COMMITTEE REPORT

April 6, 2011

**H. 3779**

Introduced by Reps. Brady, Loftis, Bingham and Harrell

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Read the first time March 2, 2011.

**THE COMMITTEE ON WAYS AND MEANS**

To whom was referred a Bill (H. 3779) to amend the Code of Laws of South Carolina, 1976, by adding Chapter 44 to Title 11 so as to enact the “Bill Wylie Entrepreneurship Act of 2011” by providing, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

DANIEL T. COOPER for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**REVENUE IMPACT 1/**

This bill is expected to reduce general fund individual income tax revenue by an estimated $5,000,000 in FY2011-12 and each fiscal year thereafter.

**Explanation**

This bill would add Chapter 44 to Title 11 to create the “South Carolina Angel Investment Act of 2011”. Similar tax credit incentive programs have been implemented in 23 states, including North Carolina and Georgia. This bill would allow an angel investor to claim a nonrefundable state income tax credit of thirty-five percent of its qualified investment in a business start-up company. Total tax credits may not exceed $5,000,000 for all taxpayers in any one taxable year, and total tax credits may not exceed $100,000 for an individual taxpayer in a single taxable year. A taxpayer may apply fifty percent of the allowed tax credit to the investor net tax liability during the tax year the qualified investment is made, and the remaining fifty percent of the tax credit may be applied to any net taxable liability in future tax years. Any unused tax credits may be carried forward for ten years and tax credits may not be used against prior years’ tax liability. Tax credits are transferrable by the heirs and legatees of the qualified investor upon death and/or to his spouse. The tax credit may be transferred only once and may be transferred to any taxpayer, but may be carried forward for ten years from the original date of issue.

An angel investor is an accredited investor who is a resident of this state or a nonresident who is obligated to pay taxes in this state, or is a pass-through entity which is formed for investment purposes, has no business operations, and does not have committed capital exceeding $5,000,000. A pass-through entity means a partnership, an S-corporation, or a limited liability company taxed as a partnership. The individual investor or the pass-through business may invest in a qualified business that meets the following criteria – is either a corporation, limited liability company, or a general or limited partnership located in this state; was organized no more than five years before the qualified investment was made; is headquartered in this state; employs 25 or fewer people; has had gross annual revenue of $2,000,000 or less in any complete fiscal year before registration with the Department of Commerce; and is primarily engaged in specific types of businesses such as manufacturing, processing, warehousing, wholesaling, software development, information technology services, and research and development.

Angel investors are different from venture capitalists. Angel investors generally invest their own money in business start-ups and very early stage companies, while venture capitalists mostly provide capital they have raised from others to later-stage businesses for growth. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as a “qualified investor”. An angel investor is an individual who invests directly into promising entrepreneurial businesses in return for stock in the companies or a share of the profits. To be an accredited investor pursuant to the Securities Act of 1933 requires a net worth of $1,000,000 or an annual income over $200,000. Under the Securities Act of 1933, a company that offers or sells its securities must register the securities with the Securities and Exchange Commission or find an exemption from the registration requirements. The most widely used exemptions are rules 505 and 506 of Regulation D which allows a company to sell its securities to “accredited investors”. An angel group is individual angel investors that join together with other angel investors to evaluate and invest in entrepreneurial ventures. They pool their capital to make larger investments. According to the Angel Capital Association, there are 165 member angel investor groups in the United States. There are two angel investor groups in South Carolina. They are the Charleston Angel Partners (CHAP) and the Upstate Carolina Angel Network (UCAN) in Greenville.

A qualified angel investor seeking to claim a tax credit must submit an application to the Department of Commerce to seek tentative approval of the tax credit. The department would notify each qualified angel investor of the tax credits that are approved and allocated to the investor by January 31st for the year after the application was submitted. If the total amount of tax credits applied for exceeds the maximum amount of tax credits allowed, the tax credits must be allocated among the qualified investors on a pro rata basis.

According to the Angel Capital Association, a professional alliance of angel groups in North America, there were 7,000 accredited angel investors that financed business start-ups investing an average of nearly $220,000 per project in 2009. After adjusting these figures to comparable state figures, we estimate that 105 investors in South Carolina would qualify as angel investors. Multiplying 105 accredited angel investors by an annual tax credit limitation of $100,000 per individual investor for all projects yields an estimated $10,500,000 that may be applied for by investors with the Department of Commerce in a tax year. Because fifty percent of the allowed tax credit may be used in the tax year the qualified investment is first made, an estimated total of $5,250,000 of tax credits could be claimed in the first tax year of the program. We also expect that the maximum limitation of $5,000,000 set aside for accredited angel investors would be met in future tax years. This bill is expected to reduce general fund individual income tax revenue by an estimated $5,000,000 in FY2011-12 and to reduce general fund individual income tax revenue by an estimated $5,000,000 in FY2012-13, and each fiscal year thereafter.

