



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB3698

Introduced 2/24/2005, by Rep. James H. Meyer

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.640 new

Creates the Illinois Opportunity Fund Act. Contains provisions intended to increase the availability and facilitate the delivery of institutional venture capital to emerging and expanding enterprises in the State of Illinois. Defines the role of the Department of Commerce and Economic Opportunity. Creates the Illinois Opportunity Fund and provides for the creation of the Illinois Capital Investment Corporation. Amends the State Finance Act to create the Illinois Opportunity Special Projects Fund. Contains other provisions. Effective immediately.

LRB094 06850 AJ0 36956 b

FISCAL NOTE ACT
MAY APPLY

HOUSING
AFFORDABILITY
IMPACT NOTE ACT
MAY APPLY

1 AN ACT to increase the availability and facilitate the
2 delivery of venture capital to emerging and expanding
3 enterprises in the State of Illinois.

4 **Be it enacted by the People of the State of Illinois,**
5 **represented in the General Assembly:**

6 Section 1. Short title. This Act may be cited as the
7 Illinois Opportunity Fund Act.

8 Section 5. Findings and purposes.

9 (a) The State of Illinois finds that the traditional means
10 by which venture capital and private equity investors direct
11 capital to Illinois markets are inadequately serving the
12 State's needs for that capital and that the shortage is
13 impairing the ability of the State to create jobs, new markets
14 for goods and services, and sustainable economic growth
15 throughout Illinois. The State of Illinois desires to
16 strengthen the overall economy of the State by increasing the
17 availability and delivery of venture capital for emerging and
18 expanding enterprises in Illinois, and to do so in a way that
19 provides for financial returns to private investors.

20 (b) Furthermore, the State of Illinois finds that certain
21 geographic areas and populations within the State have been
22 subject to economic disparities and have lacked access to the
23 private capital needed to create jobs and economic
24 opportunities.

25 (c) Venture capital shall be directed to geographic areas
26 and populations within the State that have been subject to
27 economic disparities and have lacked access to the private
28 capital needed to create jobs and economic opportunities, and
29 to sectors considered to be strategic industries for the State
30 of Illinois as determined by the Department of Commerce and
31 Economic Opportunity in coordination with the entities formed
32 under this Act.

1 (d) These investments are intended to create high-quality
2 and sustainable employment opportunities for Illinoisans,
3 create domestic and global markets for the products and
4 services of funded enterprises, and help to strengthen the
5 State's economic base. This Act has the mission of mobilizing
6 private investment in a broad variety of venture capital funds
7 in diversified industries and geographic regions of the State
8 of Illinois. To achieve this mission, the General Assembly
9 believes that it is important to retain the private sector
10 culture of focusing on rate of return in the investing process.
11 Therefore, this Act is intended to facilitate the establishment
12 of the Illinois Opportunity Fund, seek private investment, and
13 create interest in these investments by offering State credit
14 enhancements that limit risk to private investors. This Act
15 also has the mission of facilitating and enhancing the flow of
16 venture capital into the State of Illinois and improving the
17 infrastructure through which capital is delivered throughout
18 the State so as to grow commerce in the State of Illinois. It
19 is the goal and intent of this legislation to accomplish these
20 missions in such a manner as to minimize any appropriations by
21 the State of Illinois to effectuate these purposes.

22 Section 10. Definitions. In this Act, unless the context
23 requires otherwise:

24 "DCEO" means Department of Commerce and Economic
25 Opportunity, or its successor agency.

26 "Certificate" means an assignable contract between DCEO
27 Economic Opportunity and an investor in the Illinois
28 Opportunity Fund under which the terms of the tax credits being
29 issued for the benefit of the investor, or any assignee of the
30 investor, as established by DCEO, are set forth.

31 "Person" means an individual, a corporation, a
32 partnership, or any other lawfully organized entity, whether
33 domiciled in Illinois or outside of Illinois.

34 "Illinois Capital Investment Corporation" means the
35 private not for profit corporation established pursuant to this

1 Act.

2 "Illinois Opportunity Fund" means the private for profit
3 fund established by the Illinois Capital Investment
4 Corporation pursuant to this Act.

