House Bill 285

By: Representatives Peake of the 141st, Lindsey of the 54th, Williamson of the 115th, Stephens of the 164th, Sheldon of the 104th, and others

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 create the Invest Georgia Fund; to provide for legislative findings; to provide for definitions; to provide for a fund administrator; to provide for reports; to provide for conditions, procedures, and limitations; to provide for the issuance of premium tax credits to insurance companies that purchase such credits to offset liability for state insurance premium taxes; 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 designating Code Sections 10-10-1 through 10-10-7 as Article 1.

SECTION 2.

Said chapter is further amended by revising Code Section 10-10-1, relating to definitions, as follows:

"10-10-1.

As used in this ~~chapter~~ article, the term:

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

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

(3) 'Enterprise' means a corporation, partnership, limited liability company, or other legal entity 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~~ article, 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.

(4) 'Equity contribution' means:

(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~~ article and to pay the expenses of the investment entity but shall not include any current or accumulated income of the investment entity.

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

(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.

(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~~ article 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.

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

(10) 'State' means the State of Georgia.″

SECTION 3.

Said chapter is further amended by revising Code Section 10-10-3, relating to moneys in the fund to be handled in accordance with policies authorized by the board, as follows:

″10-10-3.

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

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

(c) In return for equity contributions by the fund, at the discretion of the center, the state ~~will~~ shall 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~~ shall 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.

(d) Disbursements from the fund shall be made upon the instruction of the center director 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~~ article.

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

SECTION 4.

Said chapter is further amended by revising Code Section 10-10-6, relating to distribution to be deposited in the fund, as follows:

″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~~ article, or to pay the cost of administration of the fund as provided in this ~~chapter~~ article.″

SECTION 5.

Said chapter is further amended by adding a new article to read as follows:

″ARTICLE 2

10-10-10.

Pursuant to the authority granted in Article III, Section IX, Paragraph VI(g) of the Constitution, there is hereby created the Invest Georgia Fund as a distinct component of the Seed-Capital Fund. The General Assembly declares that its purpose in creating the Invest Georgia Fund and enacting this legislation is to increase the amount of private investment capital available in this state for Georgia based business enterprises in the seed, early, or growth stages of business development and which require funding, as well as for established Georgia based business enterprises developing new methods or technologies, including the promotion of research and development purposes, thereby increasing employment, creating additional wealth, and otherwise benefitting the economic welfare of the people of this state. Accordingly, it is the intention of the General Assembly that the Invest Georgia Fund make investments in support of Georgia based business enterprises in accordance with the investment policy authorized and required under this article and focus its investment policy principally on venture capital funds and private equity organizations that invest in Georgia based business enterprises.

10-10-11.

As used in this article, the term:

(1) 'Affiliate' means:

(A) A person who, directly or indirectly, beneficially owns, controls, or holds power to vote any outstanding voting securities or other voting ownership interests of a venture capital firm or insurance company; or

(B) A person whose outstanding voting securities or other voting ownership interests are directly or indirectly beneficially owned, controlled, or held with power to vote by a venture capital firm or insurance company.

The term does not include an insurance company that becomes a purchaser in accordance with an allocation of investment tax credits under this article solely by reason of the allocation.

(2) 'Board' means the Invest Georgia Board created under Code Section 10-10-12.

(3) 'Center' means the Advanced Technology Development Center.

(4) 'Contributed capital' means the amount of money contributed to the Invest Georgia Fund by any authorized method.

(5) 'Designated capital' means the amount of money committed and invested by the Invest Georgia Fund into individual early stage venture capital funds or growth stage venture capital funds.

(6) 'Early stage venture capital fund' means:

(A) A fund that has at least one principal employed to direct the investment of the designated capital;

(B) A fund whose principals have at least five years of experience in the venture capital, angel capital, or private equity sector by investing primarily in Georgia domiciled companies or a fund whose managers have been based, as defined by having a principal office, in the State of Georgia for at least five years prior to the effective date of this article;

(C) At the discretion of the fund administrator and the board, one or more early stage venture capital funds that are first-time Georgia based funds, so long as the fund managers have at least five years of experience in venture capital or angel capital investing in Georgia based business enterprises; and

(D) A fund which has as its primary investment strategy the achievement of transformational economic development outcomes through focused investments of capital in seed or early stage businesses with high growth potential. The fund principals must have demonstrated the ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments. A minimum of 10 percent of the committed capital of the fund must be committed by the institutional investors, fund principals, or other accredited investors.