Lastly, each year, the Department of Commerce would report to the House Ways & Means Committee and Senate Finance Committee all of the businesses that have registered with the Department of Commerce as qualified businesses. This act takes effect upon approval by the Governor, and the tax credits are first available for tax years after December 31, 2010.

*Approved By:*

William C. Gillespie

Board of Economic Advisors

1/ This statement meets the requirement of Section 2-7-71 for a state revenue impact by the BEA, or Section 2-7-76 for a local revenue impact or Section 6-1-85(B) for an estimate of the shift in local property tax incidence by the Office of Economic Research.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO ENACT THE “BILL WYLIE ENTREPRENEURSHIP ACT OF 2011” BY PROVIDING FOR STATE NONREFUNDABLE INCOME TAX CREDITS ALLOCATED BY THE DEPARTMENT OF COMMERCE FOR QUALIFIED INVESTMENTS IN BUSINESSES MEETING CERTAIN CRITERIA AND PRIMARILY ENGAGED IN MANUFACTURING, PROCESSING, WAREHOUSING, WHOLESALING, SOFTWARE DEVELOPMENT, INFORMATION TECHNOLOGY SERVICES, RESEARCH AND DEVELOPMENT OR OTHER NONPROHIBITED SERVICES, TO ESTABLISH THE CRITERIA AND PROCEDURES FOR THE CREDIT, AND TO MAKE THE CREDIT TRANSFERABLE.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Title 11 of the 1976 Code is amended by adding:

“CHAPTER 44

Bill Wylie Entrepreneurship Act

Section 11‑44‑10. This chapter may be cited as the ‘Bill Wylie Entrepreneurship Act of 2011’.

Section 11‑44‑20. The General Assembly desires to support the economic development goals of this State by improving the availability of early stage capital for emerging high‑growth enterprises in South Carolina. To further these goals, this chapter is intended to:

(1) encourage individual investors to invest in early stage, high‑growth, job‑creating businesses;

(2) enlarge the number of high quality, high paying jobs within the State;

(3) expand the economy of this State by enlarging its base of wealth‑creating businesses; and

(4) support businesses seeking to commercialize technology invented in this State’s institutions of higher education.

Section 11‑44‑30. For purposes of this chapter:

(1) ‘Angel investor’ means an accredited investor as defined by the United States Securities and Exchange Commission, who is:

(a) an individual person who is a resident of this State or a nonresident who is obligated to pay taxes imposed by this chapter; or

(b) a pass‑through entity which is formed for investment purposes, has no business operations, does not have committed capital under management exceeding five million dollars, and is not capitalized with funds raised or pooled through private placement memoranda directed to institutional investors. A venture capital fund or commodity fund with institutional investors or a hedge fund does not qualify as a qualified investor.

(2) ‘Department’ means the Department of Commerce.

(3) ‘Headquarters’ means the principal central administrative office of a business located in this State which conducts significant operations of a business.

(4) ‘Net income tax liability’ means South Carolina state income tax liability reduced by all other credits allowed under Chapter 6, Title 12.

(5) ‘Pass‑through entity’ means a partnership, an S‑corporation, or a limited liability company taxed as a partnership.

(6) ‘Qualified business’ means a registered business that:

(a) is either a corporation, limited liability company, or a general or limited partnership located in this State;

(b) was organized no more than five years before the qualified investment was made;

(c) has it headquarters located in this State at the time the investment was made and has maintained these headquarters for the entire time the qualified business benefitted from the tax credit provided for pursuant to this section;

(d) employs twenty-five or fewer people in this State at the time it is registered as a qualified business;

(e) has had in any complete fiscal year before registration gross annual revenue as determined in accordance with the Internal Revenue Code of two million dollars or less on a consolidated basis;

(f) is primarily engaged in manufacturing, processing, warehousing, wholesaling, software development, information technology services, research and development, or a business providing services other than those described in subitem (g); and

(g) does not engage substantially in:

(i) retail sales;

(ii) real estate or construction;

(iii) professional services;

(iv) gambling;

(v) natural resource extraction;

(vi) financial brokerage, investment activities, or insurance;

(vii) entertainment, amusement, recreation, or athletic or fitness activity for which an admission or membership is charge.

A business is substantially engaged in one of the activities defined in subitem (f) if its gross revenue from an activity exceeds twenty‑five percent of its gross revenues in a fiscal year or it is established pursuant to its articles of incorporation, articles of organization, operating agreement, or similar organizational documents to engage as one of its primary purposes such activity.

(7) ‘Qualified investment’ means an investment by a qualified angel investor of cash in a qualified business for common or preferred stock or an equity interest or a purchase for cash of subordinated debt in a qualified business. Investment of common or preferred stock or an equity interest or purchase of subordinated debt does not qualify as a qualified investment if a broker fee or commission or a similar remuneration is paid or given directly or indirectly for soliciting an investment or a purchase.

