

House Bill 1507 (AS PASSED HOUSE AND SENATE)

By: Representatives O`Neal of the 117th, Parrish of the 102nd, Royal of the 140th, and Buck of the 112th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 10 of the Official Code of Georgia Annotated, relating to commerce and
2 trade, and Title 48 of the Official Code of Georgia Annotated, relating to revenue and
3 taxation, so as to provide for the comprehensive revision of provisions regarding venture
4 capital; to provide for the substantial revision of the Seed-Capital Fund; to provide for
5 definitions; to change certain provisions regarding handling policies regarding seed-capital
6 funds; to change certain provisions regarding investment of such funds; to provide for fund
7 transfers with respect to certain loans; to change certain provisions regarding use of such
8 funds and certain proceeds; to repeal certain provisions regarding state insurance premium
9 tax credits with respect to certified capital companies; to provide for related matters; to
10 provide an effective date; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Title 10 of the Official Code of Georgia Annotated, relating to commerce and trade, is
14 amended by striking Chapter 10, relating to the Seed-Capital Fund, and inserting in its place
15 a new Chapter 10 to read as follows:

16 "CHAPTER 10

17 10-10-1.

18 As used in this chapter, the term:

19 (1) 'Board' means the Board of Regents of the University System of Georgia.

20 (2) 'Center' means the Advanced Technology Development Center created by the board
21 and acknowledged and empowered to administer the fund by Article III, Section IX,
22 Paragraph VI(g) of the Constitution of Georgia.

23 (3) 'Enterprise' means a corporation, partnership, limited liability company, or other legal
24 entity ~~that is less than five years old~~, that has its principal place of business in this state;

and that is engaged in an entrepreneurial business, including, but not limited to, tenants of incubators. For the purposes of this chapter, an enterprise shall not be considered to be engaged in an entrepreneurial business unless it is engaged in innovative work in the areas of technology, bioscience, manufacturing, marketing, agriculture, or information related ventures that will increase the state's share of domestic or international markets. An enterprise engaged primarily in business of a mercantile nature shall not be considered engaged in an entrepreneurial business. An enterprise shall be required to be young, as determined by the center.

~~(7)~~(4) 'Investment entity capital Equity contribution' or 'capital contribution' means the:

(A) Moneys from the fund used to make direct investments by the state in qualified securities of enterprises; and

(B) The capital of an investment entity contributed by the fund, as created in Code Section 10-10-3, and contributed by other investors, which capital shall be used by the investment entity to make investments in qualified securities of one or more enterprises as provided by this chapter and to pay the expenses of the investment entity but shall not include any current or accumulated income of the investment entity.

~~(4)~~(5) 'Fund' means the Seed-Capital Fund created in Code Section 10-10-3.

~~(5)~~(6) 'Incubator' means a facility that leases small units of space to tenants and which maintains or provides access to business development services for use by the tenants or member firms.

~~(6)~~(7) 'Investment entity' means a limited partnership, a limited liability company, or other legal entity providing limited liability to its owners that is formed to receive, in part, an investment by the fund or an equity return of investment from a fund loan and for which a general partner or manager manages the ~~capital~~ equity contributions by making investments in qualified securities of one or more enterprises as permitted by this chapter and by paying the expenses of the investment entity.

(8) 'Loan' means an advance of money from the fund to an enterprise on such terms as the center shall set, including, but not limited to, an absolute promise to repay the principal amount of the loan made by the recipient enterprise, and any return on investment that the center may require as a term or condition of the loan, which may include, but not be limited to, simple or compound interest or any form of equity participation.

~~(8)~~(9) '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 or subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or application therefor or in royalty or other payments under such a patent or

1 application, or, in general, any interest or instrument commonly known as a security or
2 any certificate for, receipt for, guarantee of, or option, warrant, or right to subscribe to or
3 purchase any of the foregoing of an enterprise.

4 ~~(9)~~(10) 'State' means the State of Georgia.

5 10-10-2.

