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## COMMERCE AND TRADE Georgia Seed Capital Fund: Create

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## COMMERCE AND TRADE

*Georgia Seed Capital Fund: Create*

CODE SECTIONS: O.C.G.A. §§ 10-10-1 to -6 (new)  
 BILL NUMBER: HB 151  
 ACT NUMBER: 677  
 SUMMARY: The Act authorizes the creation of a State Seed Capital Fund which will provide capital to innovative businesses. The Act authorizes the Advanced Technology Development Center to manage the fund, subject to approval by the Georgia Board of Regents. The Act also permits the State to disburse funds to investment partnerships and to challenge the investments of partnerships engaged in innovative projects. The Act also provides for the disbursement of returns on investment of state funds, liquidation of investment partnerships, limitations on investments by investment partnerships, and annual reporting requirements.

EFFECTIVE DATE: July 1, 1989

*History*

Generally, there are four funding sources for starting a business: personal savings; family, friends, and associates; informal risk investors; and the formal venture capital community.<sup>1</sup> The amount of capital available through these sources often falls short of providing an adequate pool for the funding of young, high-risk enterprises.<sup>2</sup>

The Advanced Technology Development Center (ATDC)<sup>3</sup> conducted a study of financing programs in Georgia.<sup>4</sup> The study showed an abundance

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1. *The Advanced Technology Development Center, An Investigation of State Sponsored Seed-Capital Funds*, 3-4 (Aug. 1988) (available in Georgia State University College of Law Library) [hereinafter ATDC Report].

2. *Id.*

3. The ATDC was created in 1980 by the Governor of Georgia, the General Assembly, and leaders from the Georgia Institute of Technology to strengthen the State's economy through the development of high technology industry. Current ATDC activities focus on supporting Georgia's academic and research facilities, targeting statewide technology development efforts, and creating new technology and general business incubators in cities throughout Georgia. *Id.* at 9.

4. *Id.* at 3-4.

of good ideas, entrepreneurs, and support systems.<sup>5</sup> Start-up firms in Georgia experience a gap, however, between available funding and amounts necessary to begin their businesses.<sup>6</sup> Additionally, legislative hearings conducted throughout the State in 1988 indicated that Georgia's small businesses needed a viable source of venture capital.<sup>7</sup>

The ATDC proposed the creation of a seed capital fund for Georgia based on the concept of a public-private partnership.<sup>8</sup> The ATDC found that several states have established seed capital programs.<sup>9</sup> While private individuals invest in seed capital funds with a profit motive, most states invest with a focus on job growth in the state.<sup>10</sup> Because of these findings, the ATDC proposal received widespread support in the Georgia General Assembly.<sup>11</sup>

The creation of a Seed Capital Fund in Georgia required an amendment to the Georgia Constitution.<sup>12</sup> Accordingly, during the 1988 legislative session, the Georgia General Assembly adopted House Resolution 552 which authorized placing a proposed constitutional amendment on the 1988 ballot.<sup>13</sup> The amendment created a public-private fund for financing business start-ups.<sup>14</sup>

5. Telephone interview with C. Michael Cassidy, Manager, Statewide Developmental Programs, Advanced Technology Development Center (Mar. 21, 1989) [hereinafter Cassidy Interview].

6. See generally ATDC Report, *supra* note 1.

7. Telephone interview with Representative Roy H. Watson, Jr., Chairman of House Industry Committee, House District No. 114 (Mar. 21, 1989) [hereinafter Watson Interview].

8. ATDC Report, *supra* note 1, at 12-13.

9. *Id.* at 6. "Twenty-one of the twenty-eight states (75%) that responded to [ATDC] inquiries had initiated state sponsored seed capital fund projects." *Id.* at 12.

10. *Id.* at 6.

11. Cassidy Interview, *supra* note 5. Representatives Roy H. Watson, Jr., Chairman, House Industry Committee, House District No. 114, and Thomas M. Kilgore, House District No. 42 sponsored the necessary bills and resolution. HB 151, as introduced, 1989 Ga. Gen. Assem.

12. See Advanced Technology Development Center, News Release, Voters Set To Pass On State Investment Fund For New Businesses (Mar. 4, 1988) [hereinafter News Release].

13. *Id.* HR 552 was adopted by the House on Feb. 16, 1988, and by the Senate on Feb. 25, 1988. The vote was unanimous in both chambers. *Id.*

14. The General Assembly is authorized to provide by law for the creation of a Seed Capital Fund from which funds shall be disbursed at the direction of the Advanced Technology Development Center of the University System of Georgia to provide equity and other capital to small, young, entrepreneurial firms engaged in innovative work in the areas of technology, manufacturing, or agriculture. Funds shall be disbursed in the form of loans or investments which shall provide for repayment, rents, dividends, royalties, or other forms of return on investments as provided by law. Moneys received from returns on loans or investments shall be deposited in the Seed Capital Fund for further disbursement. The General Assembly is authorized to appropriate moneys to such fund and such moneys paid into the fund shall not be subject to the provisions of Article III, Section IX, Paragraph IV(c) relative to the lapsing of funds. The General Assembly shall

Passage of the resolution was the first of four steps needed to establish the program.<sup>15</sup> The second step was the adoption of the constitutional amendment by the citizens of the state.<sup>16</sup> The amendment paved the way for HB 151, which is the third step towards the development and implementation of the Seed Capital Fund in Georgia.<sup>17</sup> The fourth step, the appropriation of State funds, was not taken during the 1989 session.<sup>18</sup>

