**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3787**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Harrell, Cooper, Thompson, Cato and Jennings

Document Path: l:\council\bills\gjk\20180sd09.docx

Introduced in the House on March 26, 2009

Currently residing in the House Committee on **Ways and Means**

Summary: Venture Capital Investment Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/26/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑5

3/26/2009 House Referred to Committee on **Ways and Means** [HJ](file:///h:\HJ%20Archive\2009\03-26-09.docx)‑5

**VERSIONS OF THIS BILL**

[3/26/2009](file:///p:\pprever\2009-10\3787_20090326.docx)

**A** **BILL**

TO AMEND CHAPTER 45, TITLE 11, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE VENTURE CAPITAL INVESTMENT ACT OF SOUTH CAROLINA, SO AS TO INCREASE THE AMOUNT OF PRINCIPAL BORROWING WHICH MAY BE AUTHORIZED BY THE VENTURE CAPITAL AUTHORITY BY FIFTY MILLION DOLLARS AND PROVIDE THAT ONE‑HALF MUST BE ALLOCATED TO SC LAUNCH! FOR INVESTMENT IN SOUTH CAROLINA‑BASED COMPANIES AND ONE‑HALF MUST BE ALLOCATED FOR OTHER INVESTMENTS IN SOUTH CAROLINA COMPANIES ENGAGED IN THE KNOWLEDGE ECONOMY, TO DEFINE “SC LAUNCH!”, TO PROVIDE GUIDELINES FOR THESE INVESTMENTS AND CAPITAL COMMITMENTS, AND TO MAKE CONFORMING DEFINITIONAL AND OTHER CHANGES TO GIVE EFFECT TO THESE PROVISIONS.

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

SECTION 1. Chapter 45, Title 11 of the 1976 Code is amended to read:

“CHAPTER 45

Venture Capital Investment Act of South Carolina

Section 11‑45‑10. This chapter may be cited as the ‘Venture Capital Investment Act of South Carolina’.

Section 11‑45‑20. The General Assembly desires to increase the availability of equity, near‑equity, or seed capital for emerging, expanding, relocating, and restructuring enterprises in the State, so as to help strengthen the state’s economic base, and to support the economic development goals of this State in accordance with the strategy established by the Department of Commerce. The General Assembly also desires to address the long‑term capital needs of small‑sized and medium‑sized firms, to address the needs of micro enterprises, to expand availability of venture capital, and to increase international trade and export finance opportunities for South Carolina‑based companies.

Section 11‑45‑30. For purposes of this chapter:

(1) ‘Authority’ means the South Carolina Venture Capital Authority created pursuant to this chapter.

(2) ‘Certificate’ means a document executed by the authority pursuant to which a tax credit is available to a person pursuant to this chapter.

(3) ‘Equity, near‑equity, or seed capital’ means capital invested in common or preferred stock, debt with equity conversion rights, royalty rights, limited partnership interests, limited liability company interests, and any other securities or rights that evidence ownership in private business.

(4) ‘Investor’ means any corporation, limited liability company, community development corporation, or unincorporated business entity, including a general or limited partnership, and including SC Launch! that is selected by a designated investor group to receive investments from the designated investor group and then make venture capital investments with these funds that meet the requirements of this chapter. An investor, a senior member of its management team, or a qualified investment professional working closely with the investor’s senior management team must be a legal resident of this State and have a minimum of five years experience in venture capital investing. In addition, substantially all of an investor’s business activity must be venture capital investing; provided that this requirement shall not apply to SC Launch!.

(5) ‘Innovation fund’ means the South Carolina Technology Innovation Fund.

(6) ‘Person’ means any individual, corporation, partnership, or other lawfully organized entity.

(7) ‘Research and development’ means laboratory, scientific, or experimental testing and development related to new products, new uses for existing products, or improvements to existing products. Research and development also includes intellectual property, information technology, or technology transfer endeavors. The term does not include efficiency surveys, management studies, consumer surveys, economic surveys, advertising, or promotion, or research in connection with literary, historical, or similar projects.

(8) ‘Tax credit’ means a credit against a person’s income tax liability pursuant to Chapter 6, Title 12; bank tax liability pursuant to Chapter 11, Title 12; net income tax liability pursuant to Chapter 13, Title 12; liability for license fees and taxes pursuant to Chapters 20 and 23, ~~of~~ Title 12; or insurance premium tax liability pursuant to Chapter 7, Title 38; or other tax liability under Title 38, as the case may be, or in the case of a repeal or reduction by the State of the tax liability imposed by these sections, any other tax imposed upon the person by this State.

