

of treatment, but may waive the fee or collect a lesser amount upon a showing of cause. The fees shall be used by each of the district departments or contract service providers for the establishment, administration, coordination, and provision of direct services of the batterers' treatment programs.

District departments or contract service providers shall receive upon request peace officers' investigative reports regarding persons participating in programs under this section. The receipt of reports under this section shall not waive the confidentiality of the reports under section 22.7.

Approved February 22, 2002

CHAPTER 1005

BUSINESS GROWTH AND DEVELOPMENT INITIATIVES — SEED AND VENTURE CAPITAL INVESTMENTS — SMALL BUSINESS INCOME ALLOCATION

H.F. 2078

AN ACT relating to economic stimulus measures for businesses by creating an Iowa capital investment board, authorizing the organization of an Iowa capital investment corporation and an Iowa fund of funds, and authorizing the issuance of contingent tax credits to investors in the Iowa fund of funds; establishing a small business growth initiative by adjusting the allocation to Iowa of income earned by an S corporation for purposes of the state individual income tax; and including a retroactive applicability date provision.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 15E.221 FINDINGS — PURPOSE.

The general assembly finds the following: Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. A critical shortage of seed and venture capital resources exists in the state, and such shortage is impairing the growth of commerce in the state. A need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Iowa, including, without limitation, enterprises in the life sciences, advanced manufacturing, information technology, and value-added agriculture areas. Such investments will create jobs for Iowans and will help to diversify the state's economic base.

This division is enacted to fulfill the following purposes:

1. To mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales.
2. To retain the private-sector culture of focusing on rate of return in the investing process.
3. To secure the services of the best managers in the venture capital industry, regardless of location.
4. To facilitate the organization of the Iowa fund of funds in which to seek such private investment and to create interest in such investments by offering state incentives for private persons to make investments in the Iowa fund of funds.
5. To enhance the venture capital culture and infrastructure in the state of Iowa so as to increase venture capital investment within the state and to promote venture capital investing within Iowa.
6. To accomplish these purposes in such a manner as to minimize any appropriations by the state of Iowa.

7. To effectuate specific, measurable results, including all of the following:
 - a. The creation of three new venture capital fund offices in Iowa within three years of the effective date of this Act.
 - b. The investment of resources from the Iowa fund of funds in Iowa businesses within three years of the effective date of this Act.
 - c. A cumulative rate of return on venture investments of the Iowa fund of funds equal to a minimum of one and one-half percentage points above the ten-year treasury bill rate in effect at the end of five years following the effective date of this Act.¹

Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.

As used in this division, unless the context otherwise requires:

1. "Board" means the Iowa capital investment board created in section 15E.223.
2. "Certificate" means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.
3. "Designated investor" means a person, other than the Iowa capital investment corporation, who purchases an equity interest in the Iowa fund of funds or a transferee of a certificate or tax credit.
4. "Iowa capital investment corporation" means a private, nonprofit corporation created pursuant to section 15E.224.
5. "Iowa fund of funds" means a private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation pursuant to section 15E.225 in which a designated investor purchases an equity interest.
6. "Tax credit" means a contingent tax credit issued pursuant to section 15E.226 that is available against tax liabilities imposed by chapter 422, divisions II, III, and V, and by chapter 432 and against the moneys and credits tax imposed by section 533.24.²

Sec. 3. NEW SECTION. 15E.223 IOWA CAPITAL INVESTMENT BOARD.

1. The Iowa capital investment board is created as a state governmental board and the exercise by the board of powers conferred by this division shall be deemed and held to be the performance of essential public purposes. The purpose of the board shall be to mobilize venture equity capital for investment in such a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.
2. The board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and confirmed by the senate pursuant to section 2.32. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year. One nonvoting member shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. One nonvoting member shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. The nonvoting members shall be appointed for two-year terms which shall expire upon the convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall be compensated by the board for direct expenses and mileage but members shall not receive a director's fee, per diem, or salary for service on the board. Members shall be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members shall not have an interest in any person to whom a tax credit is allocated and issued by the board.
3. The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, provided, however, that the board shall not hire employees.
4. Members of the board shall be indemnified against loss to the broadest extent permissible under chapter 669.

¹ See chapter 1006, §14 herein

² See chapter 1006, §14 herein

5. Meetings of the board shall, except to the extent necessary to protect confidential information with respect to investments in the Iowa fund of funds, be subject to chapter 21.

