" **[\$211F-15.5] HI growth initiative; report to legislature.** The corporation shall submit a report to the legislature no later than twenty days prior to the convening of the regular session of 2014 and annually thereafter on the specific annual outcome achieved through the activities and expenditures of the HI growth initiative. [L 2013, c 274, §2]

" **[\$211F-16] Annual audit.** The books and records of the corporation shall be subject to an annual audit by an independent auditor. [L 1990, c 110, pt of §3]

" **[\$211F-17] Cooperation with corporation by state agencies.** Every state agency may render services to the corporation upon request of the corporation. [L 1990, c 110, pt of §3]

" **[\$211F-18] Construction of chapter.** This chapter shall be liberally construed to effect its purposes. [L 1990, c 110, pt of §3]

"PART II. PROGRAM FOR SEED CAPITAL ASSISTANCE

[\$211F-21] Establishment. The corporation shall establish a program for seed capital assistance. [L 1990, c 110, pt of §3]

" **[\$211F-22] Seed capital investments.** Subject to this chapter, the corporation may invest in:

- (1) A certified development company under sections 501 to 503 of the Small Business Investment Act of 1958, 15 U.S.C. 695 to 697, and the regulations adopted under those sections;
- (2) A small business investment company under the Small Business Investment Act, 15 U.S.C. 631 to 634, 636 to 649, and the regulations adopted under those sections;

- (3) A minority enterprise small business investment corporation or equivalent venture capital corporation;
- (4) A similar entity that may leverage its capital under a federal program; or
- (5) A seed capital fund or partnership. [L 1990, c 110, pt of §3]

" **[\$211F-23] Purposes and terms of investments.** (a) Investments may be used for any purpose consistent with the purposes and objectives of this chapter, including but not limited to:

- (1) Developing a working prototype;
- (2) Preparing a development plan;
- (3) Performing an initial market analysis;
- (4) Organizing a management team; and
- (5) Any other purpose reasonably related to an economic development project.

(b) Investments may be made on such terms and conditions as the corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter. [L 1990, c 110, pt of §3]

"PART III. PROGRAM FOR VENTURE CAPITAL ASSISTANCE

[\$211F-31] Establishment. The corporation shall establish a program for venture capital. [L 1990, c 110, pt of §3]

" **[\$211F-32] Venture capital investments.** Subject to this chapter, the corporation may invest in:

- (1) A certified development company under sections 501 to 503 of the Small Business Investment Act of 1958, 15 U.S.C. 695 to 697, and the regulations adopted under those sections;
- (2) A small business investment company under the Small Business Investment Act, 15 U.S.C. 631 to 634, 636 to 649, and the regulations adopted under those sections;
- (3) A minority enterprise small business investment corporation or equivalent venture capital corporation;
- (4) A similar entity that may leverage its capital under a federal program; or
- (5) A venture capital fund or partnership. [L 1990, c 110, pt of §3]

" **[\$211F-33] Purposes and terms of investments.** (a) Investments may be used for any purpose consistent with the purposes and objectives of this chapter.

(b) Investments may be made on such terms and conditions as the corporation shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter. [L 1990, c 110, pt of §3]

"PART IV. PROGRAM FOR CAPITAL ACCESS

[\$211F-41] Establishment. The corporation shall establish a program for capital access. [L 1990, c 110, pt of §3]

" **[\$211F-42] Financial assistance.** The corporation, through the program for capital access, may:

- (1) Procure insurance, a guarantee, or a letter of credit from any source for all or a part of a loan, debenture, or lease of others, public or private, or a revenue bond issue of the State or other entity or authority authorized by law to issue revenue bonds; and
- (2) Procure insurance, a guarantee, or a letter of credit for either a single loan, debenture, or lease or for any combination of loans, debentures, or leases, or a single revenue bond issue or for all or a part of any combination of revenue bond issues. [L 1990, c 110, pt of §3]

" **[\$211F-43] Purposes and priorities required in the procuring of insurance, loan guarantees, or letters of credit.**

(a) Insurance, guarantees, or letters of credit procured pursuant to section 211F-42 shall be procured only for economic development projects within the State that are consistent with the purposes and objectives of this chapter.