(9) ‘Venture capital’ means equity, near‑equity, and seed capital financing including, without limitation, early stage research and development capital for startup enterprises, and other equity, near‑equity, or seed capital for growth and expansion of entrepreneurial enterprises.

(10) ‘Lender’ means a banking institution subject to the income tax on banks under Chapter 11, ~~of~~ Title 12, an insurance company subject to a state premium tax liability pursuant to Chapter 7, ~~of~~ Title 38, a captive insurance company regulated pursuant to Chapter 90, ~~of~~ Title 38, a utility regulated pursuant to Title 58, or a financial institution with proven experience in state‑based venture capital transactions, pursuant to guidelines established by the authority. Both the guidelines and the lender must be approved by the State Budget and Control Board.

(11) ‘Capital commitment’ means the amount of money committed by a designated investor group to an investor for a term of up to ten years, which term may be extended to provide for an orderly liquidation of the investor’s portfolio investments.

(12) ‘Community development corporation’ is as defined in Section 34‑43‑20(2).

(13) ‘Revolving fund’ means a bank account:

(a) created by a designated investor group with a financial institution with an office or branch in this State; and

(b) used solely as provided in this chapter or any applicable designated investor contract.

(14) ‘Designated investor contract’ means an agreement entered into between the authority and any person selected as a designated investor group pursuant to Section 11‑45‑50.

(15) ‘Designated investor group’ means a person who enters into a designated investor contract with the authority pursuant to Section 11‑45‑50.

(16) ‘Interest’ means interest on the outstanding balance owed or owing to a lender by a designated investor group under such calculations, terms, or conditions as determined by the authority, provided that the method of calculating interest may be included in the tax credit certificates to the extent that the authority considers the information necessary or appropriate.

(17) ‘SC Launch!’ means SC Launch!, which is a South Carolina nonprofit corporation, or any entity designated by the South Carolina Research Authority and approved by the authority.

(18) ‘South Carolina knowledge economy’ means economic activity directed at promoting and encouraging in South Carolina the commercialization of applied research and high technology industries in ways that will help create additional jobs that will increase the per capita income of South Carolinians, and shall include without limitation activities relating to the commercialization of new advances in the life sciences, pharmaceuticals, biotechnology, hydrogen and fuel cells, military and defense technology, chemical products, high tech fibers, advanced materials, automotive, aerospace and information technology, and health science technology.

Section 11‑45‑40. (A) There is created, within the South Carolina Department of Commerce, the South Carolina Venture Capital Authority.

(B)(1) The authority must be governed by a board composed of seven directors, one of whom must be appointed by the Speaker of the House of Representatives, one of whom must be appointed by the Chairman of the House Ways and Means Committee, one of whom must be appointed by the President Pro Tempore of the Senate, one of whom must be appointed by the Chairman of the Senate Finance Committee, and three of whom must be appointed by the Governor, one of whom shall serve as chairman. No sitting member of the General Assembly may be appointed to serve on the board in any capacity including an ex officio capacity. Directors must be selected based upon outstanding knowledge and leadership, must be knowledgeable in the management of money and finance, and must possess experience in the management of investments similar in nature and in value to those of the designated investor groups. Directors serve for a term of office of four years and until their successors are appointed and qualify, except that of the initial directors appointed the member appointed by the Speaker of the House of Representatives shall serve for an initial term of two years, the member appointed by the President Pro Tempore of the Senate shall serve for an initial term of two years, and one member appointed by the Governor shall serve for an initial term of two years as designated by the Governor so as to allow the terms of the directors to be staggered. Any appointments to the governing board of the South Carolina Venture Capital Fund made prior to the effective date of the creation of the South Carolina Venture Capital Authority as established by this chapter shall expire on the effective date of the creation of the authority, and appointments to the governing board of the authority shall be made as provided in this section and shall supercede these prior appointments.

(2) The directors have the authority to govern the authority in accordance with the requirements of this chapter.

(3) A conflict of interest is considered to exist if a director of the authority, an officer, agent, or employee thereof, or any for‑profit firm or corporation in which a director, officer, agent, or employee of the authority, or any member of his immediate family, as defined in Section 2‑17‑10(7), is an officer, partner, or principal stockholder who engages in business activity with the authority either directly or indirectly in which the director, officer, agent, employee, or firm would personally benefit. In this case, the director, officer, agent, or employee shall refrain from any involvement of any type in regard to the activity including, but not limited to, discussing the proposed activity with another person associated with the entity desiring to engage in the activity with the authority, negotiating any aspects of the proposed activity with the authority, voting on any matter pertaining to the activity, and communicating with other board members, officers, agents, or employees of the authority concerning the activity. When a conflict arises, the director, officer, agent, or employee involved in the conflict, at the discretion of the board, shall resolve the conflict or resign from the position creating the conflict. Directors, officers, agents, and employees of the authority are subject to all provisions of Chapter 17, Title 2 and Chapter 13, Title 8, and the provisions of this item are supplemental to and not in lieu of the provisions of Chapter 17, Title 2 and Chapter 13, Title 8.