(7) 'Fund administrator' means a state appointed investment advisory firm consisting of experienced investment professionals that will actively pursue investment opportunities for the State of Georgia. The investment advisory firm will evaluate and select Georgia based venture capital funds, in conjunction with the Invest Georgia Board, through a rigorous due diligence process.

(8) 'Growth stage venture capital fund' means:

(A) A fund having its principal office and a majority of its employees in Georgia that has at least two principals employed to direct the investment of the designated capital;

(B) A fund whose principals have at least five years of experience in the venture capital, angel capital, or private equity sector by investing primarily in Georgia domiciled companies or a fund whose principals have been based, as defined by having a principal office, in the State of Georgia for at least five years prior to the effective date of this article; and

(C) A fund which has as its primary investment strategy the achievement of transformational economic development outcomes through focused investments of capital in growth stage businesses with high return potential. The fund principals must have demonstrated the ability to lead investment rounds, advise and mentor entrepreneurs, and facilitate follow-on investments. A minimum of 50 percent of the committed capital of the fund must be committed by the institutional investors, fund principals, or other accredited investors.

(9) 'Insurance premium tax credit' means a credit against state insurance premium tax liability offered to a purchaser under Code Section 10-10-17, et seq.

(10) 'Insurance premium tax liability' means any state tax liability incurred under Code Sections 33-3-26 and 33-8-4; provided, however, that any insurance premium tax liability incurred under the provisions of Code Section 47-7-61, relating to fire, lightning, or extended coverage, inland marine or allied lines, or windstorm coverage, shall not be offset by any insurance premium tax credits issued under this article.

(11) 'Invest Georgia Fund' means the fund created under the provisions of Code Section 10-10-15 to hold the money collected from appropriations and the sale of state insurance premium tax credits, if any.

(12) 'Purchaser' means:

(A) An insurance company that:

(i) Is authorized to do business in Georgia;

(ii) Has insurance premium tax liability; and

(iii) Pays contributed capital to purchase an allocation of insurance premium tax credits under this article; or

(B) A holding company that:

(i) Has at least one insurance company subsidiary authorized to do business in Georgia; and

(ii) Pays contributed capital on behalf of one or more of these subsidiaries.

(13) 'Qualified distribution' means any distribution or payment by the Invest Georgia Fund in connection with any of the following:

(A) Costs and expenses of forming, syndicating, and organizing the Invest Georgia Fund, including fees paid for professional services, and the costs of financing and insuring the obligations of the Invest Georgia Fund, provided such payments are not made to a participating investor;

(B) An annual management fee in accordance with a fund's partnership agreement, and consistent with such fund's other private investors, to offset the costs and expenses of managing and operating the Invest Georgia Fund; or

(C) Reasonable and necessary fees in accordance with industry custom for ongoing professional services, including, but not limited to, legal and accounting services related to the operation of the Invest Georgia Fund, but not including any lobbying or governmental relations.

(14) 'Qualified early stage business' or 'seed' business means a business that, at the time of the first investment in the business by a venture capital firm:

(A) Has its headquarters located in the State of Georgia;

(B) Has its principal business operations located in the State of Georgia and intends to maintain its principal business operations in this state after receiving an investment from the venture capital firm. In order to discourage the business from relocating outside Georgia within three years from the date of an initial investment, the investment in the business shall be subject to redemption by the venture capital firm within one year from the time the business relocates its principal business operations outside this state, unless the business maintains a significant presence in Georgia as determined by relative number of employees or relative assets remaining in Georgia following the relocation;

(C) Has 20 or fewer employees;

(D) Has a current gross annual revenue run rate of less than $1 million;

(E) Has not obtained during its existence more than $2 million in aggregate cash proceeds from the issuance of its equity or debt investments, not including commercial loans from chartered banks or savings and loan institutions; and

(F) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate development or construction;

(iii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission is charged;

(iv) The business of insurance, banking, lending, financial, brokerage, or investment activities;

(v) Natural resource extraction, including, but not limited to, oil, gas, or biomass; or

(vi) The provision of professional services by accountants, attorneys, or physicians.

A business classified as a qualified early stage business at the time of the first qualified investment in such business shall remain classified as a qualified early stage business and may receive continuing qualified investments from venture capital firms participating in the Invest Georgia Fund. Continuing investments shall constitute qualified investments even though the business may not meet the definition of a qualified early stage business at the time of such continuing investments.

