

Adopted Rejected

COMMITTEE REPORT

YES: 12
NO: 0

MR. SPEAKER:

*Your Committee on Commerce and Economic Development, to which was referred Senate Bill 405, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 economic development.
- 4 Delete everything after the enacting clause and insert the following:
- 5 SECTION 1. IC 4-35 IS ADDED TO THE INDIANA CODE AS A
- 6 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON
- 7 PASSAGE]:
- 8 ARTICLE 35. LOCAL CERTIFIED EQUITY POOLS
- 9 **Chapter 1. Citation**
- 10 **Sec. 1. This article may be cited as the Local Certified Equity**
- 11 **Pool Law.**
- 12 **Sec. 2. The purpose of this article is:**
- 13 **(1) to foster entrepreneurship, innovation, and the transfer of**
- 14 **research and technology to the private market;**

- 1 **(2) to increase the availability of seed and start-up capital for**
- 2 **investment throughout Indiana; and**
- 3 **(3) to provide tax incentives to investors in seed and start-up**
- 4 **ventures that create high-wage, high-skilled positions in**
- 5 **high-growth industries located in Indiana.**

6 **Chapter 2. Definitions**

7 **Sec. 1. As used in this article, "affiliate of a local certified equity**
8 **pool" means the following:**

- 9 **(1) A person, directly or indirectly, owning (whether through**
- 10 **rights, options, convertible interests, or otherwise),**
- 11 **controlling, or holding power to vote at least ten percent**
- 12 **(10%) of the outstanding voting securities or other ownership**
- 13 **interests of the local certified equity pool.**
- 14 **(2) A person in whom at least ten percent (10%) of the**
- 15 **outstanding voting securities or other ownership interests are**
- 16 **directly or indirectly beneficially owned (whether through**
- 17 **rights, options, convertible interests, or otherwise), controlled,**
- 18 **or held with power to vote by the local certified equity pool.**
- 19 **(3) A person directly or indirectly controlling, controlled by,**
- 20 **or under common control with the local certified equity pool.**
- 21 **(4) A partnership in which the local certified equity pool is a**
- 22 **general partner.**
- 23 **(5) A person who is an officer, a director, or an agent of the**
- 24 **local certified equity pool or an immediate family member of**
- 25 **an officer, director, or agent.**

26 **Sec. 2. As used in this article, "authority" refers to the Indiana**
27 **development finance authority established by IC 4-4-11.**

28 **Sec. 3. As used in this article, "capital" means an investment of**
29 **cash by an investor in a local certified equity pool that fully funds**
30 **the purchase price of the investor's equity interest in the local**
31 **certified equity pool.**

32 **Sec. 4. As used in this article, "certification date" means the**
33 **date on which a local certified equity pool is certified by the**
34 **authority.**

35 **Sec. 5. As used in this article, "director" means the director of**
36 **the Indiana development finance authority or a person acting**
37 **under the supervision of the director.**

38 **Sec. 6. As used in this article, "investor" means a person that**

1 contributes capital to a local certified equity pool.

2 **Sec. 7. As used in this article, "local certified equity pool" means**
 3 **a for-profit partnership, corporation, trust, or limited liability**
 4 **company that:**

5 (1) is located, headquartered, and registered to conduct
 6 business in Indiana;

7 (2) has as its primary business activity the investment of cash
 8 in qualified Indiana businesses; and

9 (3) is certified by the authority as meeting the criteria of this
 10 article.

11 **Sec. 8. As used in this article, "person" means an individual or**
 12 **entity, including a corporation, general or limited partnership,**
 13 **trust, or limited liability company.**

14 **Sec. 9. As used in this article, "qualified Indiana business"**
 15 **means an independently owned and operated business that:**

16 (1) is a seed, start-up, or early stage venture as defined by the
 17 authority in its written guidelines, taking into account the
 18 United States Small Business Administration's definition of a
 19 small business (13 CFR 121.301(c));

20 (2) is a high growth company with high skilled jobs (as
 21 defined in IC 4-4-10.9-9.5);

22 (3) has its headquarters in Indiana;

23 (4) employs at least seventy percent (70%) of its employees in
 24 Indiana, of which ninety-five percent (95%) are Indiana
 25 residents;

26 (5) is in need of venture capital and is unable to obtain capital
 27 using conventional financing; and

28 (6) is not involved in any of the following enterprises:

29 (A) Real estate.

30 (B) Real estate development.

31 (C) Insurance.

32 (D) Professional services provided by:

33 (i) accountants;

34 (ii) lawyers; or

35 (iii) physicians.