(C) Any fees or other amounts received by the authority pursuant to any designated investor contract must be held by the authority in a fund that is separate and distinct from the state general fund. Subject to approval by the board of directors, the fund must be administered by the Department of Commerce to support the economic development goals of this State in accordance with the strategy established by the Department of Commerce.

Section 11‑45‑50. (A)(1) The authority shall solicit as necessary from time to time investment plans for the raising and investing of capital in accordance with the requirements of this chapter.

(2) Investment plans submitted shall address such matters as may be required by the authority including, but not limited to the submitting person’s:

(a) level of experience;

(b) quality of management;

(c) investment philosophy and process;

(d) probability of success in fund raising; and

(e) plan for achieving the purposes of this chapter.

(3) The authority shall consider the investment plans submitted pursuant to this section and shall select one or more designated investor groups deemed best qualified to:

(a) capitalize one or more private revolving funds in accordance with this chapter;

(b) invest the capital as permitted by this chapter in a manner mobilizing equity, near‑equity or seed capital investments in ventures promoting the economic development goals of this State; and

(c) help build a significant, fiscally strong, and permanent resource to serve the objectives expressed in this chapter.

(B)(1) Each designated investor group selected pursuant to subsection (A)(3) of this section shall enter into a designated investor contract with the authority, which designated investor contract must contain any investment guidelines and other terms and conditions the authority considers necessary, advisable, or appropriate.

(2) A designated investor contract may authorize a designated investor group to invest capital either through investors or directly in South Carolina‑based companies, or both; provided, however, that any designated investor group authorized to invest directly in South Carolina‑based companies shall meet the requirements set forth in this chapter for an investor.

(3) The authority may charge a fee under each designated investor contract as compensation.

(C) Each designated investor group must have a manager who is a person with demonstrated substantial successful experience in the design, implementation, and management of venture capital investment programs and in capital formation.

(D) The authority shall require one or more designated investor groups to make capital commitments of twenty‑five million dollars to SC Launch!. The authority may establish guidelines for the terms of the capital commitment to SC Launch!, including whether the capital commitment is a contractual arrangement with SC Launch! or an equity investment, and for the investments of the capital by SC Launch!. The guidelines shall address:

(1) the financial criteria to be applied in selecting South Carolina‑based companies in which to invest the funds received pursuant to this chapter;

(2) the nature of the activities engaged in by these companies, which activities must be aligned with the objectives of the South Carolina Research Authority as set forth in Sections 13‑17‑87 and 13‑17‑88; and

(3) how investments can be made without unnecessarily competing with investments by existing designated investor groups and investors.

(E) The authority shall have the right as further specified in the designated investor contract to:

(1) remove and replace any designated investor group; and

(2) effect the assignment of all assets, liabilities, and tax credits acquired or incurred in connection with this chapter to any other designated investor group.

Section 11‑45‑55. (A) Each designated investor group shall have the power and authority to borrow funds from lenders and invest those funds in accordance with the provisions of this chapter and its designated investor contract.

(B) The authority shall issue tax credit certificates to each lender contemporaneously with each loan made pursuant to this chapter in accordance with any guidelines established by the authority pursuant to Section 11‑45‑100. The tax credit certificates must describe procedures for the issuance, transfer and redemption of the certificates, and related tax credits. These certificates also must describe the amounts, year, and conditions for redemption of the tax credits reflected on the certificates. Once a loan is made by a lender, the certificate issued to the lender shall be binding on the authority and this State and may not be modified, terminated, or rescinded. The form of the tax credit certificate must be approved by the State Budget and Control Board.

(C) Tax credits represented by the certificates issued pursuant to this section may be used to offset any of the tax liabilities of a person as set forth in Section 11‑45‑30(8), subject to compliance with the conditions set forth on the certificates representing the tax credits. The amount of the tax credits issued to any lender shall be limited to an amount equal to the lender’s principal loan amount together with required interest. These tax credits may be carried forward without limitation but are not refundable. These tax credits are hereby established and authorized in the amounts required by this section.

(D) Use of tax credits by an insurance company shall not affect the application of retaliatory taxes or other fees pursuant to Chapter 7, Title 38 or any payments due under that chapter.

(E) The tax credits may also be transferred by any lender or transferee of the tax credits to a person able to utilize the tax credits as set forth in Section 11‑45‑30(8).