(15) 'Qualified growth stage business' means a business that, at the time of the first investment in the business by a venture capital firm:

(A) Has its headquarters located in the State of Georgia;

(B) Is a corporation, limited liability company, or a general or limited partnership located in this state;

(C) Has its principal business operations located in the State of Georgia and intends to maintain its principal business operations in this state after receiving an investment from the venture capital firm. In order to discourage the business from relocating outside Georgia within three years from the date of initial investment, the investment in the business shall be subject to redemption by the venture capital firm within one year from the time the business relocates its principal business operations outside this state, unless the business maintains a significant presence in Georgia as determined by relative number of employees or relative assets remaining in Georgia following the relocation;

(D) Has 100 or fewer employees;

(E) Has a current gross annual revenue run rate of more than $1 million; and

(F) Does not engage substantially in:

(i) Retail sales;

(ii) Real estate development or construction;

(iii) Entertainment, amusement, recreation, or athletic or fitness activity for which an admission is charged;

(iv) The business of insurance, banking, lending, financial, brokerage, or investment activities;

(v) Natural resource extraction, including, but not limited to, oil, gas, or biomass; or

(vi) The provision of professional services by accountants, attorneys, or physicians.

A business classified as a qualified growth stage business at the time of the first qualified investment in such business shall remain classified as a qualified growth stage business and may receive continuing qualified investments from venture capital firms participating in the Invest Georgia Fund. Continuing investments shall constitute qualified investments even though the business may not meet the definition of a qualified growth stage business at the time of such continuing investments.

(16) 'Qualified investment' means the investment of money by the Invest Georgia Fund in each early stage venture capital fund or growth stage venture capital fund selected by the fund administrator.

10-10-12.

(a) There is hereby created the Invest Georgia Board, which shall exercise the powers and perform the duties prescribed by this article. The exercise by the board of its powers and duties is hereby declared to be an essential state governmental function. The board shall be subject to all laws generally applicable to state agencies and public officials, to the extent those laws do not conflict with the provisions of this article.

(b) The board shall consist of three members appointed by the Governor, one member appointed by the Lieutenant Governor, and one member appointed by the Speaker of the House of Representatives. Each appointed member shall be a resident of Georgia and shall have experience in at least one of the following areas:

(1) Early stage, angel, or venture capital investing;

(2) Growth stage venture capital investing;

(3) Fund of funds management; or

(4) Entrepreneurship.

No member of the board shall be an affiliate of any venture capital fund that is selected to perform services for the board or of an insurance company.

(c) The commissioner of economic development, a member of the One Georgia Authority, and the Commissioner of Insurance or their designees shall serve as nonvoting members of the board.

(d) Initial appointees to the board shall serve staggered terms, with all of the initial terms beginning within 30 days of the effective date of this Code section. The terms of one member appointed by the Governor and the members appointed by the Lieutenant Governor and the Speaker of the House of Representatives shall expire on December 31,

2016. The terms of the other two initial appointments by the Governor shall expire on December 31, 2018. Thereafter, terms of office for all appointees shall be for four years, with each term ending on the same day of the same month as did the term that it succeeds. A vacancy on the board shall be filled in the same manner as the original appointment, except that a person appointed to fill a vacancy shall be appointed to the remainder of the unexpired term. Any appointed member of the board shall be eligible for reappointment.

(e) A member of the board may be removed by such member's appointing official for misfeasance, willful neglect of duty, or other cause, after notice and a public hearing, unless the notice and hearing are waived in writing by such member.

(f) Members of the board shall serve without compensation. The Governor shall designate a member of the board to serve as chairperson. A majority of the voting members of the board shall constitute a quorum, and the affirmative vote of a majority of the voting members present shall be necessary for any action taken by the board. A vacancy in the membership of the board shall not impair the right of a quorum to exercise all rights and perform all duties of the board.