5 "Tax credits" means credits against taxes imposed pursuant
6 to Section 201 of the Illinois Income Tax Act for any taxable
7 year ending after December 31, 2009, and having such terms as
8 are established by DCEO in accordance with Section 25 of this
9 Act, including any contingencies on redemption.

10 "SBIC" means small business investment company within the
11 meaning of the federal Small Business Investment Act of 1958.

12 CDFI and CDVC. "CDFI" means a community development
13 financial institution as defined in the Illinois Investment and
14 Development Authority Act, and "CDVC" means community
15 development venture capital, a type of CDFI specific to
16 investing equity interests in Illinois firms with the dual goal
17 of financial returns and economic and social benefit.

18 Section 15. Illinois Capital Investment Corporation.

19 (a) DCEO shall create the Illinois Capital Investment
20 Corporation as a private not for profit corporation under the
21 General Not For Profit Corporation Act of 1986 and not as a
22 public corporation or instrumentality of the State. The
23 corporation shall not enjoy any of the privileges nor be
24 required to comply with any of the requirements of a State
25 agency. Except as provided in this Act, nothing in this Act
26 exempts the Illinois Capital Investment Corporation from the
27 same requirements under State law that apply to other
28 corporations organized under the General Not For Profit
29 Corporation Act of 1986. The Director or Acting Director of
30 DCEO or his or her designee shall be the incorporator of the
31 Illinois Capital Investment Corporation.

32 (b) The Illinois Capital Investment Corporation shall
33 recommend and DCEO shall approve investment objectives and
34 criteria for the Illinois Opportunity Fund established to
35 provide financial returns to investors, create jobs, and

1 strengthen the economy of the State of Illinois. DCEO shall
2 assist the corporation in performing its duties, and undertake
3 such other responsibilities as are set forth in this Act or as
4 may be necessary or appropriate to give effect to the intent
5 and purposes of this Act.

6 (c) Subject to the assistance of DCEO, the Illinois Capital
7 Investment Corporation shall receive investment returns from
8 the Illinois Opportunity Fund and shall reinvest those funds in
9 further venture capital investments subject to the provisions
10 of this Act, and shall have responsibility for organizing and
11 overseeing the management of the Illinois Opportunity Fund,
12 identifying and engaging a private fund manager or managers for
13 the Illinois Opportunity Fund, and establishing investment
14 objectives for the Illinois Opportunity Fund designed to create
15 jobs and strengthen the economy of the State of Illinois.

16 (d) The Illinois Capital Investment Corporation shall
17 exercise no governmental functions. Without limiting the
18 authority of DCEO to issue tax credits pursuant to this Act
19 under certificates that are binding on DCEO and the Illinois
20 Department of Revenue, the obligations of the Illinois Capital
21 Investment Corporation are not obligations of the State or any
22 political subdivision of the State within the meaning of any
23 constitutional or statutory debt limitations, but are
24 obligations of the corporation payable solely and only from the
25 corporation's funds. The Illinois Capital Investment
26 Corporation shall itself have no authority to pledge the credit
27 or taxing power of the State or any political subdivision of
28 the State or make its debts payable out of any moneys except
29 those of the corporation.

30 (e) The board of directors of the Illinois Capital
31 Investment Corporation shall have not less than 7 nor more than
32 11 members. The Director or Acting Director of DCEO or his or
33 her designee shall be a member of the board of directors of the
34 Illinois Capital Investment Corporation. The Governor, with
35 the advice and consent of three-fifths of the members elected
36 to the Senate, shall appoint the remaining members of the board