36 (E) Retail sales, except when the primary purpose of the
 37 business is developing or supporting electronic commerce
 38 using the Internet.

1 (F) Gas and oil exploration.

2 Sec. 10. As used in this article, "qualified investment" means an
3 investment of cash by a local certified equity pool in a manner that
4 enables the local certified equity pool to acquire capital in a
5 qualified Indiana business.

6 Sec. 11. As used in this article, "restricted capital" means
7 either:

- 8 (1) the portion of an investor's capital that may only be
- 9 invested in qualified Indiana businesses; or
- 10 (2) the portion of a local certified equity pool's funds that may
- 11 only be invested in qualified Indiana businesses.

12 Sec. 12. As used in this article, "state tax liability" means a
13 taxpayer's total tax liability that is incurred under:

- 14 (1) IC 6-2.1 (the gross income tax);
- 15 (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- 16 (3) IC 6-3-8 (the supplemental net income tax);
- 17 (4) IC 6-5-10 (the bank tax);
- 18 (5) IC 6-5-11 (the savings and loan association tax);
- 19 (6) IC 27-1-18-2 (the insurance premiums tax); and
- 20 (7) IC 6-5.5 (the financial institutions tax);

21 as computed after the application of the credits that under
22 IC 6-3.1-1-2 are to be applied before the credit provided by this
23 article.

24 Sec. 13. As used in this article, "unrestricted capital" means
25 either:

- 26 (1) the portion of an investor's capital that may be invested in
- 27 a business other than a qualified Indiana business; or
- 28 (2) the portion of a local certified equity pool's funds that may
- 29 be invested in businesses other than a qualified Indiana
- 30 business.

31 **Chapter 3. Tax Credit**

32 Sec. 1. The aggregate amount of tax credits that may be allowed
33 under this chapter may not exceed forty million dollars
34 (\$40,000,000).

35 Sec 2. The authority may allocate, through a competitive
36 process, up to the forty million dollars (\$40,000,000) in tax credits
37 allowed under section 1 of this chapter to qualified local certified
38 equity pools before January 1, 2005.

1 **Sec. 3. The cumulative tax credits awarded to a local certified**
 2 **equity pool may not exceed seven million five hundred thousand**
 3 **dollars (\$7,500,000).**

4 **Sec. 4. An investor that invests restricted capital in a local**
 5 **equity pool is entitled to a credit against the investor's state tax**
 6 **liability. The credits equals the amount of the investor's restricted**
 7 **capital that is invested by the local certified equity pool in qualified**
 8 **Indiana businesses multiplied by forty percent (40%).**

9 **Sec. 5. An investor may claim a tax credit allowed under this**
 10 **chapter at any time within five (5) years after the date the**
 11 **investor's restricted capital is invested in a qualified Indiana**
 12 **business.**

13 **Sec. 6. Before March 31 of each year, the authority shall**
 14 **determine how many new tax credits may be claimed for the**
 15 **preceding calendar year and shall notify the state department of**
 16 **revenue of its determination.**

17 **Sec. 7. The authority shall consider geographic diversity of the**
 18 **local certified equity pools and shall take affirmative steps to**
 19 **ensure that a portion of the tax credits allocated under this chapter**
 20 **are made available to local certified equity pools with their place**
 21 **of business located outside the area within the Indianapolis**
 22 **Metropolitan Statistical Area designated by the federal Office of**
 23 **Management and Budget (FIPS Code 3480).**

24 **Chapter 4. Initial Certification**

25 **Sec. 1. An applicant for certification may request that certain**
 26 **information submitted by the applicant be kept confidential. The**
 27 **authority shall make a determination of confidentiality as soon as**
 28 **practicable. If the authority determines that the information**
 29 **should not be kept confidential, the applicant may withdraw its**
 30 **application and the authority must return the information.**

31 **Sec. 2. The authority shall establish guidelines for the**
 32 **preliminary and final certification of applicants as local certified**
 33 **equity pools and grant each qualifying pool tax credits through a**
 34 **competitive process. The authority shall consider the following in**
 35 **making its preliminary certification determination:**

- 36 (1) The projected leverage of the fund.
 37 (2) The experience of fund managers and investors.
 38 (3) The projected number of investors.

