

House Bill 1305

By: Representatives Amerson of the 9th, Stephens of the 164th, Smith of the 113th, Royal of the 171st, and Forster of the 3rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the
2 Seed-Capital Fund, so as to provide definitions; to provide for investment entities as to which
3 the state is a sole limited liability owner; to provide means of investment of Seed-Capital
4 Fund moneys by and through investment entities as to which the state is a sole limited
5 liability owner; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 10 of Title 10 of the Official Code of Georgia Annotated, relating to the
10 Seed-Capital Fund, is amended by striking paragraphs (7) and (8) of Code Section 10-10-1,
11 relating to definitions, and inserting in their place new paragraphs (7) and (8) to read as
12 follows:

13 "(7) 'Investment entity' means a limited partnership, a limited liability company, or other
14 legal entity, including without limitation any such entity as to which the state is the sole
15 limited liability owner, providing limited liability to its owners that is formed to receive,
16 in part, an investment by the fund or an equity return of investment from a fund loan and
17 for which a general partner or manager manages the equity contributions by making
18 investments in qualified securities of one or more enterprises or, in the case of an
19 investment entity as to which the state is the sole limited liability owner, in another
20 investment entity, as permitted by this chapter and by paying the expenses of the
21 investment entity.

22 (8) 'Loan' means an advance of money from the fund to an enterprise or an investment
23 entity on such terms as the center shall set, including, but not limited to, an absolute
24 promise to repay the principal amount of the loan made by the recipient enterprise, and
25 any return on investment that the center may require as a term or condition of the loan,

1 which may include, but not be limited to, simple or compound interest or any form of
2 equity participation."

3 **SECTION 2.**

4 Said chapter is further amended by striking subsection (c) of Code Section 10-10-3, relating
5 to the handling of moneys in the Seed-Capital Fund, and inserting in its place a new
6 subsection (c) to read as follows:

7 "(c) In return for equity contributions by the fund, at the discretion of the center, the state
8 will receive either direct ownership of qualified securities of an enterprise or a limited
9 liability ownership in an investment entity either directly or indirectly through an
10 investment entity as to which the state is the sole limited liability owner as permitted in
11 subsection (c) of Code Section 10-10-4 with rights accruing from investments in qualified
12 securities by the investment entity. With respect to loans made from the fund, the state shall
13 receive repayment of the loan in accordance with its terms, with cash proceeds or other
14 assets from such repayments being deposited in or held through the fund. Additional
15 returns to the state will be secured through the establishment and growth of innovative
16 enterprises that create new, value added products, processes, and services and encourage
17 growth and diversification in the economy of the state."

18 **SECTION 3.**

19 Said chapter is further amended by striking paragraph (3) of subsection (a) of Code Section
20 10-10-4, relating to investing of funds with investment entities, and inserting in its place a
21 new paragraph (3) to read as follows:

22 "(3) The total amount of equity contributions by the state made to an enterprise that
23 originate from the fund, either directly or indirectly through an investment entity as
24 permitted by ~~subsection~~ subsections (b) and (c) of this Code section, and that are invested
25 in qualified securities of an enterprise should ordinarily be no more than \$1 million. Total
26 equity contributions from the fund to an enterprise, directly or indirectly through an
27 investment entity, may be greater than \$1 million if, in the judgment of the center, the
28 enterprise is in severe financial difficulty and an investment of a greater amount is
29 necessary to preserve the initial investment in qualified securities;"

30 **SECTION 4.**

31 Said chapter is further amended by striking the introductory language of paragraph (6) of
32 subsection (a) of Code Section 10-10-4, relating to investing of funds with investment
33 entities, and inserting in its place new introductory language of paragraph (6) to read as
34 follows:

SECTION 6.

