**South Carolina General Assembly**

118th Session, 2009-2010

**H. 3870**

**STATUS INFORMATION**

General Bill

Sponsors: Rep. Harrell

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Introduced in the House on April 2, 2009

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

Summary: Entrepreneurial Success Fund Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

4/2/2009 House Introduced and read first time [HJ](file:///h:\HJ%20Archive\2009\04-02-09.docx)‑30

4/2/2009 House Referred to Committee on **Ways and Means** [HJ](file:///h:\HJ%20Archive\2009\04-02-09.docx)‑30

**VERSIONS OF THIS BILL**

[4/2/2009](file:///p:\pprever\2009-10\3870_20090402.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 44 TO TITLE 11 SO AS TO PROVIDE FOR THE “SOUTH CAROLINA ENTREPRENEURIAL SUCCESS FUND ACT” TO BE ADMINISTERED BY THE SOUTH CAROLINA VENTURE CAPITAL AUTHORITY, TO PROVIDE DEFINITIONS, TO PROVIDE A STATE INCOME TAX CREDIT FOR QUALIFIED INVESTMENTS IN A FUND, TO PROVIDE FOR THE AMOUNT OF ANNUAL AVAILABLE CREDIT, TO DETERMINE THE AMOUNT OF A TAXPAYER’S CREDIT, TO PROVIDE FOR THE FORMATION OF A FUND, TO PROVIDE THAT THE PURPOSE OF A FUND IS TO MAKE SEED CAPITAL INVESTMENTS IN HIGH GROWTH-ORIENTED BUSINESSES, AND TO PROVIDE REPORTING REQUIREMENTS.

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

South Carolina Entrepreneurial Success Fund Act

Section 11‑44‑10. This chapter may be cited as the ‘South Carolina Entrepreneurial Success Fund Act’.

Section 11‑44‑20. For purpose of this chapter:

(1) ‘Authority’ means the South Carolina Venture Capital Authority created pursuant to Chapter 45 of this title.

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

(3) ‘Fund’ means a legal entity established to pool investments to provide seed capital pursuant to the provisions of this chapter.

(4) ‘High growth-oriented business’ means a corporation, general partnership, limited partnership, joint venture, trust, proprietorship, or other similar entity or organization that is expected to experience significant sales revenue growth.

(5) ‘Manager’ means the manager of a fund.

(6) ‘Prestart‑up business’ means a South Carolina business that is in the process of developing a product or service and before the time the product or service is offered for sale in the ordinary course of business.

(7) ‘Qualified investment’ means a share in a fund purchased solely for cash.

(8) ‘Seed capital’ means investments in either the common stock, preferred stock, or bonds convertible to either common or preferred stock, or options, warrants, or rights to receive any of these or any other similar investment in a South Carolina business.

(9) ‘South Carolina business’ means any corporation, limited liability company, community development corporation or unincorporated business organization, including a general or limited partnership, that 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 by a fund. 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, is 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.

(10) ‘Start‑up business’ means a South Carolina business that is in the first thirty‑six months of providing goods or services in the ordinary course of business or any South Carolina business that qualified as a start‑up business by this definition at the time it entered the fund’s seed capital portfolio.

(11) ‘State income tax credit’ includes both the taxpayer’s income tax or premium tax liability.

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

Section 11‑44‑30. (A) A taxpayer is entitled to a refundable state income tax credit for a qualified investment made pursuant to this chapter. Except for the credit provided by this section, a fund and a manager are otherwise subject to tax as provided for by law.

(B) Subject to Section 11‑44‑40, the amount of the credit that a taxpayer may receive under this chapter for a particular taxable year is equal to the lesser of:

(1) the taxpayer’s state income tax liability for that taxable year;

(2) the amount determined in Step Three of the following steps:

Step One: Add the consideration paid for all qualified investments of the taxpayer during the taxable year of the taxpayer.

Step Two: Multiply the amount determined in Step One by three‑tenths.

Step Three: Add the product determined in Step Two to the credit carryover, if any, to which the taxpayer is entitled for the taxable year pursuant to Section 11‑44‑40; or

(3) one‑half of all the qualified investments of the taxpayer multiplied by three‑tenths.

(C) A corporation which files or is required to file a consolidated return is entitled to the income tax credit allowed by this section on a consolidated basis. The tax credit may be determined on a consolidated basis regardless of whether or not the corporation entitled to the credit contributed to the tax liability of the consolidated group.

(D) The merger, consolidation, or reorganization of a corporation where tax attributes survive does not create new eligibility in a succeeding corporation but unused credits may be transferred and continued by the succeeding corporation. In addition, a corporation may assign its rights to its unused credit to another qualifying entity if it transfers all, or substantially all, of the assets of the corporation or all, or substantially all, of the assets of a trade or business or operating division of a corporation to another qualifying entity.

(E) 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.

Section 11‑44‑40. If the amount of the credit determined pursuant to Section 11‑44‑30(B) exceeds the credit allowed pursuant to Section 11‑44‑30 for that taxable year, then the taxpayer may carry the excess over to the immediately succeeding taxable years. However, the credit carryover may not be used for any taxable year that begins on or after ten years from the date of the qualified investment. The amount of the credit carryover from a taxable year must be reduced to the extent that the carryover is used by the taxpayer to obtain a credit under this chapter for any subsequent taxable year.

Section 11‑44‑50. (A)(1) The South Carolina Venture Capital Authority shall be responsible for administering the provisions of this chapter in the same manner it administers the provisions of Chapter 45 of this title mutatis mutandis. 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) 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 capitalize one or more private funds in accordance with this chapter.

