House Bill 1305 (AS PASSED HOUSE AND SENATE)

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

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(7) 'Investment entity' means a limited partnership, a limited liability company, or other legal entity, including without limitation any such entity as to which the state is the sole limited liability owner, 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 equity contributions by making investments in qualified securities of one or more enterprises or, in the case of an investment entity as to which the state is the sole limited liability owner, in another investment entity, 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 or an investment entity 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."

SECTION 2.

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

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

SECTION 3.

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

"(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~~ subsections (b) and (c) 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;"

SECTION 4.

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

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

SECTION 5.

Said chapter is further amended by striking the introductory language and paragraph (1) of subsection (b) of Code Section 10-10-4, relating to investing of funds with investment entities, and inserting in their place new introductory language and a new paragraph (1) of subsection (b) to read as follows:

″(b) The center, subject to the approval of the board or its designee, may authorize transfers directly from the fund or indirectly, as described in subsection (c) of this Code section, from an investment entity as to which the state is the sole limited liability owner, to make equity contributions to one or more investment entities whose structures, purposes, and operations are consistent with the criteria specified in this chapter. Investment entities to which the state, directly or indirectly, makes 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 equity contributions has been committed in writing to the investment entity by persons other than the state for every $1.00 of equity contributions committed by the state from the fund or from an investment entity as to which the state is the sole limited liability owner to the investment entity;

(B) At least $1.00 of equity contributions has been committed in writing to the investment entity by persons other than the state for every $1.00 of equity contributions committed by the state from the fund or from an investment entity as to which the state is the sole limited liability owner 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~~ invested by the investment entity in the enterprise that are other than from equity contributions made by the state from the fund or from an investment entity as to which the state is the sole limited liability owner, 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;″

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

(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;

(5) The investment entity shall be authorized to make equity contributions in qualified securities of 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 center shall request; and

(6) Approval of an equity contribution 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 center 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 needs of the enterprise except as authorized by paragraph (2) of this subsection;

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

(C) The fund´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 fund will recoup at least its initial investment or financial commitment; and

(H) Binding commitments have been made to the state by the enterprise for adequate reporting of financial data to the center, which shall include a requirement for an annual report or, if required by the center, 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.″

SECTION 7.

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

SECTION 8.

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