(g) The board shall have the power:

(1) To have a seal and alter the same at its pleasure;

(2) To acquire by purchase, lease, or otherwise, including acquisition of land from the state government, and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purpose and to enter into any contracts, leases, or other charges for the use of property or services of the board and collect and use the same as necessary to operate the board; and to accomplish any of the purposes of this article and make any purchases or sales necessary for such purposes;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, real property, or rights or easements therein, or franchises necessary or convenient for its corporate purpose, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of such property, or dispose of the same in any manner it deems to be to the best advantage of the board;

(4) To appoint, select, and employ officers, agents, and employees, including real estate, environmental, engineering, architectural, and construction experts, fiscal agents, and attorneys, and to fix their respective compensations;

(5) To make contracts and leases and to execute all instruments necessary or convenient. Any and all persons, firms, and corporations and any and all political subdivisions, departments, institutions, authorities, or agencies of the state and federal government are authorized to enter into contracts, leases, or agreements with the board upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the

foregoing, authority is specifically granted to municipal corporations, counties, political subdivisions, and to the board relative to entering into contracts, lease agreements, or other undertakings authorized between the board and private corporations, both inside and outside this state, and between the board and public bodies, including counties and cities outside this state and the federal government;

(6) To accept loans and grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may require;

(7) To accept loans and grants of money or materials or property of any kind from the State of Georgia or any authority, agency, or instrumentality or political subdivision thereof upon such terms and conditions as the State of Georgia or such authority, agency, or instrumentality or political subdivision may require;

(8) To exercise any power usually possessed by private corporations performing similar functions, provided that no such power is in conflict with the Constitution or general laws of this state; and

(9) To do all things necessary or convenient to carry out the powers expressly given in this article.

(h) The center shall provide the board with office space and such technical assistance as the board requires, and the board shall be attached to the center for administrative purposes. The center shall also consult with the board in connection with the administration of the Invest Georgia Fund created under this article.

10-10-13.

The board's primary responsibilities shall include:

(1) Establishing an investment policy for the selection of a fund administrator;

(2) Selecting a fund administrator to administer the provisions of this article;

(3) Giving final approval to allocations of designated capital to the venture capital funds selected by the fund administrator;

(4) Executing and overseeing the contracts of the fund administrator in order to assure compliance with this article; and

(5) Establishing a policy with respect to use of capital and profits returned to the state pursuant to the provisions of Code Section 10-10-19.

10-10-14.

(a) The fund administrator shall be selected by the board through a transparent open bid process and shall be responsible for administering the Invest Georgia Fund and for making all venture capital fund selections in accordance with the investment policies developed by the board or contained in this article.

(b) The fund administrator shall be responsible for selecting a group of Georgia based venture capital funds in two categories, seed or early stage venture capital funds and growth stage venture capital funds.

(c) The early stage venture capital funds shall invest primarily in early or seed stage businesses and shall be selected using a transparent open bid process pursuant to guidelines developed by the board. The fund administrator shall ensure that a diverse cross section of industry sectors is represented by the selected funds, including technology, health care, life sciences, agribusiness, logistics, energy, and advanced manufacturing.

(d) The growth stage venture capital funds shall be selected using a transparent open bid process pursuant to guidelines developed by the board. The fund administrator shall ensure that a diverse cross section of industry sectors is represented by the selected funds, including technology, health care, life sciences, agribusiness, logistics, energy, and advanced manufacturing.

(e) In the selection of the early stage venture capital funds and the growth stage venture capital funds, the fund administrator shall consider the following factors:

(1) The management structure of the venture capital fund, including:

(A) The investment experience of the principals;

(B) The applicant's reputation in the venture capital firm industry and the applicant's ability to attract coinvestment capital and syndicate investments in qualified businesses in Georgia;

(C) The knowledge, experience, and capabilities of the applicant in subject areas relevant to venture stage businesses in Georgia; and

(D) The tenure and turnover history of principals and senior investment professionals of the venture capital fund;

(2) The venture capital fund's investment strategy, including:

(A) The applicant's record of performance in investing in early and growth stage businesses;

(B) The applicant's history of attracting coinvestment capital and syndicate investments;

(C) The soundness of the applicant's investment strategy and the compatibility of that strategy with business opportunities in Georgia; and

(D) The applicant's history of job creation through investment;

(3) The venture capital fund's commitment to making investments that, to the fullest extent possible:

(A) Create employment opportunities in Georgia;

(B) Lead to the growth of the Georgia economy and qualified businesses in Georgia;

(C) Complement the research and development projects of Georgia academic institutions; and

(D) Foster the development of technologies and industries that present opportunities for the growth of qualified businesses in Georgia; and

(4) The venture capital fund's commitment to Georgia, including:

(A) The applicant's presence in Georgia through permanent local offices or affiliation with local investment firms;

(B) The local presence of senior investment professionals;

(C) The applicant's history of investing in early and growth stage businesses in Georgia;

(D) The applicant's ability to identify investment opportunities through working relationships with Georgia research and development institutions and Georgia based businesses; and

(E) The applicant's commitment to investing an amount that matches or exceeds the amount of the applicant's designated capital received under this article in Georgia based qualified early stage businesses and qualified growth stage businesses.