1 of directors of the Illinois Capital Investment Corporation and
2 fill any vacancies in the same manner as original appointments.
3 DCEO shall recommend to the Governor candidates for the board
4 and shall advise as to the qualifications of any other
5 candidates the Governor desires to consider. In recommending
6 and selecting directors, DCEO and the Governor shall seek to
7 ensure that (i) each candidate has meaningful experience
8 reviewing, preparing, analyzing, or interpreting financial
9 statements or has sophistication in financial matters
10 generally, has meaningful experience in the supervision or
11 management of venture capital or private equity investments,
12 has meaningful experience operating or managing investments in
13 businesses engaged in the industries or sectors targeted by
14 DCEO as candidates for investment by the Illinois Opportunity
15 Fund, or has meaningful experience managing or selecting
16 investments for institutional, seed, angel, mezzanine, or
17 community development venture capital funds or SBIC's; (ii) the
18 board includes minority and female representatives; (iii) a
19 majority of the board includes representatives of geographic
20 areas beyond Cook County and the collar counties; and (iv) the
21 board includes at least 3 venture capital professionals,
22 including one or more representatives associated with venture
23 capital fund trade associations that maintain a meaningful
24 physical presence in the State of Illinois. Directors shall
25 endeavor to avoid conflicts of interest that interfere with
26 their ability to exercise their fiduciary obligations to the
27 Illinois Capital Investment Corporation and its constituents,
28 shall agree to make full disclosure of any conflicts of
29 interest involved in the exercise of their duties, and shall
30 abstain from participating in any manner whatsoever in the
31 consideration of a matter in which they have an interest. The
32 secretary of the Illinois Capital Investment Corporation shall
33 advise DCEO of the nature of any such conflicts, and DCEO shall
34 make written recommendations to the Governor, with copies of
35 the recommendations being filed contemporaneously with the
36 Clerk of the House and the Secretary of the Senate, if DCEO

1 believes that pervasive conflicts are interfering with the
2 ability of the board as a whole to function efficiently and to
3 give full effect to the intent and purposes of this Act.

4 (f) In its selection of a private fund manager or managers
5 for the Illinois Opportunity Fund, the Illinois Capital
6 Investment Corporation shall consider each applicant's level
7 of experience in institutional, seed, angel, mezzanine, or
8 community development venture capital or SBIC's investing, its
9 quality of management, its investment philosophy, its plan for
10 fundraising, and its prior investment fund results. Any fund
11 manager selected shall demonstrate substantial successful
12 experience in the design, implementation, and management of
13 institutional, seed, angel, mezzanine, or community
14 development venture capital investment programs or of SBIC's
15 and in capital formation. Each applicant shall submit an
16 investment plan for review by the Illinois Capital Investment
17 Corporation, which plan shall describe the applicant's plan for
18 seeking investment opportunities, evaluating and structuring
19 investments, and achieving the financial and policy goals of
20 this Act.

21 (g) The Illinois Capital Investment Corporation may charge
22 a fee to the Illinois Opportunity Fund, which shall be in
23 addition to any fee payable by the Illinois Opportunity Fund to
24 the fund manager or managers engaged. The fee payable to the
25 Illinois Capital Investment Corporation shall be structured to
26 cover the reasonable costs of the corporation in fulfilling its
27 oversight functions and of DCEO in fulfilling its obligations
28 under this Section and Section 25.

29 (h) Directors of the Illinois Capital Investment
30 Corporation shall be compensated for direct expenses and
31 mileage but shall not receive a director's fee or salary for
32 their service as directors.

33 (i) The Illinois Capital Investment Corporation shall have
34 the power to engage consultants, expend funds, invest funds,
35 contract, bond or insure against loss, and perform any other
36 act necessary to carry out its mission.

1 (j) The directors of the Illinois Capital Investment
2 Corporation shall adopt bylaws, policies, and procedures
3 necessary to administer the affairs of the corporation.

4 (k) Upon the dissolution of Illinois Capital Investment
5 Corporation, any assets owned by it shall thereupon be
6 distributed to the State of Illinois.

7 Section 20. Illinois Opportunity Fund.

8 (a) Following the organization of the Illinois Capital
9 Investment Corporation, the corporation shall organize the
10 Illinois Opportunity Fund for the purpose of making investments
11 in private institutional, seed, angel, mezzanine, or community
12 development venture capital funds or SBIC's in a manner that is
13 intended to strengthen the economy of the State, help business
14 in Illinois gain access to capital resources, help build a
15 significant, permanent resource available to serve the needs of
16 Illinois businesses, and accomplish all these benefits in a way
17 that minimizes the use of tax credits and provides market rate
18 returns to the Illinois Opportunity Fund. The Illinois Capital
19 Investment Corporation shall organize the Illinois Opportunity
20 Fund as a for profit limited partnership or limited liability
21 company under Illinois law pursuant to which the Illinois
22 Capital Investment Corporation shall be the general partner or
23 managing member, as the case may be.