(F) An individual may claim the tax credit of a partnership, limited liability company, ‘S’ corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, ‘S’ corporation, estate, or trust.

(G) The authority shall ensure that the principal amount authorized to be borrowed by all designated investor groups is no more than ~~fifty~~ one hundred million dollars at any one time and no more than ~~twenty~~ forty million dollars in tax credit certificates are redeemable for any one year; provided, however, that of the one hundred million dollars, twenty‑five million dollars shall be allocated to SC Launch! in accordance with Section 11‑45‑50(D) and twenty‑five million dollars shall be allocated only for one or more designated investor groups to invest, whether directly or through one or more investors, in South Carolina‑based companies engaged in the South Carolina knowledge economy. Any tax credit certificates issued in one year but carried forward and redeemed in a subsequent year do not count against the ~~twenty~~ forty million dollar limitation on the total amount of tax credit certificates which may be redeemed in that subsequent year.

(H) No certificate or tax credit issued or transferred pursuant to this chapter shall be considered a security pursuant to Title 35.

(I)(1) The authority, in conjunction with the South Carolina Department of Revenue, shall develop a system for registration of all tax credits claimed under this chapter.

(2) The system shall verify that any:

(a) tax credit claimed upon a tax return is valid and properly taken in the year of claim; and

(b) transfer of the tax credit is made in accordance with the requirements of this chapter and any guidelines or regulations under this chapter.

(3) Notwithstanding Section 12‑54‑240(A), the authority, the Department of Commerce, the Department of Revenue, and the Department of Insurance may exchange information for the purpose of registering and verifying the existence, possession, transfer, and use of tax credits pursuant to this chapter.

(J) No part of the fund held by the authority pursuant to Section 11‑45‑40(C) or the capital in any revolving fund of a designated investor group may inure to the benefit of or be distributed to the authority’s employees, officers, or board of directors, or to members of their immediate families as this term is defined in Section 2‑17‑10(7), except that the authority is authorized to pay reasonable compensation for services provided by employees of the authority or the Department of Commerce, as the case may be, and out‑of‑pocket expenses incurred by these employees, officers, or board members, as long as the compensation does not create a conflict of interest pursuant to Section 11‑45‑40. The provisions of this subsection are supplemental to and not in lieu of the provisions of Chapter 17, Title 2 and Chapter 13, Title 8.

Section 11‑45‑60. Each designated investor group authorized by its designated investor contract shall solicit from investors plans for the investing of capital held in the designated investor group’s revolving fund in accordance with the requirements of this chapter. Each designated investor group shall consider and select the investment plans and shall select investors qualified to:

(1) make the most effective and efficient utilization of the investment; and

(2) invest in venture capital investments, requiring equity, near‑equity, or seed capital which promote the economic development goals of this State in accordance with the strategy established by the Department of Commerce. Designated investor groups are not required to comply with this section with respect to investments of capital that the authority requires any designated investor groups to make in SC Launch! in accordance with Section 11‑45‑50(D).

Section 11‑45‑70. In order for a designated investor group to place monies held in its revolving fund with an investor for the purpose of making a venture capital investment, the following requirements must be met:

(1) No investment by ~~an~~ SC Launch! in any one investment may exceed five million dollars, and no investment by any other investor in any one investment may exceed the lesser of five million dollars or fifteen percent of the committed capital of the investor~~, whichever is less. In addition, an~~ In addition, SC Launch! must agree to invest all of the designated investor group’s twenty‑five million dollar capital commitment to SC Launch! in South Carolina‑based companies, and any other investor must agree to invest at least an amount equal to the designated investor group’s capital commitment to that investor in South Carolina‑based companies.

(2)(a) While each designated investor group shall give preference to investors, otherwise qualified, that agree to maintain either a headquarters or an office staffed by an investment professional in South Carolina, investments may be made with investors not principally located in South Carolina if the investors are otherwise qualified pursuant to this chapter and, together with related companies, have other venture capital investments in South Carolina or in South Carolina‑based companies or can provide evidence to the authority of prior investments in South Carolina or South Carolina‑based companies at least equal to the total amount of monies placed with that investor by the designated investor group.

(b) ‘South Carolina‑based companies’ for purposes of this chapter means any corporation, limited liability company, community development corporation or unincorporated business organization, including a general or limited partnership, that either: ( i) has its principal place of business located in this State and has at least fifty percent of its gross assets and fifty percent of its employees located in this State at the time of the initial investment; or

(ii) meets qualifications as may be determined by the authority and set forth in any designated investor contract. If a corporation, limited liability company, or unincorporated business organization is a member of an affiliated group, the gross assets and the number of employees of all of the members of the affiliated group, wherever those assets and employees are located, shall be included for the purpose of determining the percentage of the corporation’s, company’s, or organization’s gross assets and employees located in this State.