6 There is created the Seed-Capital Fund to be managed by the center under the authority of
7 the board.

8 10-10-3.

9 (a) The fund is created as a separate fund maintained by the board or a body designated
10 by the board and shall be expended only as provided in this chapter. Pending their use as
11 ~~capital~~ equity contributions or as loans, the moneys in the fund may be invested and
12 reinvested in accordance with the investment policies authorized by the board or its
13 designee. The entire cost of administration of the fund, including expenses of the center
14 incurred in connection with the creation, operation, management, liquidation, and
15 investment of fund moneys in enterprises, directly or through investment entities, may be
16 paid from the assets of the fund. All moneys appropriated to or otherwise paid into the fund
17 shall be presumptively concluded to have been committed to the purpose for which they
18 have been appropriated or paid and shall not lapse.

19 (b) The fund shall consist of all moneys authorized by law for deposit in the fund,
20 including, but not limited to, gifts, grants, private donations, and funds by government
21 entities authorized to provide funding for the purposes authorized for use of the fund and
22 any payments or returns on investments made by the center.

23 (c) In return for ~~capital~~ equity contributions by the fund, at the discretion of the center, the
24 state will receive either direct ownership of qualified securities of an enterprise or a limited
25 liability ownership in the an investment entity with rights accruing from investments in
26 qualified securities by an the investment entity. With respect to loans made from the fund,
27 the state shall receive repayment of the loan in accordance with its terms, with cash
28 proceeds or other assets from such repayments being deposited in or held through the fund.

29 Additional returns to the state will be secured through the establishment and growth of
30 innovative enterprises that create new, value added products, processes, and services and
31 encourage growth and diversification in the economy of the state.

32 (d) Disbursements from the fund shall be made upon the instruction of the center director
33 in accordance with the policies of the board.

(e) The center, subject to the approval of the board or its designee, shall be authorized to contract and have contracts and other legal documents prepared to carry out the provisions of this chapter.

(f) The board shall have the authority to issue policies governing the management and operation of the fund as needed.

10-10-4.

(a) The center, subject to the approval of the board or its designee, may authorize transfers from the fund to make equity contributions through the direct purchase of qualified securities of enterprises, subject to the center assuring itself 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 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 originate from the fund, either directly or indirectly through an investment entity as permitted by subsection (b) of this Code section, 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

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

1 (5) The center shall invest equity contributions in qualified securities of enterprises
2 engaged in an entrepreneurial business only after receipt of an application from the
3 enterprise that contains:

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) The center, subject to the approval of the board or its designee, may authorize transfers
36 from the fund to make capital equity contributions to one or more investment entities
37 whose structures, purposes, and operations are consistent with the criteria specified in this

chapter. Investment entities to which the state makes a ~~capital~~ an equity contribution shall not expend any of the funds invested by the state unless and until the center has assured itself that the following conditions will be satisfied by such investment entity:

(1) Either:

(A) At least \$3.00 of ~~capital~~ equity contributions has been committed in writing to the investment entity by persons other than the state for every \$1.00 of ~~capital equity contribution~~ contributions committed by the state from the fund to the investment entity;

(B) At least \$1.00 of ~~capital~~ equity contributions ~~have~~ has been committed in writing to the investment entity by persons other than the state for every \$1.00 of ~~capital equity contribution~~ contributions committed by the state from the fund to an investment entity; provided, however, that no investment is to be made from such investment entity in qualified securities without an equal or greater investment in the same enterprise from sources other than the investment entity, such that, in total, at least \$3.00 of investment from sources other than the state, including funds investment by the investment entity in the enterprise that are other than from ~~capital equity~~ contributions made by the state from the fund, ~~have~~ has been committed to such enterprise for every \$1.00 of the state's portion of the amount invested in the qualified securities of such enterprise;