(f) A venture capital fund shall file an application with the board in the form required by the fund administrator. The board shall begin accepting applications no later than 60 days after the initial appointments.

10-10-15.

(a) The Invest Georgia Fund is created as a separate fund maintained by the board, and moneys shall be expended only as provided in this article.

(b) The Invest Georgia Fund shall be capitalized through grants from the Seed-Capital Fund, designated appropriations to the center, and private contributions to the board. In addition, the board may, in its discretion, sell insurance premium tax credits following the procedures contained in Code Section 10-10-17.

(c) The capital raised shall be periodically distributed to the venture capital funds selected by the fund administrator pursuant to Code Section 10-10-14.

(d) All moneys appropriated to or otherwise paid into the Invest Georgia Fund shall be presumptively concluded to have been committed to the purpose for which they have been appropriated or paid and shall not lapse.

(e) The entire cost of administration of the Invest Georgia Fund, including expenses of the center incurred in connection with the creation, operation, management, liquidation, and investment of fund moneys may be paid from the assets of the Invest Georgia Fund.

10-10-16.

The Invest Georgia Fund shall be financed over a five-year period through guidelines developed by the board. In the first year of the Invest Georgia Fund, the state shall provide $10 million to the Invest Georgia Fund; in the second year, $15 million; in the third year, $15 million; in the fourth year, $25 million; and in the fifth year, $35 million.

10-10-17.

(a) The Invest Georgia Fund may, at the discretion of the board, be capitalized through the sale of state insurance premium tax credits. The board is authorized to sell state insurance premium tax credits to purchasers, pursuant to the provisions of this article, and the insurance premium tax credits shall be used to offset the purchasers' state insurance premium tax liability.

(b) The capital raised through the auction of insurance premium tax credits shall be deposited in the Invest Georgia Fund and periodically distributed to the venture capital funds selected by the fund administrator pursuant to Code Section 10-10-14.

(c) Each year, the purchasers shall be issued a tax credit certificate by the board.

(d) Purchasers shall be able to claim their tax credits pursuant to the provisions of Code Section 10-10-18.

10-10-18.

(a) The board is authorized to sell a maximum of $100 million in insurance premium tax credits over a five-year period through an auction process administered by the fund administrator pursuant to guidelines developed by the board. In the first year of the operation of the Invest Georgia Fund, the board may authorize $10 million in insurance premium tax credits; in the second year, $15 million; in the third year, $15 million; in the fourth year, $25 million; and in the fifth year, $35 million. The purchasers shall be obligated to pay the purchase amount to the board for deposit in the Invest Georgia Fund.

(b) The fund administrator shall obtain the services of an independent third party to conduct the bidding process to secure purchasers for the insurance premium tax credits.

(c) Using the procedures adopted by the independent third party, each potential purchaser shall make a timely and irrevocable offer, subject only to the board's approval for issuance to the purchaser of tax credit certificates, to make specified contributions of designated capital to the board.

(d) The offer shall include:

(1) The requested amount of insurance premium tax credits, which shall not be less than $5 million;

(2) The potential purchaser's specified contribution for each insurance premium tax credit dollar requested, which shall not be less than the greater of:

(A) Ninety percent of the requested dollar amount of insurance premium tax credits; or

(B) The percentage of the requested dollar amount of insurance premium tax credits that the fund administrator, on the recommendation of the independent third party, determines to be consistent with market conditions as of the offer date; and

(3) Any other information the independent third party requires.

(e)(1) The deadline for submission of applications for insurance premium tax credits shall be determined by the board after it decides to proceed with a sale of insurance premium tax credits authorized under this article.

(2) Each bidder at an auction of insurance premium tax credits shall receive a written notice from the fund administrator indicating whether or not it has been approved as a purchaser and, if so, the amount of insurance premium tax credits allocated to the purchaser.

(f) Contributed capital committed by a purchaser shall be paid to the board according to a schedule to be developed by the fund administrator pursuant to guidelines developed by the board.