(3) When selecting investors other than SC Launch! with which to place venture capital investments, each designated investor group shall give preference to investors that, together with their affiliates, have on or before the date of the designated investor group’s capital commitment, aggregate capital commitments of at least three times the amount of the designated investor group’s capital commitment. Capital commitments of an investor and its affiliates for purposes of this requirement include private, federal, or other nonstate funds secured by the investor and its affiliates.

(4) Investors must develop a repayment plan based on expected liquidity events of its portfolio investments. All repayments must occur within ten years, subject to extension as described in Section 11‑45‑30(11).

Section 11‑45‑80. In addition to and apart from the other duties and functions of the authority, there is created under the administration of the board of directors of the authority, a fund entitled the South Carolina Technology Innovation Fund which shall receive that funding as may be provided by law. The board shall contract with a tax‑exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, for administration of the innovation fund. The innovation fund must be used by the board to:

(1) award small grants for the best and most creative ideas from South Carolina research universities’ technology incubators with the awards to be available for eligible students and innovative knowledge‑based enterprises that are located in a research university incubator. These grants are to be awarded to inspire and encourage knowledge‑based technology and intellectual property transfers from research university faculty and students to the marketplace;

(2) design a major education, marketing, and public relations program to ensure that residents of South Carolina, members of the General Assembly, and potential venture capital investors understand and support the requirements for participation in the fund, the strategic need for venture capital funding, and for grant support for deserving entrepreneurs.

Section 11‑45‑90. Each designated investor group shall provide an annual report to the authority with that information as may be required by the authority, and which shall:

(1) include an annual audit of the activities conducted by the designated investor group;

(2) document and review the progress of the designated investor group in implementing its investment plan;

(3) list any use, redemption, or transfer of tax credits allowed under this chapter;

(4) include a schedule of the rates of return, net of total investment expense, on assets held by the designated investor group pursuant to this chapter overall and on those assets aggregated by category over the most recent one‑year, three‑year, five‑year, and ten‑year periods, to the extent available; and

(5) include a schedule of the sum of total investment expense and total general administrative expense for the fiscal year incurred and expressed as a percentage of the fair value of assets of the designated investor group held pursuant to this chapter on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years, if applicable.

Section 11‑45‑95. (A) The authority shall provide an annual report to the Governor, the General Assembly, and other appropriate officials and entities containing at a minimum the following information:

(1) monies placed in venture capital investments with approved investors and South Carolina‑based companies cumulatively and during that fiscal year;

(2) an audit of the activities conducted by the authority during that fiscal year;

(3) the progress of the designated investor groups in implementing their respective investment plans;

(4) the amount and time lines of tax credit certificates issued both cumulatively and during that fiscal year, and any use, redemption, or transfer of tax credits during that fiscal year;

(5) a description of a material interest held by a director, officer, or employee of the authority with respect to the investments or assets of the designated investor groups;

(6) a schedule of the aggregate rate of return, net of total investment expense, on assets of the designated investor groups held pursuant to this chapter over the most recent one‑year, three‑year, five‑year, and ten‑year periods, to the extent available; and

(7) a schedule of the sum of total investment expense and total general administrative expense for the fiscal year incurred and expressed as a percentage of the fair value of assets of the designated investor groups held pursuant to this chapter on the last day of the fiscal year, and an equivalent percentage for the preceding five fiscal years, if applicable.

(B) These disclosure requirements are cumulative to and do not replace other reporting requirements provided by law.

(C) Notwithstanding any other provision of law, private investment and other proprietary financial data provided to the authority by a designated investor group or an investor is not subject to public disclosure under Title 30, Chapter 4.

Section 11‑45‑100. (A) The authority has the power to establish guidelines and regulations and make any contract (including without limitation any designated investor contract), execute any document, perform any act, or enter into any financial or other transaction necessary to implement this chapter.

(B) In furtherance of subsection (A) above, the authority, or the Department of Commerce on its behalf, as the case may be, may employ any person as may be required for:

(1) proper implementation of this chapter;

(2) the management of its assets; or

(3) the performance of any function authorized or required by this chapter or necessary for the accomplishment of any function.

(C) The provisions of Title 11, Chapter 35 do not apply to any transaction necessary to implement this chapter.

Section 11‑45‑105. Any guideline issued by the authority pursuant to this chapter must be approved by the State Budget and Control Board.”

SECTION 2. This act takes effect upon approval by the Governor.

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