24 (b) DCEO shall assist the Capital Investment Corporation in
25 developing investment policies the effect of which ensures that
26 venture capital is directed first to business projects that
27 meet all of the following criteria:

28 (1) they may not otherwise have access to such
29 financing; and

30 (2) they are in areas of Illinois experiencing a lack
31 of economic and job growth.

32 The policy goal is that venture capital should be directed
33 throughout the State on an equitable basis.

34 (c) Qualified investors shall be permitted to invest in
35 equity interests or debt obligations of the Illinois

1 Opportunity Fund. Such interests or obligations shall provide
2 for a fixed or variable rate of return established by the
3 Illinois Capital Investment Corporation in consultation with
4 DCEO. DCEO may award contingent tax credits to investors in the
5 Illinois Opportunity Fund that shall be redeemable if the
6 Illinois Opportunity Fund fails to achieve results sufficient
7 to repay the amounts invested by such investors and provide
8 them with specified returns. Returns on investments generated
9 by the Illinois Opportunity Fund in excess of amounts required
10 to (i) repay the amounts invested by investors and provide them
11 with specified returns, and (ii) pay all or an agreed upon
12 portion of DCEO's costs for establishing and operating
13 specified business development programs designed to promote
14 economic development within the State of Illinois, including by
15 increasing the availability of viable investment opportunities
16 and business start-ups in all regions of the State, shall be
17 reinvested by the Illinois Opportunity Fund in investments in
18 private institutional, seed, angel, mezzanine, or community
19 development venture capital funds, SBIC's, or other entities in
20 the manner described in this Section.

21 (d) DCEO and the Capital Investment Corporation shall
22 consult any State agency that is also overseeing similar
23 venture capital and other business financing programs to ensure
24 that State financing and investment efforts are not duplicated
25 and that business projects in all areas of the State have
26 access to State venture capital and financing options.

27 (e) The Illinois Opportunity Fund shall operate primarily
28 as a fund of funds that invests principally in high-quality
29 institutional, seed, angel, mezzanine, and community
30 development venture capital funds and SBIC's that (i) maintain
31 a meaningful physical presence in the State of Illinois, (ii)
32 are managed by private investment managers who commit that
33 their funds will invest not less than the amount invested with
34 them by the Illinois Opportunity Fund in businesses that are
35 headquartered or maintain meaningful business operations in
36 the State of Illinois, and (iii) meet the investment objectives

1 and criteria established by DCEO and this Act. In establishing
2 these objectives and criteria, DCEO shall consult with leaders
3 in business, science, and government to identify strategic
4 industries and sectors that offer the potential to create
5 high-quality and sustainable employment opportunities for
6 Illinoisans and create domestic and global markets for the
7 products and services of investee companies. In addition, in
8 establishing these objectives and criteria, DCEO shall seek to
9 ensure that funds will be available for investment by the
10 Illinois Opportunity Fund in seed funds, angel funds, and CDVC
11 or other CDFI funds in diverse geographies within Illinois.

12 (f) The Illinois Opportunity Fund shall have the power to
13 engage consultants, expend funds, invest funds, contract, bond
14 or insure against loss, and perform any other act necessary to
15 carry out its mission. Without limiting the foregoing, the
16 Illinois Opportunity Fund may (i) issue debt or equity
17 securities and borrow such funds as may be needed to accomplish
18 its goals, (ii) open and manage bank and short-term investment
19 accounts as deemed necessary by its fund manager or managers,
20 and (iii) expend funds to secure investment ratings. The
21 Illinois Opportunity Fund shall adopt investment and
22 diversification policies.

23 (g) The Illinois Opportunity Fund shall engage a certified
24 public accountant to conduct an annual audit of its financial
25 condition and results of operations.

26 (h) DCEO shall provide to the Governor and the General
27 Assembly reports on the performance of the Illinois Opportunity
28 Fund and other pertinent information concerning the Illinois
29 Opportunity Fund and the Illinois Capital Investment
30 Corporation, except for trade secrets and commercial or
31 financial information obtained from a person or business if the
32 information is proprietary, privileged, or confidential or if
33 disclosure may cause competitive harm or could reasonably be
34 expected to produce private gain or public loss.