6. The board shall, in cooperation with the department of revenue and finance, establish criteria and procedures for the allocation and issuance of tax credits to designated investors by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable by a designated investor or transferee in order to receive a tax credit. The contingencies to redemption shall be tied to the scheduled rates of return and scheduled redemptions of equity interests purchased by designated investors in the Iowa fund of funds. The procedures established by the board, in cooperation with the department of revenue and finance, shall relate to the procedures for the issuance of the certificates and the related tax credits, for the transfer of a certificate and related tax credit by a designated investor, and for the redemption of a certificate and related tax credit by a designated investor or transferee. The board shall also establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors and transferees, including, without limitation, criteria and procedures for evaluating the value of investments made by the Iowa fund of funds and the returns from the Iowa fund of funds.

7. Pursuant to section 15E.226, the board shall issue certificates which may be redeemable for tax credits to provide incentives to designated investors to make equity investments in the Iowa fund of funds. The board shall issue the certificates so that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

8. The board may charge a placement fee to the Iowa fund of funds with respect to the issuance of a certificate and related tax credit to a designated investor, but the fee shall be charged only to pay for reasonable and necessary costs of the board and shall not exceed one-half of one percent of the equity investment of the designated investor.

9. The board shall, in consultation with the Iowa capital investment corporation, publish an annual report of the activities conducted by the Iowa fund of funds, and present the report to the governor and the general assembly. The annual report shall include a copy of the audit of the Iowa fund of funds and a valuation of the assets of the Iowa fund of funds, review the progress of the investment fund allocation manager in implementing its investment plan, and describe any redemption or transfer of a certificate issued pursuant to this division, provided, however, that the annual report shall not identify any specific designated investor who has redeemed or transferred a certificate. Every five years, the board shall publish a progress report which shall evaluate the progress of the state of Iowa in accomplishing the purposes stated in section 15E.221.

10. The board shall redeem a certificate submitted to the board by a designated investor and shall calculate the amount of the allowable tax credit based upon the investment returns received by the designated investor and its predecessors in interest and the provisions of the certificate. Upon submission of a certificate for redemption, the board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which may be claimed by the designated investor with respect to the redemption of the certificate.

11. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.³

Sec. 4. NEW SECTION. 15E.224 IOWA CAPITAL INVESTMENT CORPORATION.

1. An Iowa capital investment corporation may be organized as a private, not-for-profit corporation under chapter 504A. The Iowa capital investment corporation is not a public corporation or instrumentality of the state and shall not enjoy any of the privileges and shall not be required to comply with the requirements of a state agency. Except as otherwise provided in this division, this division does not exempt the corporation from the requirements under state law which apply to other corporations organized under chapter 504A. The purposes of an Iowa capital investment corporation shall be to organize the Iowa fund of funds, to select a venture capital investment fund allocation manager to select venture capital fund investments by the

³ See chapter 1006, §14 herein

Iowa fund of funds, to negotiate the terms of a contract with the venture capital investment fund allocation manager, to execute the contract with the selected venture capital investment fund⁴ manager on behalf of the Iowa fund of funds, to receive investment returns from the Iowa fund of funds, and to reinvest the investment returns in additional venture capital investments designed to result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The corporation shall not exercise governmental functions and shall not have members. The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the corporation.

2. To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504A.28:

a. The chairperson of the Iowa economic development board or a designee of the chairperson.

b. The director of the department of economic development or a designee of the director.

3. After incorporation, the initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the Iowa economic development board. The initial board of directors shall consist of five members. The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds, and other areas of expertise as deemed appropriate by the appointment committee. After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be elected by the remaining directors of the corporation. Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this division or in any investments made by the Iowa fund of funds.

4. The members of the appointment committee shall exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

5. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

6. The department of economic development shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the incorporators and appointment committee in order to administer this section.

7. After incorporation, the Iowa capital investment corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Iowa fund of funds in accordance with the requirements of this division. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fund-raising, prior investment fund results, and plan for achieving the purposes of this division. The selected venture capital investment fund allocation manager shall be a person with substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation. The corporation shall only select a venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds. The corporation shall select the venture capital investment fund allocation manager deemed best qualified to generate the amount of capital required by this division and to invest the capital of the Iowa fund of funds.

⁴ See chapter 1175, §77 herein

8. The Iowa capital investment corporation may charge a management fee on assets under management in the Iowa fund of funds. The fee shall be in addition to any fee charged to the Iowa fund of funds by the venture capital investment fund allocation manager selected by the corporation, but the fee shall be charged only to pay for reasonable and necessary costs of the Iowa capital investment corporation and shall not exceed one-half of one percent per year of the value of assets under management.

9. Directors of the Iowa capital investment corporation shall be compensated for direct expenses and mileage but shall not receive a director's fee or salary for service as directors.

10. The Iowa capital investment corporation shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the corporation shall not hire staff as employees except to administer the rural and small business loan guarantee program of the Iowa fund of funds.