- 1 **(4) The projected size of the fund.**
 2 **(5) The principals' and managers' knowledge of the Indiana**
 3 **economy.**
 4 **(6) The proposed management and administrative fees to be**
 5 **levied against the total fund.**
 6 **(7) Experience and performance history with seed and**
 7 **start-up ventures and the fund's focus on such ventures.**
 8 **(8) Whether the unrestricted capital in the pool equals the**
 9 **restricted capital in the pool.**
 10 **(9) Any other reasonable criteria that the authority considers**
 11 **necessary to assure that the applicant will meet the goals and**
 12 **purposes of this article.**

13 **Sec. 3. The applicant shall pay a nonrefundable fee at the time**
 14 **of filing an application for preliminary certification with the**
 15 **authority. The authority shall establish by written guideline the**
 16 **amount of the fee.**

17 **Sec. 4. In applying for preliminary certification, the applicant**
 18 **must provide for review by the authority the following documents:**

- 19 **(1) Records of criminal background investigations for all**
 20 **principals and managers.**
 21 **(2) Fingerprint cards for all principals and managers.**
 22 **(3) Resumes detailing work related experiences for all**
 23 **principals and managers.**
 24 **(4) The business history of the applicant.**
 25 **(5) Organizational documents for the applicant.**
 26 **(6) Documentation that a surety bond will be secured by the**
 27 **applicant for an amount equal to the tax credits allocated to**
 28 **the applicant. The surety bond must be payable to the**
 29 **authority upon a determination that the applicant has failed**
 30 **to meet the requirements of this article.**

31 **Sec. 5. After receiving commitment letters from investors, the**
 32 **applicant shall apply to the authority for final certification. An**
 33 **applicant must have a minimum of ten million dollars**
 34 **(\$10,000,000) in committed funds to be eligible for an allocation of**
 35 **tax credits.**

36 **Sec. 6. Principals and managers of an applicant must have at**
 37 **least five (5) years of experience in managing a portfolio of at least**
 38 **twenty million dollars (\$20,000,000) in the investment banking,**

1 finance, or venture capital industry.

2 **Sec. 7. Not later than sixty (60) business days after the date of**
3 **final application, the authority shall inform the applicant in**
4 **writing of the authority's decision to either certify the pool or**
5 **refuse certification.**

6 **Sec. 8. Before making a proposed investment in a particular**
7 **business, a local certified equity pool may request from the**
8 **authority a written opinion that the business in which it proposes**
9 **to invest is a qualified Indiana business. The authority shall**
10 **provide a written opinion not later than ten (10) days after**
11 **receiving the request.**

12 **Sec. 9. An offering of material involving the sale of securities of**
13 **a local certified equity pool must have printed on the front, in bold**
14 **and capital letters the following statement:**

15 **"BY AUTHORIZING THE FORMATION OF A LOCAL**
16 **CERTIFIED EQUITY POOL, THE STATE OF INDIANA**
17 **DOES NOT ENDORSE THE QUALITY OF**
18 **MANAGEMENT OR THE POTENTIAL FOR EARNINGS**
19 **OF A PARTICULAR BUSINESS AND IS NOT LIABLE FOR**
20 **DAMAGES OR LOSSES TO AN INVESTOR IN THE**
21 **BUSINESS. THE USE OF THE WORD "CERTIFIED" IN**
22 **AN OFFERING DOES NOT CONSTITUTE A**
23 **RECOMMENDATION OR ENDORSEMENT OF THE**
24 **INVESTMENT BY THE INDIANA DEVELOPMENT**
25 **FINANCE AUTHORITY, THE STATE OF INDIANA, OR**
26 **ANY OF THEIR RESPECTIVE OFFICERS, EMPLOYEES,**
27 **OR AGENTS. INVESTMENTS IN A PROSPECTIVE**
28 **LOCAL CERTIFIED EQUITY POOL BEFORE THE TIME**
29 **THE POOL IS CERTIFIED ARE NOT ELIGIBLE FOR**
30 **TAX CREDITS. IF CERTAIN PROVISIONS OF IC 4-35**
31 **ARE VIOLATED, THE STATE OF INDIANA MAY**
32 **REQUIRE FORFEITURE OF UNUSED TAX CREDITS."**

33 **Chapter 5. Requirements for Continued Certification;**
34 **Decertification**

35 **Sec. 1. To continue to be certified, a local certified equity pool**
36 **must adhere to the following guidelines:**

37 **(1) The local certified equity pool may not hold restricted**
38 **capital for longer than thirty (30) days after it has been called**