35 (i) Fifty years after the formation of the Illinois
36 Opportunity Fund, it shall be liquidated and its assets shall

1 be distributed in accordance with law.

2 Section 25. Contingent tax credits.

3 (a) The State of Illinois hereby allows an aggregate of
4 \$200,000,000 of contingent tax credits, which may be allocated
5 and issued by DCEO to qualified investors in the Illinois
6 Opportunity Fund. DCEO shall not be obligated to issue
7 certificates equal to the full aggregate amount allowed by the
8 State of Illinois, and it may elect to suspend or terminate the
9 issuance of certificates at any time if it does not believe
10 that the continued issuance of certificates will assist the
11 State of Illinois in meeting the objectives of this Act. Tax
12 credits may be redeemed in any year redemption is permitted to
13 the extent the Illinois Opportunity Fund is unable to make
14 required repayments to its investors of the amounts invested by
15 them and provide them with specified fixed or variable rate
16 returns. Tax credits shall be redeemable not earlier than
17 January 1, 2010 nor later than December 31, 2033 as may be
18 specified in any certificate.

19 (b) DCEO shall determine the amount of tax credits to be
20 allowed to investors in the Illinois Opportunity Fund and the
21 years those tax credits may first be redeemed. The aggregate
22 redemptions of tax credits issued by DCEO, however, shall not
23 exceed \$40,000,000 in any fiscal year of the State of Illinois.

24 (c) All tax credits shall be evidenced by certificates.
25 DCEO shall establish and set forth in each certificate all
26 terms and conditions under which tax credits may be redeemed.
27 In establishing the terms of any tax credits and issuing
28 certificates, DCEO shall seek to promote the purposes of this
29 Act. Tax credits may not be redeemed except in accordance with
30 the terms of the certificate under which they have been issued.
31 The certificates shall, upon proper issuance to investors in
32 the Illinois Opportunity Fund, be binding on DCEO and the
33 Illinois Department of Revenue.

34 (d) Tax credits issued pursuant to this Section shall be
35 freely transferable by their holders. DCEO shall, in

1 conjunction with the Illinois Department of Revenue, develop a
2 system for registration of any tax credits allowed or
3 transferred pursuant to this Act that permits verification that
4 any tax credit claimed upon a tax return is valid and properly
5 taken in the year of claim, and that any transfers of the tax
6 credit are made in accordance with the requirements of this
7 Act.

8 (e) Tax credits allowed or transferred pursuant to this Act
9 shall not be considered securities under any Illinois law
10 relating to securities.

11 Section 30. Powers and effectiveness. Nothing contained in
12 this Act is or shall be construed as a restriction or
13 limitation upon any powers that DCEO might otherwise have under
14 any other law of this State, and the provisions of this Act are
15 cumulative to those powers. The provisions of this Act do and
16 shall be construed to provide a complete, additional, and
17 alternative method for the doing of the things authorized and
18 shall be regarded as supplemental and additional to powers
19 conferred by any other laws.

20 Section 35. Acceptable investments. Investments by
21 designated investors in the Illinois Opportunity Fund shall be
22 deemed permissible investments for State chartered banks and
23 for domestic insurance companies under the appropriate laws of
24 the State of Illinois.

25 Section 40. Business development grants. DCEO may
26 establish a business planning and development assistance grant
27 program to provide grant funds to help entrepreneurs with
28 business creation and expansion or related activities, subject
29 to appropriation.

30 Section 45. Illinois Opportunity Special Projects Fund.
31 The Illinois Opportunity Special Projects Fund is created as a
32 special fund in the State treasury. DCEO may accept

1 disbursements from the Illinois Opportunity Fund for deposit
2 into the Illinois Opportunity Special Projects Fund and expend
3 those funds for the purposes set forth in subsection (g) of
4 Section 15 and subsection (c) of Section 20 of this Act,
5 subject to appropriation.

6 Section 95. The State Finance Act is amended by adding
7 Section 5.640 as follows:

8 (30 ILCS 105/5.640 new)

9 Sec. 5.640. The Illinois Opportunity Special Projects
10 Fund.

11 Section 99. This Act takes effect upon becoming law.