(b) The corporation shall give paramount priority in procuring insurance, guarantees, and letters of credit to economic development projects that have the greatest potential for creating new jobs or retaining current jobs within the State. [L 1990, c 110, pt of §3]

" **[\$211F-44] Conditions for procuring of insurance, loan guarantees, or letters of credit.** (a) Insurance, guarantees, or letters of credit shall not be procured pursuant to section 211F-42 unless the corporation is assured that the loans, debentures, or leases insured, or guaranteed, or for which letters of credit are issued, shall be used to assist economic development projects that also have significant private sector financial support.

(b) Insurance, guarantees, or letters of credit may be procured on such terms and conditions as the corporation, in its

sole discretion, shall determine to be reasonable, appropriate, and consistent with the purposes and objectives of this chapter.

(c) The corporation shall charge the lender or the borrower, or both, a fee or premium for procuring loan, debenture, or lease insurance, guarantee, or a letter of credit. Rules for premiums or fees shall be established by the corporation. [L 1990, c 110, pt of §3]

" **[§211F-45] Program for capital access participation agreements.** The corporation shall enter into agreements with lenders for participation in the program for capital access that shall include but not be limited to:

- (1) Authorization for the lender to determine, collect, and transmit to the corporation a fee or premium charge within a specified range established consistent with the purposes and objectives of the corporation;
- (2) Specification of whether the premium charge shall be paid by the lender, the borrower, the corporation, or by a combination thereof in specified proportions;
- (3) The procedure by which a lender may make a claim upon the corporation upon default by the borrower, and the conditions under which a claim may be made; and
- (4) The maximum amount of claims a lender may make upon the corporation, which amount may be equal to or less than the proportion of the total premiums contributed by the corporation. [L 1990, c 110, pt of §3]

" **[§211F-46] Establishment of special funds to secure loan insurance obligations; source of funds.** The corporation may establish a special fund or funds for capital access into which fees or premiums collected by the corporation are deposited. [L 1990, c 110, pt of §3]

" **[PART V. HAWAII TECHNOLOGY INVESTMENT PROGRAM]**

[§211F-51] Definitions. As used in this part:

"Biotechnology" means fundamental knowledge regarding the function of biological systems from the macro level to the molecular subatomic levels that has application to development including the development of novel products, services, technologies, and subtechnologies from insights gained from research advances that add to that body of fundamental knowledge.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared and is intended to be processed,

is being processed, or has been processed in a computer or computer network.

"Computer program" means an ordered set of computer data representing coded instructions or statements, that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer software" means computer data, a computer program, or a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Financial organization" means an organization authorized to do business in Hawaii that is:

- (1) Certified as an insurer by the insurance commissioner;
- (2) Licensed or chartered as a financial institution by the commissioner of financial institutions;
- (3) Chartered by an agency of the federal government;
- (4) Subject to the jurisdiction and regulation of the federal Securities and Exchange Commission; or
- (5) Any other entity otherwise authorized to do business in the State that meets the requirements of this part.

"Program" means the Hawaii technology investment program.

"Program manager" means a financial organization selected by the corporation to manage the program.

"Qualified high technology business":

- (1) Means a business, employing or owning capital or property, or maintaining an office, in this State that:
 - (A) Conducts more than fifty per cent of its activities in performing qualified research in this State; or
 - (B) Receives more than fifty per cent of its gross income derived from qualified research; provided that the income is received from:
 - (i) Products sold from, manufactured in, or produced in the State; or
 - (ii) Services performed in this State.
- (2) Does not include:
 - (A) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;
 - (B) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of

raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

- (C) Any business operating a hotel, motel, restaurant, or similar business; and
- (D) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:

- (1) The same as in section 41(d) of the Internal Revenue Code; or
- (2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
- (3) Biotechnology;

provided that more than fifty per cent of the business' activities are qualified research.

"Venture capital investment" means any of the following investments in a qualified high technology business:

- (1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
- (2) A right to purchase stock or equity securities;
- (3) Any debenture or loan, whether or not convertible or having stock purchase rights, which:
 - (A) Is subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders;
 - (B) Is for a term of not less than three years; and
 - (C) Has no part amortized during the first three years;
- (4) General or limited partnership interests; and
- (5) Membership interests in limited liability companies.