- 1 **upon for a qualified investment.**
- 2 **(2)The local certified equity pool must use all tax credits**
- 3 **allocated to it by investing all restricted capital in qualified**
- 4 **Indiana businesses within five (5) years after receiving an**
- 5 **allocation of tax credits. If a pool fails to make significant**
- 6 **progress toward using its allocated tax credits, it may be**
- 7 **subject to decertification by the authority.**
- 8 **(3) A single qualified investment may not exceed a percentage,**
- 9 **set in the authority's written guidelines, of the total capital of**
- 10 **the local certified equity pool at the time of investment.**
- 11 **(4)The local certified equity pool must comply with any limits,**
- 12 **set in the authority's written guidelines, on outside leverage.**
- 13 **(5) The unrestricted capital in the pool must equal the**
- 14 **restricted capital in the pool.**
- 15 **(6) The local certified equity pool may not make an**
- 16 **investment in an affiliate of the local certified equity pool. If**
- 17 **a legal entity is not an affiliate before a local certified equity**
- 18 **pool initially invests in the entity, it is not an affiliate if a local**
- 19 **certified equity pool provides additional investment in the**
- 20 **entity after its initial investment.**
- 21 **(7)The local certified pool may not have engaged in any**
- 22 **fraudulent activities and may not be under investigation by**
- 23 **the federal Securities Exchange Commission or the securities**
- 24 **division of the office of the secretary of state.**
- 25 **(8) The local certified equity pool must fully comply with this**
- 26 **article, including any requirement for timely reporting.**

27 **Sec. 2. The following are grounds for decertification of a local**

28 **certified equity pool:**

- 29 **(1) A material violation of this article.**
- 30 **(2) A material misrepresentation made in connection with the**
- 31 **application process.**
- 32 **(3) A finding of fraud by the federal Securities Exchange**
- 33 **Commission or the securities division of the office of the**
- 34 **secretary of state.**
- 35 **The authority shall provide written notice to the principal or**
- 36 **manager of the local certified equity pool or to whomever is**
- 37 **designated on the certification application to receive notice on**
- 38 **behalf of the pool that the pool shall be decertified not later than**

1 one hundred twenty (120) days from the date of mailing of the
2 notice unless the pool corrects the deficiencies to the satisfaction of
3 the authority.

4 **Sec. 3.** If the local certified equity pool remains out of
5 compliance at the end of the one hundred twenty (120) day period
6 described in section 2 of this chapter, the authority shall send a
7 notice of decertification to the pool and to the state department of
8 revenue.

9 **Sec. 4.** If a local certified equity pool is decertified for reasons
10 of fraud or misrepresentation, or both, the authority shall
11 recapture the total amount of tax credits awarded to the local
12 certified equity pool. Not later than thirty (30) days after receiving
13 a notice of decertification under section 3 of this chapter, the pool
14 shall repay to the authority an amount equal to the tax credits
15 claimed by its investors at the time of decertification. The
16 decertified pool must provide written notice by certified mail,
17 return receipt requested, to all of its investors informing them of
18 the authority's decision.

19 **Sec. 5.** The authority shall send written notice by certified mail,
20 return receipt requested, to each investor of the decertified local
21 certified equity pool explaining the following:

22 (1) The decertification of the local certified equity pool.

23 (2) The authority's recapture of the tax credit from the local
24 certified equity pool.

25 (3) The forfeiture of all future tax credits to be claimed by the
26 investor with respect to the investments in the local certified
27 equity pool.

28 The notice shall be sent to the address shown on the investor's last
29 tax filing or, if no filing has been made, to address provided by the
30 pool.

31 **Sec. 6.** If the local certified equity pool does not meet the
32 requirements for recertification at the end of the one hundred
33 twenty (120) day period described in section 2 of this chapter, the
34 authority must issue a written opinion not later than one hundred
35 twenty (120) days after the end of the period. The authority shall
36 promptly send a copy of the written opinion by registered mail to
37 the local certified equity pool.

38 **Sec. 7.** The authority shall address any opinions issued under

1 section 6 of this chapter at its next meeting. The authority shall
 2 provide advance notice of the meeting date, time, and location to
 3 the affected local certified equity pools. The pools shall be provided
 4 an administrative mediation and appeal process in their
 5 certification contracts with the authority.

6 Sec. 8. If the authority determines that a local certified equity
 7 pool has made an investment in a business that the authority
 8 determines is not a qualified Indiana business, the local certified
 9 equity pool shall have thirty (30) days to pay to the authority an
 10 amount equal to the tax credits that were allocated to and claimed
 11 by investors in the local certified equity pool in connection with
 12 investments in the business determined not to be a qualified
 13 Indiana business.

14 **Chapter 6. Reporting and Compliance Review**

15 Sec. 1. On or before January 31 of each year, a local certified
 16 equity pool that has been awarded tax credits shall pay a
 17 nonrefundable recertification fee to the authority. The authority
 18 shall establish by guideline the amount of the annual recertification
 19 fee, which shall be no more than is reasonably necessary to cover
 20 the cost of ensuring compliance with the requirements for
 21 continued certification.