(B)(1) Each designated investor group selected pursuant to subsection (A) 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) The authority may charge a fee under each designated investor contract as compensation.

(C) A fund formed by a selected investor group must have as a manager a taxpayer who is a resident of this State, or if the manager is a legal entity, that entity must be a South Carolina business and at least one taxpayer who is an executive officer actively involved in the management of the entity must be a resident of this State.

(D) The fund shall receive binding commitments from investors to provide a minimum of five million dollars of seed capital.

(E) After the investor group has formed a fund, the manager must apply to the department to certify the amount of binding commitments made to the fund. All commitments must be cash commitments. The manager must provide the director of the department with satisfactory evidence demonstrating the amount and binding nature of the commitments. The director has sole discretion to determine the appropriate amount to certify and his decision is binding upon the fund. Upon certification, the amount of annual available credit must be reduced in an amount equal to thirty percent of the certified amount of the fund. The amount of annual available credit must be reduced in order of certification until all remaining credit is exhausted. The department must maintain a current balance of available credit and provide the amount upon request to any person interested in forming a fund. A manager may apply in subsequent years for certification of additional binding commitments made to the fund above those certified in a previous year that would qualify the fund for additional credit.

(F) The general nature of the business of the fund must be to provide financing to high growth-oriented businesses, to provide seed capital to South Carolina businesses, and to undertake any acts appropriate or necessary to carry out these obligations.

(G) The fund shall raise capital to provide financing to high growth oriented businesses. All investments made by a fund must be to provide seed capital to South Carolina businesses, this seed capital to be used primarily for the purpose of enhancing the production capacity of these businesses or their ability to do business in South Carolina. However, to the extent that a fund directly induces seed capital monies from outside the State to be invested in South Carolina businesses in which it is also investing, a fund may substitute up to two‑thirds of these outside monies for its own capital in fulfillment of the requirements of this section. Seventy percent of qualified investments in a fund for which the tax credit is allowed and investment monies induced into the State by a fund to meet its capital commitment, must be invested to provide seed capital financing of either start‑up businesses or prestart‑up businesses. The remaining thirty percent may be invested as the manager of the fund determines to provide capital to South Carolina businesses. Any qualified investments in the fund that exceed the amount for which a credit is allowed may be invested in the fund manager’s discretion.

(H) When making investments by a fund, the manager must give preference to South Carolina businesses that support the goals of a regional or statewide economic development plan, and that together with their affiliates, have on or before the date of the fund’s investment commitment, aggregate capital or capital commitments of at least thirty percent of the amount to be invested. Capital or capital commitments for purposes of this preference include private, federal, or other nonstate funds secured by the South Carolina business and its affiliates.

(I) The aggregate amount of investments by a fund in any one South Carolina business and its affiliates in any one year may not exceed ten percent of the fund’s value.

Section 11‑44‑60. (A) If a taxpayer redeems a qualified investment which is the basis for a credit under this chapter within five years of the date it is purchased, the credit provided by this chapter for the qualified investment is disallowed, and any credit previously claimed and allowed with respect to the qualified investment so redeemed must be paid to the department with the appropriate return of the taxpayer covering the period in which the redemption occurred. When payments are made to the department under this section, the amount collected must be handled in the same manner as if no credit had been allowed. However, the credit is not disallowed pursuant to this section if a taxpayer who redeemed the qualified investment within the five‑year period reinvests the redeemed amount in a qualified investment in the same year of redemption. A taxpayer offsetting a redeemed amount may not claim an additional credit for the reinvested amount in the same taxable year or carryover any credit to a succeeding tax year.

(B) Notwithstanding the provisions of subsection (A) of this section, neither a distribution by a fund nor dividends or other distributions by the manager are considered to be redemption of a qualified investment unless the amount of the qualified investment held by the taxpayer, after the distribution or dividend, is less than the amount of the qualified investment held by the taxpayer immediately prior to the distribution or dividend.

Section 11‑44‑70. To receive the credit provided by this chapter, a taxpayer shall:

(1) invest up to one million dollars but no less than one hundred thousand dollars in the fund to qualify for the tax credit;

(2) claim the credit on the taxpayer’s annual state income or premium tax return in the manner prescribed by the department; and

(3) file with the taxpayer’s annual state income or premium tax return a copy of the form issued by the fund as to the qualified investment by the taxpayer, including any redemption of the qualified investment within the meaning of Section 11‑44‑80.

Section 11‑44‑80. (A) A fund shall complete forms prescribed by the department that show:

(1) as to each qualified investment in the fund:

(a) the name, address, and identification number of the taxpayer who purchased a qualified investment; and

(b) the nature of the qualified investment purchased by the taxpayer and the amount paid for it;

(2) as to each investment made by the fund:

(a) the name, address, and tax identification number of the entity receiving the seed capital;

(b) the amount of the investment;

(c) the aggregate amount of investments by the fund in the entity at the time of the investment; and

(d) the amount of capital or capital commitments of the entity at the time of the investment.

(B) These forms must be filed with the department on or before the fifteenth day of the third month following the month in which the qualified investment is purchased or an investment by the fund is made. Copies of the forms reporting a qualified investment must be mailed to the taxpayer on or before the fifteenth day of the second month following the month in which the qualified investment is purchased.

(C) The investment must be held for two years before it is eligible for a tax credit.

Section 11-44-90. No investment in a fund established pursuant to this chapter or the tax credits generated as a result of these investments are considered securities under the laws of this State.”

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

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