Ohio Legislative Service Commission

Bill Analysis

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Sub. H.B. 511

129th General Assembly
(As Passed by the House)

Reps. Beck and Gonzales, Amstutz, Antonio, Baker, Barnes, Blair, Brenner, Bubp, Buchy, Carney, Celebrezze, Celeste, Clyde, Combs, Dovilla, Driehaus, Duffey, Fedor, Garland, Goyal, Grossman, Hackett, Hall, Henne, Huffman, Luckie, Mallory, Martin, McClain, Newbold, O'Brien, Phillips, Ruhl, Sears, Sprague, Stautberg, Stinziano, Szollosi, Terhar, Batchelder

BILL SUMMARY

- Terminates the Industrial Technology and Enterprise Advisory Council, which was created to approve tax credits for investments in research and development and technology transfer companies and to make recommendations for the award of other development assistance.

- Transfers duties of the Industrial Technology and Enterprise Advisory Council to the Third Frontier Commission.

- Eliminates the involvement of Edison Centers in reviewing applications for, and making recommendations regarding, those investment tax credits and substitutes the Director of Development for that role.

- Increases, from $45 million to $51 million, the maximum amount of investment tax credits that can be issued.

- Increases from $20 million to $26.5 million the annual and overall limits on venture capital loan loss tax credits available to lenders to the state's venture capital loan program that lose money, and the amount of principal and interest payments that may be paid to lenders each year.

- Increases the total amount of venture capital loan loss credits allowed for all years from $380 million to $550 million.

- Relaxes limits on the extent to which the program's investments may be concentrated in two or more venture capital funds that are under common management.
- Requires the selection criteria for investment funds to qualify to administer the program to include similar experience and a history of positive investment returns.
- Requires agreements for administering the program to specify that the investment fund administering the program and any fund managers employed by the administrator to have a "significant presence" in Ohio as defined in the agreement.
- Adds additional reporting requirements and recipients for the Ohio Venture Capital Authority's annual report.

CONTENT AND OPERATION

Industrial Technology and Enterprise Advisory Council; investment tax credits and other technology and enterprise development assistance

The bill terminates the Industrial Technology Enterprise Advisory Council effective October 1, 2012. The Council was created to do the following:

(1) Assist the Director of Development by reviewing applications for and making recommendations regarding the award of assistance under the Industrial Technology and Enterprise Development Grant Program, the Industrial Technology and Enterprise Resources Program, and the Thomas Alva Edison Grant Program. Under the bill, the Third Frontier Commission is to take over those duties.

(2) Receive recommendations from an Edison Center and make final determinations regarding the approval of tax credits for investments made in Ohio businesses that primarily involve research and development, technology transfer, bio-technology, or information technology. Under the bill, the Director, rather than an Edison Center, is to receive the applications for investment tax credits and make recommendations to the Third Frontier Commission. The Commission is given the responsibility of making the final determination as to the award of the tax credits.[1]

Further, the bill increases – from $45 million to $51 million – the maximum amount of investment tax credits that can be issued, and permits the Director to take up

[1] R.C. 121.22, 122.15 to 122.154, 122.29 (repealed), 122.30, 122.31, 122.36, and 184.02; Section 4.

to four weeks to review initial tax credit applications, instead of the three weeks provided in current law.[2]

Venture capital loan loss tax credits

The existing venture capital loan loss tax credit program permits financial institutions, insurance companies, dealers in intangibles, natural gas companies, and other companies and individuals to lend money to the program for investment by the program administrator(s) in venture capital funds and to have some or all of any losses they incur on the invested money to be compensated by a refundable tax credit against the applicable state tax. (Certain trust companies may claim the credit even if they are not subject to one of the state taxes.) The program is governed by the Ohio Venture Capital Authority, which prescribes the program's investment policies (subject to statutory restrictions), selects not more than two private investment funds to administer the program (currently only one investment fund has been selected to administer), and issues tax credits. The total amount of credits that currently may be issued under the program over its life is limited to $380 million.[3]

The bill modifies the existing venture capital loan loss tax credit program in four respects.

The bill increases the annual tax credit limit from $20 million to $26.5 million. It also increases the amount of principal and interest payments that may be paid to taxpayers lending money to the investment fund from $20 million to $26.5 million. The bill also increases the existing all-year tax credit limit from $380 million to $550 million.[4]

The bill relaxes limits on the extent to which the program's investments may be concentrated in two or more venture capital funds that are under common management by applying those limits only to commonly managed funds that have been formed within two years of each other. Accordingly, if two funds have been formed more than two years apart, the concentration limits do not apply, even if the funds are under common management. The current concentration limits prohibit the program from investing more than the lesser of the following in a single venture capital fund or in two or more venture capital funds under common management: (1) $10 million, or (2) a certain percentage of a venture capital fund's total capital from all investors (the

[2] R.C. 122.151(A) and (D)(2).

[3] R.C. Chapter 150.

[4] R.C. 150.05(B) and 150.07.

percentage is 50% for Ohio-based venture capital funds, and 20% for non-Ohio-based funds).[5]

The bill requires that, when the Ohio Venture Capital Authority solicits requests for proposals from private investment funds to administer the program, the request's description of the evaluation criteria must specifically include the investment fund's past performance "in successfully administering similar programs and achieving positive investment returns" (among the various other items currently required to be included in the request).[6]

Finally, the bill specifies that the agreement between the OVCA and a program administrator governing the program administrator's administration of the program must require the program administrator, and any fund manager employed by the administrator, to have a "significant presence" in Ohio, and must define how that is to be determined.[7] Currently, a program administrator must have "an established business presence" in Ohio, which is not defined.

Report by Ohio Venture Capital Authority

The bill expands the information provided in and the required recipients of the Ohio Venture Capital Authority's annual report. Current law requires the Authority to issue an annual report that includes the following information:

- A description of the Authority's investment policy;
- The Authority's assessment of the venture capital program's achievement of its statutory purpose;
- The value of tax credit certificates issued by the Authority;
- The amount of any tax credits claimed;
- The financial status of the Ohio Venture Capital Fund;
- The names and locations of venture capital funds in which money from the program has been invested and the names and locations of businesses in which each of those funds invested program funds;
- Suggestions for modifications to the venture capital program.

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[5] R.C. 150.03.

[6] R.C. 150.05(A).

[7] R.C. 150.05(B)(10).

The Authority must submit the annual report to the Clerk of the House of Representatives and the Senate and the chairpersons of the House and Senate economic development committees. Moreover, a representative of the Authority must, in every year in which the report is issued, appear before the House and Senate economic development committees to testify concerning the status of the venture capital program.

The bill adds as recipients of the Authority's annual report the chairpersons of the House and Senate committees that deal with taxation and requires the Authority's representative to appear before those committees to testify on the venture capital program. The bill also requires the Authority to include the following information in the report, in addition to information required under current law:

- The geographic distribution of investments from venture capital funds of venture capital program money distributed to the funds;
- The number of jobs created at Ohio businesses in which a venture capital fund invested program money since the time such money was first invested in a business;
- The amount of program funds invested by venture capital funds in Ohio businesses;
- The development stage, as defined by the Authority, of each business receiving program funds on the date a venture capital fund first invests such money in the business, the aggregate amount of program funds invested in such businesses, and the sources of any funding secured by such businesses after a venture capital fund first invests program money in a business.

HISTORY

ACTION	DATE
Introduced	04-12-12
Reported, H. Ways & Means	05-22-12
Passed House (91-6)	05-23-12

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