22 Sec. 2. (a) As soon as practicable after the receipt of capital, a
 23 local certified equity pool shall report to the authority the
 24 following:

- 25 (1) The name of each investor from which the capital was
 26 received.
- 27 (2) The tax identification number of each investor.
- 28 (3) The amount of each investor's investment of capital.
- 29 (4) The tax credits computed without regard to any
 30 limitations under IC 4-35-3.
- 31 (5) The date on which the capital was received.

32 (b) Before February 15 of each year, a local certified equity pool
 33 shall provide the authority with the following:

- 34 (1) Proof that each business in which a qualified investment of
 35 restricted capital was made was a qualified Indiana business.
- 36 (2) Proof that the local certified equity pool has met all
 37 requirements for continued certification.
- 38 (3) Proof that the local certified equity pool has made the

1 required qualified investments in qualified Indiana businesses
2 to allow the level of tax credits awarded to investors in the
3 pool.

4 (c) Not later than one hundred twenty (120) days after the end
5 of the fiscal year, a local certified equity pool shall provide to the
6 authority its annual audited financial statements, including the
7 opinion of an independent certified public accountant that
8 addresses the following:

9 (1) Whether the methods of operation and conduct of the local
10 certified equity pool are in compliance with this article and
11 the program guidelines adopted by the authority.

12 (2) Whether the funds received by the local certified equity
13 pool have been invested as required and within the time limits
14 set forth in this article.

15 Sec. 3. The authority may direct a nationally recognized
16 certified public accounting firm to audit a local certified equity
17 pool at the expense of the local certified equity pool. The audit
18 must determine the following:

19 (1) The portion of the principal that has been spent on
20 management and administrative fees.

21 (2) The total return realized by the fund on all of its
22 investments.

23 (3) The total return realized by the fund on its investments in
24 qualified Indiana businesses.

25 Sec. 4. A certified local equity pool must follow the reporting
26 requirements set forth in this chapter for three (3) years after the
27 date on which the pool made its last qualified investment.

28 Sec. 5. A certified equity pool may request that certain
29 information submitted under this chapter be kept confidential. The
30 authority shall make a determination of confidentiality as soon as
31 is practicable. If the authority determines that the information
32 should not be kept confidential, the local certified equity pool may
33 withdraw from the program, reimbursing the authority for tax
34 credits claimed and forfeiting any future tax credits. The authority
35 shall return the information without making it part of any public
36 record.

37 Chapter 7. Distributions

38 Sec. 1. A local certified equity pool may make distributions at

1 any time to cover management and administrative fees up to a level
2 agreed upon with the authority before certification, subject to the
3 guidelines of the authority.

4 Sec. 2. A local certified equity pool shall distribute to the state
5 department of revenue a portion of the return realized on the
6 pool's investments. The portion of the return that must be
7 distributed to the state department of revenue shall be set forth in
8 the authority's guidelines.

9 Chapter 8. Reports

10 Sec. 1. Before June 1 of each year, the director shall submit a
11 report to the legislative services agency for distribution to the
12 legislative council. The report must include the following:

- 13 (1) The number of local certified equity pools holding capital.
- 14 (2) The amount of tax credits awarded to each local certified
15 equity pool.
- 16 (3) The cumulative amount that each local certified equity
17 pool has invested in qualified Indiana businesses and the tax
18 credits available to be claimed as a result of these investments.
- 19 (4) The total amount of tax credits claimed under this article
20 in the previous year and the cumulative total of tax credits
21 claimed.
- 22 (5) The compliance of each local certified equity pool with the
23 requirements of IC 4-35-5.
- 24 (6) The classification, according to industry sector as defined
25 by the authority, of companies in which each local certified
26 equity pool has invested.
- 27 (7) The total number of jobs in each qualified Indiana
28 business before and after the qualified investments made by
29 local certified equity pools.
- 30 (8) The annual payroll of each qualified Indiana business
31 before and after the qualified investments made by local
32 certified equity pools.
- 33 (9) The name of each pool that is decertified or has had its
34 certification revoked and the reasons for the decertification or
35 revocation.

36 Chapter 9. Miscellaneous

37 Sec. 1. The authority shall adopt administrative guidelines
38 consistent with this article, without having to comply with

1 **IC 4-22-2.**

2 **Sec. 2. This article expires January 1, 2013.**

3 **SECTION 2. [EFFECTIVE UPON PASSAGE] IC 4-35, as**
4 **added by this act, applies to taxable years beginning after**
5 **December 31, 2000.**

6 **SECTION 3. An emergency is declared for this act.**

(Reference is to SB 405 as printed January 19, 2000.)

and when so amended that said bill do pass.

Representative Crooks