(g) On receipt of each installment of capital, the board shall issue to each purchaser a tax credit certificate representing a fully vested credit against state insurance premium tax liability equal to one-third of the total insurance premium tax credits allocated to the purchaser.

(h) The tax credit certificate shall state:

(1) The total amount of insurance premium tax credits that the purchaser may claim;

(2) The amount of capital that the purchaser has contributed in return for the issuance of the tax credit certificate;

(3) The dates on which the insurance premium tax credits will be available for use by the purchaser;

(4) Any penalties or other remedies for noncompliance;

(5) The procedures to be used for transferring the insurance premium tax credits; and

(6) Any other requirements the board, in consultation with the Department of Revenue, considers necessary.

(i)(1) A tax credit certificate shall not be issued to any purchaser that fails to make a contribution of capital within the time the board specifies.

(2) A purchaser that fails to make a contribution of capital within the time the board specifies shall be subject to a penalty equal to 10 percent of the amount of contributed

capital that remains unpaid, payable to the board within 30 days after demand by the board.

(3) The board, after consultation with the fund administrator, may offer to reallocate the defaulted contributed capital amount among the other purchasers so that the result after reallocation is the same as if the initial allocation had been performed without considering the insurance premium tax credit allocation to the defaulting purchaser.

(4) If the reallocation of contributed capital results in the contribution by another purchaser or purchasers of the amount of capital not contributed by the defaulting purchaser, then the board, in consultation with the fund administrator, may waive the penalty provided under this subsection.

(5)(A) A purchaser that fails to make a contribution of capital within the time specified may avoid the imposition of the penalty by transferring the allocation of insurance premium tax credits to a new or existing purchaser within 30 days after the due date of the defaulted installment.

(B) Any transferee of an allocation of insurance premium tax credits of a defaulting purchaser under this paragraph shall agree to make the required contribution of capital within 30 days after the date of the transfer.

(j) A purchaser may first claim the insurance premium tax credits on an insurance premium tax return filed the year after the year the tax certificates were issued to the purchaser. The insurance premium tax credits shall not be applied to any prior years' insurance premium tax liability of the purchaser, but unused insurance premium tax credits may be carried forward for three years.

(k)(1) The insurance premium tax credits to be applied against insurance premium tax liability in any one year shall not exceed the insurance premium tax liability of the purchaser for that taxable year.

(2) On 30 days' advance notice to the board, insurance premium tax credits allocated to a purchaser under this article may be transferred without further restriction to any other entity that:

(A) Meets the definition of a purchaser; and

(B) Agrees to assume all of the transferor's obligations under this article.

(l) A purchaser claiming an insurance premium tax credit against insurance premium tax liability earned through an investment under this article shall not be required to pay any additional tax as a result of claiming the insurance premium tax credit.

(m) A purchaser shall not be required to reduce the amount of premium tax included by the purchaser in connection with rate making for any insurance contract written in Georgia because of a reduction in the purchaser's insurance premium tax derived from the insurance premium tax credit granted under this article.

(n) A purchaser or an affiliate shall not directly or indirectly:

(1) Manage a venture capital fund that receives any designated capital under this article;

(2) Beneficially own, through rights, options, convertible interests, or otherwise, greater than 15 percent of the voting securities or other voting ownership interest of a venture capital fund that receives any designated capital under this article; or

(3) Control the direction of investments for a venture capital fund that receives any designated capital under this article.

10-10-19.

(a) As soon as practicable after the board receives contributed capital, the board and each selected venture capital fund that has been allocated designated capital shall enter into a contract under which the allocated amount of designated capital shall be committed by the board to the selected venture capital funds for investment pursuant to this article.

(b) The board shall allocate designated capital as follows:

(1) Early stage venture capital funds: 40 percent of the total contributed capital in the Invest Georgia Fund shall be allocated among the early stage venture capital funds, in accordance with the following eligibility conditions and requirements:

(A) Each early stage venture capital fund shall be eligible for a minimum of $10 million, up to a maximum of $15 million allocation over a five-year period or in accordance with the early stage venture capital fund's partnership agreement and concurrent with the contributions of the early stage venture capital fund's other investors;

(B) Each early stage venture capital fund shall be required to obtain other independent investors. A minimum of 10 percent of the committed capital of the early stage venture capital fund shall be committed by independent institutional investors, early stage venture capital fund principals, or other accredited investors; and