### *HB 151*

HB 151 creates a Seed Capital Fund as a separate fund of the Georgia State treasury.<sup>19</sup> The Act provides that the state make a one-time contribution to the Fund.<sup>20</sup> Future state contributions will come from the returns on the State's initial investments.<sup>21</sup> The Act provides for private investors to match the State's contribution by a three-to-one ratio.<sup>22</sup>

In exchange for its investment, the State will receive a "limited partner position . . . with rights to income accruing from profits from investments by the investment partnership."<sup>23</sup> All investors will receive an equity share in the venture enterprise based on their original position in the Fund.<sup>24</sup> The investors will realize a return "as the valuations of the companies increase and as those companies go public, are merged with or acquired by larger companies, and/or redeem their stock from the fund."<sup>25</sup> Returns on State funds must be reinvested in seed capital

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be authorized to provide by law for any matters relating to the purpose or provisions of this subparagraph. GA. CONST. art. III, § 9, ¶ 6(g).

15. News Release, *supra* note 12.

16. *Id.*

17. *Id.*

18. Watson Interview, *supra* note 7.

19. O.C.G.A. § 10-10-3 (Supp. 1989). "Seed capital" is defined as "[f]inancing obtained by a company before it has completed developing a prototype of its product. Sometimes it refers to capital raised after a company has developed a prototype of its product but before it has manufactured any production units of it." ATDC Report, *supra* note 1, at 2-3.

20. News Release, *supra* note 12. The sponsors recommended a \$2.5 million appropriation. Watson Interview, *supra* note 7.

21. O.C.G.A. § 10-10-3(c) (1989).

22. O.C.G.A. § 10-10-4(1)(A) (1989). The sponsors predict that initially the Fund will total \$10 million. *Legislators Approve Seed Capital Fund*, Atlanta J., Feb. 8, 1989, at D1, col. 2.

23. O.C.G.A. § 10-10-3(c) (1989). An "investment partnership" is defined as a "limited partnership in which the general partner or partners manage the funds contributed by the state as a limited partner and contributed by other limited and general partners, which funds shall be used to make investments in private enterprises." O.C.G.A. § 10-10-1(6) (1989).

24. O.C.G.A. § 10-10-3(c) (1989).

25. News Release, *supra* note 12.

reserves or paid to the Seed Capital Fund.<sup>26</sup> Funds resulting from liquidation of a partnership must also be paid into the Seed Capital Fund.<sup>27</sup>

The self-perpetuating nature of the Fund, the potential for creating jobs in the State, and the fact that investments from the Fund are available exclusively to "new enterprises located in the State of Georgia,"<sup>28</sup> all contributed to the popularity of the Act among Georgia lawmakers.<sup>29</sup> To qualify, an entrepreneurial firm must engage in "innovative work in the areas of technology, manufacturing, marketing, agriculture, or information-related ventures which will increase the state's share of domestic or international markets."<sup>30</sup>

Firms eligible to receive funds from conventional sources are not eligible for investment from the Seed Capital Fund.<sup>31</sup> The Act also explicitly excludes mercantile firms from receiving investments from the Fund<sup>32</sup> because other sources exist to provide them start-up capital.<sup>33</sup>

The ATDC will manage the Seed Capital Fund; it presently operates a similar program.<sup>34</sup> The ATDC incubator program provides funds for companies in all stages of growth in the southeastern United States.<sup>35</sup> The Seed Capital Fund will augment the incubator program.<sup>36</sup>

The Act authorizes the ATDC to recommend expenditures from the Seed Capital Fund.<sup>37</sup> An applicant must meet certain criteria before the ATDC can recommend an investment in the applicant's enterprise.<sup>38</sup> All expenditures from the Fund are made subject to the approval of the Board of Regents.<sup>39</sup> Also, subject to approval by the Board, the ATDC is "authorized to contract and have contracts and other legal documents prepared."<sup>40</sup>

The General Assembly did not appropriate money for the Fund during the 1989 legislative session.<sup>41</sup> A last-minute proposed appropriation of

26. O.C.G.A. § 10-10-4(7) (1989). "Seed capital reserves" are defined as "funds of an applicant or investment partnership contributed by the state from the Seed Capital Fund and contributed by private investors, which funds shall be used by the investment partnership to make investments in private enterprises." O.C.G.A. § 10-10-1(8) (1989).

27. O.C.G.A. § 10-10-5 (1989).

28. O.C.G.A. § 10-10-4(2) (1989).

29. Cassidy Interview, *supra* note 5.

30. O.C.G.A. § 10-10-4(2) (1989).

31. News Release, *supra* note 12.

32. O.C.G.A. § 10-10-4(2) (1989).

33. Cassidy Interview, *supra* note 5.

34. O.C.G.A. § 10-10-2 (1989).

35. News Release, *supra* note 12.

36. Watson Interview, *supra* note 7.

37. O.C.G.A. § 10-10-3(a) (1989).

38. O.C.G.A. § 10-10-4(4) (1989).

39. O.C.G.A. § 10-10-3(a) (1989).

40. O.C.G.A. § 10-10-3(e) (1989).

41. Watson Interview, *supra* note 7.

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\$2.5 million was defeated.<sup>42</sup> The Act's sponsors do not consider the lack of funding a setback.<sup>43</sup> The original schedule for implementation of the Fund anticipated that the appropriation would occur during either the 1990 or 1991 session.<sup>44</sup>

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42. *Id.*

43. *Id.*

44. News Release, *supra* note 12.