(8) ‘Registered’ or ‘registration’ means that a business has been certified by the department as a qualified business at the time of application to the department.

Section 11‑44‑40. (A) An angel investor is entitled to a nonrefundable state income tax credit of thirty‑five percent of its qualified investment made pursuant to this chapter.

(B) Fifty percent of the allowed credit may be applied to the investor’s net income tax liability in the tax year during which the qualified investment is made, and fifty percent of the allowed credit may be applied to the investor’s net income tax liability in the tax years after the qualified investment is made and may be carried forward for a period not to exceed ten years for these purposes as provided in Section 11‑44‑50.

(C) For any pass‑through entity making a qualified investment directly in a qualified business, each individual who is a shareholder, partner, or member of the entity must be allocated the credit allowed the pass‑through entity in an amount determined in the same manner as the proportionate shares of income or loss of such pass‑through entity would be determined. If an individuals’ share of the pass‑through entity’s credit is limited due to the maximum allowable credit under this chapter for a taxable year, the pass‑through entity and its owners may not reallocate the unused credit among the other owners.

Section 11‑44‑50. Tax credits claimed pursuant to this chapter are subject to the following conditions and limitations:

(1) the total amount of credits allowed pursuant to this chapter may not exceed in the aggregate five million dollars for all taxpayers for any one taxable year;

(2) the aggregate amount of credit allowed an individual for one or more qualified investments in a single taxable year under this chapter, whether made directly or by a pass‑through entity and allocated to an individual, shall not exceed one hundred thousand dollars;

(3) the amount of the tax credit allowed an individual under this chapter for a taxable year shall not exceed an individual’s net income tax liability. An unused credit amount is allowed to be carried forward for ten years from the close of the taxable year in which the qualified investment was made. Credit is not allowed against prior years’ tax liability;

(4) the credit is transferrable by the qualified investor to his heirs and legatees upon his or her death and to his or her spouse or incident to divorce;

(5) the credit may be sold, exchanged, or otherwise transferred, and may be carried forward for a period of ten taxable years following the taxable year in which the credit originated until fully expended. A tax credit or increment of a tax credit may be transferred only once. The credit may be transferred to any taxpayer. A taxpayer to whom a credit has been transferred may use the credit for the taxable year in which the transfer occurred and unused amounts may be carried forward to succeeding taxable years, but the transferred credit may not be used more than ten years after it was originally issued; and

(6) to be eligible for the credit provided in this chapter, the angel investor shall file an application for the credit with the department by December thirty‑first of the year in which the qualified investment was made.

Section 11‑44‑60. (A) A qualified business shall register with the department for purposes of this chapter. Approval of this registration constitutes certification by the department for twelve months after being issued. A business is permitted to renew its registration with the department so long as, at the time of renewal, the business remains a qualified business.

(B) If the department finds that any information contained in an application of a business for registration under this chapter is false, the department shall revoke the registration of the business. The department shall not revoke the registration of a business only because it ceases business operations for an indefinite period of time, as long as the business renews its registration.

(C) A registration as a qualified business may not be sold or otherwise transferred, except that, if a qualified business enters into a merger, conversion, consolidation, or other similar transaction with another business and the surviving company would otherwise meet the criteria for being a qualified business, the surviving company retains the registration for the twelve‑month registration period without further application to the department. In this case, the qualified business shall provide the department with written notice of the merger, conversion, consolidation, or similar transaction and other information as required by the department.

(D) The department shall report to the House Ways and Means Committee and the Senate Finance Committee each year all of the businesses that have registered with the department as a qualified business. The report must include the name and address of each business, the location of its headquarters, a description of the type of business in which it engages, the amount of capital it has raised, the number of jobs created by the business during the period covered by the report, and the average wages paid by these jobs.

Section 11‑44‑70. (A) A qualified investor seeking to claim a tax credit provided for under this chapter shall submit an application to the department for tentative approval for the tax credit in the year for which the tax credit is claimed or allowed. The department, by regulation, shall provide for the manner in which the application is to be submitted. The department shall review the application and tentatively shall approve the application upon determining that it meets the requirements of this chapter.

(B) The department shall provide tentative approval of the applications by the date provided in subsection (C).

(C) The department shall notify each qualified investor of the tax credits tentatively approved and allocated to the qualified investor by January thirty‑first of the year after the application was submitted. If the credit amounts on the tax credit applications filed with the department exceed the maximum aggregate limit of tax credits, then the tax credit must be allocated among the qualified investors who filed a timely application on a pro rata basis based upon the amounts otherwise allowed by this chapter. Once the tax credit application has been approved and the amount has been communicated to the applicant the angel investor then may apply the amount of the approved tax credit to its tax liability for the tax year of which the approved application applies.

Section 11‑44‑80. Tax credits generated as a result of these investments are not considered securities under the laws of this State.”

SECTION 2. This act takes effect upon approval by the Governor, and the tax credits permitted by this chapter are first available for tax years beginning after December 31, 2010.

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