[L 2000, c 297, pt of §33]

" **[\$211F-52] Formation of Hawaii technology investment program.** (a) The corporation shall establish the Hawaii technology investment program for the purpose of allowing individual investors to contribute to the program to invest venture capital in businesses in Hawaii.

(b) The corporation may implement the Hawaii technology investment program through a regulated investment company under the terms and conditions established by this section. The corporation may make changes to the program as required for participants to obtain the federal and state income tax benefits or treatment provided by sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended.

The corporation may establish a program in which the dividends distributed by the regulated investment company are exempt from income taxation under chapter 235. If the corporation establishes a program that is proposed to be exempt from income taxation under chapter 235, it shall furnish sufficient information and notify the department of taxation and investors of the tax exempt status of that program.

(c) The corporation may implement the program through the use of financial organizations as program managers. Under the program, individuals may establish accounts directly with a program manager.

(d) The corporation may solicit proposals from one or more financial organizations to act as a program manager. Financial organizations submitting proposals shall describe the investment instrument. The corporation shall select as program managers the financial organizations from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

- (1) The financial stability and integrity of the financial organization;
- (2) The ability of the financial organization to establish or act as a regulated investment company for the purposes of this part;
- (3) The ability of the financial organization to satisfy recordkeeping and reporting requirements for the purposes of a program that allows a program that is exempt from taxation under chapter 235;
- (4) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;
- (5) The fees, if any, proposed to be charged to persons for opening accounts;

- (6) The minimum initial deposit and minimum contributions, subject to this section that the financial organization will require;
- (7) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

(e) The corporation may enter into a management contract of up to ten years with a financial organization. The financial organization shall provide investment instruments meeting the requirements of this section. The management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of this section and to manage the program to meet the requirements of sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended;
- (2) Keep adequate records of each account, keep each account segregated from each other's account, and provide the corporation with the information necessary to prepare any necessary statements;
- (3) Provide the corporation with the information necessary to determine compliance with this section;
- (4) Provide the corporation access to the books and records of the financial organization to the extent needed to determine compliance with the contract;
- (5) Hold all accounts for the benefit of the account owner;
- (6) Be audited at least annually by a firm of independent certified public accountants selected by the financial organization, and provide the results of the audit to the corporation; and
- (7) Provide the corporation with copies of all regulatory filings and reports related to the program made by the financial organization during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The financial organization shall make available for review by the corporation, the results of any periodic examination of the financial organization by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the examining agency.

(f) The corporation may require an audit to be conducted of the operations and financial position of the program manager

at any time if the corporation has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager.

(g) During the term of any contract with a program manager, the corporation shall conduct an examination of the program manager and its handling of accounts. The examination shall be conducted at least biennially if the program manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(h) If selection of a financial organization as a program manager is not renewed, after the end of the term:

- (1) Accounts previously established and held in investment instruments at the financial organization may be terminated;
- (2) Additional contributions may be made to the accounts;
- (3) No new accounts may be placed with the financial organization; and
- (4) Existing accounts held by the financial organization shall remain subject to all oversight and reporting requirements established by the corporation.

If the corporation terminates a financial organization as a program manager, the corporation shall take custody of accounts held by the financial organization and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(i) The corporation may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(j) The program shall only allow contributions from individual investors in amounts ranging from a minimum of \$1,000 to a maximum of \$100,000 per investor.

(k) The program manager shall invest all contributions received from investors in securities not limited to legal investments under state laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Contributions shall be used for venture capital investment. Investment may be made in any manner the program deems correct. If no venture capital investment is available at the time a contribution is made to the program, the program manager may invest the contribution in any manner allowed a regulated investment company until a venture capital investment opportunity occurs. While the program manager should make a best effort to make venture capital investments as defined in section 211F-51, if no such

venture capital investment is available in Hawaii, then the program manager may make venture capital investments outside Hawaii.

(1) The corporation may adopt any necessary rules under chapter 91. [L 2000, c 297, pt of §33]

Revision Note

Paragraphs (3) to (7) in subsection (e) redesignated pursuant to §23G-15(1).

" **[\$211F-53] Limitation of liability.** In no case shall the corporation, officers or employees of the corporation, or the State be liable for the monetary losses of individuals contributing to the program. In all cases, the program manager shall inform individual contributors of the risk involved in contributing to the program. [L 2000, c 297, pt of §33]