(C) Each early stage venture capital fund shall be required to commit, via a side letter or otherwise, to invest in Georgia based qualified early stage businesses and qualified growth stage businesses an amount that matches or exceeds the amount of the early stage venture capital fund's designated capital received under this article;

(2) Growth stage venture capital funds: 60 percent of the total contributed capital in the Invest Georgia Fund shall be allocated among the growth stage venture capital funds, in accordance with the following eligibility conditions and requirements:

(A) Each growth stage venture capital fund shall be eligible for an allocation of a minimum of $10 million designated capital over a five-year period or in accordance with the growth stage venture capital fund's partnership agreement and concurrent with the contributions of the growth stage venture capital fund's other investors;

(B) Each growth stage venture capital fund shall be required to obtain other independent investors. A minimum of 50 percent of the committed capital of the growth stage venture capital fund shall be committed by independent institutional investors, growth stage venture capital fund principals, or other accredited investors; and

(C) Each growth stage venture capital fund shall be required to commit, via a side letter or otherwise, to invest in Georgia based qualified early stage businesses and qualified growth stage businesses an amount that matches or exceeds the amount of the growth stage venture capital fund's designated capital received under this article.

10-10-20.

(a) Not later than December 31 of each year, each venture capital fund shall report to the board:

(1) The amount of designated capital remaining uninvested at the end of the preceding calendar year;

(2) All qualified investments made during the preceding calendar year, including the number of employees of each business at the time the qualified investment was made and as of December 31 of that year;

(3) For any qualified investment in which the venture capital fund no longer has a position as of the end of the calendar year, the number of employees of the business as of the date the investment was terminated; and

(4) Any other information the board requires to ascertain the impact of this article on the economy of Georgia.

(b) Not later than 180 days after the end of its fiscal year, each venture capital fund shall provide to the board an audited financial statement that includes the opinion of an independent certified public accountant.

(c) Not later than 60 days after the sale or other disposition of a qualified investment, the selling venture capital fund shall provide to the board a report on the amount of the interest sold or disposed of and the consideration received for the sale or disposition.

10-10-21.

Designated capital and investment returns resulting from the qualified investments made under this article shall be retained and used to make additional qualified investments in venture capital funds selected by the fund administrator; provided, however, that the Invest Georgia Fund shall receive any and all returns representing the principal portion of designated capital and shall receive 80 percent of investment returns in excess of designated capital from each respective venture capital fund with the remaining 20 percent of investment returns in excess of designated capital retained by each respective venture capital fund in accordance with such venture capital fund's partnership agreement.

10-10-22.

(a)(1) On or before January 1, 2015, and January 1 of each subsequent year, the fund administrator, through the board, shall submit a report on the implementation of this article to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Finance Committee and the House Committee on Ways and Means.

(2) The center shall also publish the report on the center's website in a publicly available format.

(3) The report published on the website shall not include any proprietary or confidential information.

(b) The report shall include:

(1) With respect to each venture capital fund or private equity organization that has received an allocation of designated capital:

(A) The name and address of the venture capital fund or private equity organization;

(B) The names of the individuals making qualified investments under this article;

(C) The amount of designated capital received during the previous year;

(D) The cumulative amount of designated capital received;

(E) The amount of designated capital remaining uninvested at the end of the preceding calendar year;

(F) The names and locations of qualified businesses receiving designated capital and the amount of each qualified investment;

(G) The annual performance of each qualified investment, including the qualified investment's fair market value as calculated according to generally accepted accounting principles; and

(H) The amount of any qualified distribution or nonqualified distribution taken during the prior year, including any management fee;

(2) With respect to the Invest Georgia Fund:

(A) The amount of designated capital received during the previous year;

(B) The cumulative amount of designated capital received;

(C) The amount of designated capital remaining uninvested at the end of the preceding calendar year;

(D) The names and locations of qualified businesses receiving designated capital and the amount of each qualified investment; and

(E) The annual performance of each qualified investment, including the qualified investment's fair market value as calculated according to generally accepted accounting principles; and

(3) With respect to the qualified businesses in which venture capital funds have invested:

(A) The classification of the qualified businesses according to the industrial sector and the size of the business;

(B) The total number of jobs created in Georgia by the investment and the average wages paid for the jobs; and

(C) The total number of jobs retained in Georgia as a result of the investment and the average wages paid for the jobs."

SECTION 6.

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

SECTION 7.

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