(2) The total amount of ~~capital~~ equity contributions by the state made to an investment entity that originate from the fund and that are ultimately invested by an investment entity in qualified securities of an enterprise, when added to any amounts invested by the fund directly in the enterprise's qualified securities, should ordinarily be no more than ~~\$500,000.00~~ \$1 million. In addition, the amount of investment by an investment entity in qualified securities issued by an enterprise should ordinarily not represent more than 49 percent of the total qualified securities at the time such qualified securities are purchased by the investment entity, after giving effect to the conversion of all outstanding convertible qualified securities of the enterprise; provided, however, that the investment in qualified securities of the enterprise by the investment entity can exceed 49 percent if, in the investment entity's judgment exercised in accordance with paragraph (5) of this ~~Code section~~ subsection, such greater investment is prudent; and provided, further, that an amount greater than ~~\$500,000.00~~ \$1 million of funds attributable to ~~capital equity contribution~~ contributions by the state from the fund may be invested by the investment entity in qualified securities of an enterprise if the enterprise is in severe financial difficulty and, in the judgment of the investment entity, an investment of such greater amount is necessary to preserve the initial investment in qualified securities;

(3) The investment entity shall make authorized investments in enterprises engaged in an entrepreneurial business only after receipt of an application from the enterprise that contains:

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

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

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

(D) Such other information as the investment entity shall request;

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

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

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

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

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

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

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

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

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

(5) The governing agreement of the investment entity provides that the care and judgment that management of the investment entity must exercise in the performance of

its obligations shall be the judgment and care under the circumstances then prevailing and that persons of ordinary prudence, discretion, and intelligence exercise in the management of risk capital intended for investment at the early stages of organization and growth of a business that ~~are~~ is:

(A) Expected to create, retain, or extend employment opportunities and economic growth in Georgia; and

(B) All other material matters being equal, developing technological advances that could be expected to result in the greatest increase in employment opportunity and economic growth in Georgia; and

(6) The governing agreement of the investment entity provides for distributions made by the investment entity to its partners or members that are proportionate to the capital committed or otherwise reflective of the ownership interests purchased by the partners or members.

10-10-5.

The center, subject to the approval of the board or its designee, may authorize transfers from the fund to make unsecured or secured loans. With respect to such loans, the center, acting on behalf of the state and the fund, shall have the authority to sell loans, mortgages, security interests, and other obligations held by the state through the fund at public or private sale; to negotiate modifications or alterations in loans, mortgages, security interests, and other obligations held by the fund; to foreclose on any security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such loan, mortgage, security interest, or other obligation held by the fund at any foreclosure or at any other sale; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the fund.

~~10-10-5.~~ 10-10-6.

All distributions made by an investment entity allocable to the state's limited partner interest or membership interest therein; all cash proceeds with respect to any loan, whether interest, the repayment of principal, or other amounts; or proceeds of the sale or transfer of qualified securities held directly by the fund shall be deposited in the fund for future investment in other investment entities, in other qualified securities of enterprises, for making loans as provided in this chapter, or to pay the cost of administration of the fund as provided in this chapter.

1 ~~10-10-6.~~ 10-10-7.

2 The center, on behalf of the board, shall publish an annual report which shall be made
3 available to the Governor, the General Assembly, the Department of Industry, Trade, and
4 Tourism or any successor agency, the chairperson of the House Committee on Economic
5 Development and Tourism, the chairperson of the Senate Economic Development and
6 Tourism Committee, and the board setting forth in detail the operations and transactions
7 conducted by it pursuant to this chapter. The annual report shall specifically account for
8 the ways in which the ~~need~~ needs, mission, and programs of the center described in this
9 chapter have been carried out. The center shall distribute its annual report by such means
10 that will make it widely available to those innovative enterprises of special importance to
11 the Georgia economy."

12 **SECTION 2.**

13 Title 48 of the Official Code of Georgia Annotated, relating to revenue and taxation, is
14 amended by repealing in its entirety Chapter 18, regarding state insurance premium tax
15 credits with respect to certified capital companies.

16 **SECTION 3.**

17 This Act shall become effective upon its approval by the Governor or upon its becoming law
18 without such approval.

19 **SECTION 4.**

20 All laws and parts of laws in conflict with this Act are repealed.