Said chapter is further amended in Code Section 10-10-4, relating to investing of funds with investment entities, by inserting a new subsection (c) to read as follows:

"(c) The center, subject to the approval of the board or its designee, may authorize transfers from the fund to make equity contributions to one or more investment entities as to which the state is the sole limited liability owner. Any such investment entities as to which the state is the sole limited liability owner shall be assigned for administrative purposes to the center within the meaning of Code Section 50-4-3. Such investment entities may make investments in other investment entities, which make equity contributions pursuant to subsection (b) of this Code section. Such investment entities may also make equity contributions through direct purchases of qualified securities of enterprises, subject to the center and the investment entity assuring themselves that the following conditions will be satisfied:

(1) At least \$3.00 of equity contributions has been committed in writing to the enterprise by persons other than the state for every \$1.00 of equity contributions committed by the state directly or indirectly from the fund to the enterprise;

(2) The center shall manage the investments of equity contributions in the qualified securities of enterprises so that the state shall not hold voting control of an enterprise;

(3) The total amount of equity contributions by the state made to an enterprise that originates from the fund, either directly or indirectly through an investment entity as permitted by subsection (b) of this Code section and this subsection, and that are invested in qualified securities of an enterprise should ordinarily be no more than \$1 million. Total equity contributions from the fund to an enterprise, directly or indirectly through an investment entity, may be greater than \$1 million if, in the judgment of the center, the enterprise is in severe financial difficulty and an investment of a greater amount is necessary to preserve the initial investment in qualified securities;

(4) The amount of investment, directly or indirectly through an investment entity, by the fund in qualified securities issued by an enterprise should ordinarily not represent more than 49 percent of the enterprise's total qualified securities outstanding at the time such qualified securities are purchased by the fund after giving effect to the conversion of all outstanding convertible qualified securities of the enterprise. An investment of an equity contribution from the fund may exceed 49 percent of the enterprise's total qualified securities outstanding if:

(A) In the case of direct investment, in the center's judgment, such greater investment is prudent; or

1 (B) In the case of indirect investment, in the investment entity's judgment exercised
2 in accordance with paragraph (5) of subsection (b) of this Code section, such greater
3 investment is prudent;

4 (5) The investment entity shall be authorized to make equity contributions in qualified
5 securities of enterprises engaged in an entrepreneurial business only after receipt of an
6 application from the enterprise that contains:

7 (A) A business plan including pro forma financial statements and a description of the
8 enterprise and its management, product, and market;

9 (B) A statement of the amount, timing, and projected use of the capital required;

10 (C) A statement of the potential economic impact of the enterprise, including the
11 number, location, and types of jobs expected to be created; and

12 (D) Such other information as the center shall request; and

13 (6) Approval of an equity contribution may be made after the investment entity finds,
14 based upon the application submitted by the enterprise and such additional investigation
15 as the staff of the center shall make and incorporate in its records, that:

16 (A) The proceeds of the investment or financial assistance will be used only to cover
17 the seed-capital needs of the enterprise except as authorized by paragraph (2) of this
18 subsection;

19 (B) The enterprise has a reasonable chance of success;

20 (C) The fund's participation is instrumental to the success of the enterprise and its
21 retention within the state;

22 (D) The enterprise has the reasonable potential to enhance employment opportunities
23 within the state;

24 (E) The entrepreneur and other founders of the enterprise have already made or are
25 contractually committed to make a substantial financial or time commitment to the
26 enterprise;

27 (F) Any securities to be purchased are qualified securities;

28 (G) There is a reasonable possibility that the fund will recoup at least its initial
29 investment or financial commitment; and

30 (H) Binding commitments have been made to the state by the enterprise for adequate
31 reporting of financial data to the center, which shall include a requirement for an annual
32 report or, if required by the center, an annual audit of the financial and operational
33 records of the enterprise, and for such control on the part of the investment entity as
34 considered prudent, over the management of the enterprise so as to protect the
35 investment or financial commitment of the investment entity, including in the discretion
36 of the entity and, without limitation, right of access to financial and other records of the
37 enterprise and membership or representation on the board of directors of the enterprise."