11. Upon the dissolution of the Iowa fund of funds, the Iowa capital investment corporation shall be liquidated and dissolved, and any assets owned by the corporation shall be distributed to the state of Iowa and deposited in the general fund.⁵

Sec. 5. NEW SECTION. 15E.225 IOWA FUND OF FUNDS.

1. The Iowa capital investment corporation shall organize the Iowa fund of funds. The Iowa fund of funds shall be authorized to make investments in private seed and venture capital partnerships or entities in a manner which will encourage the availability of a wide variety of venture capital in the state, strengthen the economy of the state, help business in Iowa gain access to sources of capital, help build a significant, permanent source of capital available to serve the needs of Iowa businesses, and accomplish all these benefits in a way that minimizes the use of tax credits.

2. The Iowa capital investment corporation shall organize the Iowa fund of funds in the following manner:

a. The Iowa fund of funds shall be organized as a private, for-profit, limited partnership or limited liability company under Iowa law pursuant to which the Iowa capital investment corporation shall be the general partner or manager. The entity shall be organized so as to provide for equity interests for designated investors which provide for a designated scheduled rate of return and a scheduled redemption which shall occur not less than five years following the issuance of such equity interests. The interest of the Iowa capital investment corporation in the Iowa fund of funds shall be to serve as general partner or manager and to be paid a management fee for the service as provided in section 15E.224, subsection 8, and to receive investment returns of the Iowa fund of funds in excess of those payable to designated investors. Any returns in excess of those payable to designated investors shall be reinvested by the Iowa capital investment corporation by being held in the Iowa fund of funds as a revolving fund for reinvestment in venture capital funds or investments until the termination of the Iowa fund of funds. Any returns received from these reinvestments shall be deposited in the revolving fund.

b. The Iowa fund of funds shall principally make investments in high-quality venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of Iowa and which have committed to maintain a physical presence within the state of Iowa. The investments by the Iowa fund of funds shall be focused principally on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Iowa fund of funds shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds. The Iowa fund of funds may invest in newly created venture capital funds as long as the managers or management teams of the funds have the experience, expertise, and a successful history in the investment of venture capital funds described in this paragraph.

c. The Iowa fund of funds shall establish and administer a program to provide loan guarantees and other related credit enhancements on loans to rural and small business borrowers within the state of Iowa. The Iowa fund of funds shall invest five percent of its assets in investments for this program.

⁵ See chapter 1006, §14 herein

d. The Iowa fund of funds shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, including, without limitation, engaging and agreeing to compensate a venture capital investment fund allocation manager. Such compensation shall be in addition to the management fee paid to the Iowa capital investment corporation. However, the Iowa fund of funds shall not hire employees except to administer its rural and small business loan guarantee and credit enhancement program.

e. The Iowa fund of funds may issue debt and borrow such funds as may be needed to accomplish its goals. However, such debt shall not be secured by tax credits issued by the board. The Iowa fund of funds may open and manage bank and short-term investment accounts as deemed necessary by the venture capital investment fund allocation manager.

f. The Iowa fund of funds may expend moneys to secure investment ratings for investments by designated investors in the Iowa fund of funds.

g. Each calendar year, the auditor of state shall conduct an annual audit of the activities of the Iowa fund of funds or shall engage an independent auditor to conduct the audit provided that the independent auditor has no business, contractual, or other connection to the Iowa capital investment corporation or the Iowa fund of funds. The corporation shall reimburse the auditor of state for costs associated with the annual audit. The audit shall be delivered to the Iowa capital investment corporation and the board each year and shall include a valuation of the assets owned by the Iowa fund of funds as of the end of each year.

h. Fifty years after the organization of the Iowa fund of funds, the Iowa capital investment corporation shall cause the Iowa fund of funds to be liquidated with all of its assets distributed to its owners in accordance with the provisions of its organizational documents.

i. Upon the liquidation of the Iowa fund of funds, the Iowa capital investment corporation shall file a report with the general assembly stating how many jobs in this state were created through investments made by the Iowa fund of funds.⁶

Sec. 6. NEW SECTION. 15E.226 CERTIFICATES AND TAX CREDITS.

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of one hundred million dollars of tax credits. The certificates shall be issued contemporaneously with an investment in the Iowa fund of funds by a designated investor. A certificate issued by the board shall have a specific calendar year maturity date designated by the board of not less than five years after the date of issuance and shall be redeemable on a schedule similar to the scheduled redemption of investments by designated investors. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate. An individual may claim the 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. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.

2. The board shall certify the maximum amount of a tax credit which could be issued to a designated investor and identify the specific calendar year the certificate may be redeemed pursuant to this division. The amount of the tax credit shall be limited to an amount equivalent to any difference between the scheduled aggregate return to the designated investor at rates of return authorized by the board and aggregate actual return received by the designated investor and any predecessor in interest of capital and interest on the capital. The rates, whether fixed rates or variable rates, shall be determined pursuant to a formula stipulated in the certificate. The board shall clearly indicate on the certificate the schedule, the amount of equity investment, the calculation formula for determining the scheduled aggregate return on invested

⁶ See chapter 1006, §14 herein

capital, and the calculation formula for determining the amount of the tax credit that may be claimed. Once moneys are invested by a designated investor, the certificate shall be binding on the board and the department of revenue and finance and shall not be modified, terminated, or rescinded.

3. If a designated investor elects to redeem a certificate, the certificate shall be redeemed on June 30 of the calendar year maturity date stated on the certificate. At the time of redemption, the board shall determine the amount of the tax credit that may be claimed by the designated investor based upon the returns received by the designated investor and its predecessors in interest and the provisions of the certificate. The board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.

4. The board shall, in conjunction with the department of revenue and finance, develop a system for registration of any certificate and related tax credit issued or transferred pursuant to this section and a system that permits verification that any tax credit claimed upon a tax return is valid and that any transfers of the certificate and related tax credit are made in accordance with the requirements of this division.

5. The board shall issue the tax credits in such a manner that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

6. A certificate or tax credit issued or transferred pursuant to this division shall not be considered a security pursuant to chapter 502.

7. In determining the one hundred million dollar maximum limit in subsection 1 and the twenty million dollar limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been redeemed shall be included only to the extent of tax credits actually allowed.⁷

Sec. 7. NEW SECTION. 15E.227 POWERS AND EFFECTIVENESS.

This division shall not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this division are cumulative to such powers. This division shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers conferred by any other laws. The level, timing, or degree of success of the Iowa fund of funds or the investment funds in which the Iowa fund of funds invests in, or the extent to which the investment funds are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objectives, shall not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Iowa fund of funds.⁸

Sec. 8. NEW SECTION. 15E.228 PERMISSIBLE INVESTMENTS.

Investments by designated investors in the Iowa fund of funds shall be deemed permissible investments for state-chartered banks, for credit unions, and for domestic insurance companies under applicable state laws.⁹

Sec. 9. NEW SECTION. 15E.229 ENFORCEMENT.

The attorney general may enforce the provisions of this division and conduct any investigations necessary for such enforcement.¹⁰

Sec. 10. Section 422.8, subsection 2, paragraph b, subparagraph (2), Code 2001, is amended to read as follows:

(2) Any cash or the value of property distributions which are made only to the extent that

⁷ See chapter 1006, §14 herein

⁸ See chapter 1006, §14 herein

⁹ See chapter 1006, §14 herein

¹⁰ See chapter 1006, §14 herein

they are paid from income upon which Iowa income tax has not been paid, as determined under rules of the director, reduced by ~~fifty percent~~ of the amount of any of these distributions that are made to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

Sec. 11. **APPLICABILITY PROVISION.** Section 10 of this Act applies retroactively to January 1, 2002, for tax years beginning on or after that date.

Approved February 28, 2002

CHAPTER 1006

INVESTMENT TAX CREDITS — QUALIFYING BUSINESSES — COMMUNITY-BASED SEED CAPITAL FUNDS

H.F. 2271

AN ACT creating a tax credit for investments in qualifying businesses and community-based seed capital funds and including effective and retroactive applicability date provisions.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 15E.41 PURPOSE.

The purpose of this division is to enhance the quality of life for citizens of this state through the increased availability of and accessibility to venture capital, particularly at the seed capital investment stage, which encourages the creation of wealth through high-paid, new jobs that increase the wage base and promote industrial development and innovative products that use new technology. The purpose of this division is also to encourage individuals to invest seed capital in Iowa businesses and in community-based seed capital funds.

Sec. 2. NEW SECTION. 15E.42 DEFINITIONS.

For purposes of this division, unless the context otherwise requires:

1. "Affiliate" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.
2. "Board" means the Iowa capital investment board, if created in House File 2078¹ as enacted by the Seventy-ninth General Assembly.
3. "Investor" means an individual making a cash investment in a qualifying business or a person making a cash investment in a community-based seed capital fund. "Investor" does not include a person which is a current or previous owner, member, or shareholder in a qualified² business.
4. "Near equity" means debt that may be converted to equity at the option of the debt holder, and royalty agreements.
5. "Qualifying business" means a business meeting the criteria defined in section 15E.44.

Sec. 3. NEW SECTION. 15E.43 INVESTMENT TAX CREDITS.

1. a. For tax years beginning on or after January 1, 2002, a tax credit shall be allowed against the taxes imposed in chapter 422, division II, for a portion of an individual taxpayer's equity investment, as provided in subsection 2, in a qualified³ business. An individual shall

¹ Chapter 1005 herein

² See chapter 1175, §75 herein

³ See chapter 1175, §76 herein