

HB5947



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5947

by Rep. Bob Biggins - Mark H. Beaubien, Jr. - Michael Tryon

SYNOPSIS AS INTRODUCED:

New Act
30 ILCS 105/5.708 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.

LRB095 17083 BDD 43136 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning economic development.

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

4 Section 1. Short title. This Act may be cited as the
5 Illinois Opportunity Fund Act.

6 Section 5. Findings and purposes.

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

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

23 (c) Venture capital shall be directed to geographic areas

1 and populations within the State that have been subject to
2 economic disparities and have lacked access to the private
3 capital needed to create jobs and economic opportunities, and
4 to sectors considered to be strategic industries for the State
5 of Illinois as determined by the Department of Commerce and
6 Economic Opportunity in coordination with the entities formed
7 under this Act.

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

1 missions in such a manner as to minimize any appropriations by
2 the State of Illinois to effectuate these purposes.

3 Section 10. Definitions. In this Act, unless the context
4 requires otherwise:

5 "DCEO" means Department of Commerce and Economic
6 Opportunity, or its successor agency.

7 "Certificate" means an assignable contract between DCEO
8 Economic Opportunity and an investor in the Illinois
9 Opportunity Fund under which the terms of the tax credits being
10 issued for the benefit of the investor, or any assignee of the
11 investor, as established by DCEO, are set forth.

12 "Person" means an individual, a corporation, a
13 partnership, or any other lawfully organized entity, whether
14 domiciled in Illinois or outside of Illinois.

15 "Illinois Capital Investment Corporation" means the
16 private not for profit corporation established pursuant to this
17 Act.

18 "Illinois Opportunity Fund" means the private for profit
19 fund established by the Illinois Capital Investment
20 Corporation pursuant to this Act.

21 "Tax credits" means credits against taxes imposed pursuant
22 to Section 201 of the Illinois Income Tax Act for any taxable
23 year ending after December 31, 2012, and having such terms as
24 are established by DCEO in accordance with Section 25 of this
25 Act, including any contingencies on redemption.

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

3 CDFI and CDVC. "CDFI" means a community development
4 financial institution as defined in the Illinois Investment and
5 Development Authority Act, and "CDVC" means community
6 development venture capital, a type of CDFI specific to
7 investing equity interests in Illinois firms with the dual goal
8 of financial returns and economic and social benefit.

9 Section 15. Illinois Capital Investment Corporation.

10 (a) DCEO shall create the Illinois Capital Investment
11 Corporation as a private not for profit corporation under the
12 General Not For Profit Corporation Act of 1986 and not as a
13 public corporation or instrumentality of the State. The
14 corporation shall not enjoy any of the privileges nor be
15 required to comply with any of the requirements of a State
16 agency. Except as provided in this Act, nothing in this Act
17 exempts the Illinois Capital Investment Corporation from the
18 same requirements under State law that apply to other
19 corporations organized under the General Not For Profit
20 Corporation Act of 1986. The Director or Acting Director of
21 DCEO or his or her designee shall be the incorporator of the
22 Illinois Capital Investment Corporation.

23 (b) The Illinois Capital Investment Corporation shall
24 recommend and DCEO shall approve investment objectives and
25 criteria for the Illinois Opportunity Fund established to

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

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

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

1 Corporation shall itself have no authority to pledge the credit
2 or taxing power of the State or any political subdivision of
3 the State or make its debts payable out of any moneys except
4 those of the corporation.

5 (e) The board of directors of the Illinois Capital
6 Investment Corporation shall have not less than 7 nor more than
7 11 members. The Director or Acting Director of DCEO or his or
8 her designee shall be a member of the board of directors of the
9 Illinois Capital Investment Corporation. The Governor, with
10 the advice and consent of three-fifths of the members elected
11 to the Senate, shall appoint the remaining members of the board
12 of directors of the Illinois Capital Investment Corporation and
13 fill any vacancies in the same manner as original appointments.
14 DCEO shall recommend to the Governor candidates for the board
15 and shall advise as to the qualifications of any other
16 candidates the Governor desires to consider. In recommending
17 and selecting directors, DCEO and the Governor shall seek to
18 ensure that (i) each candidate has meaningful experience
19 reviewing, preparing, analyzing, or interpreting financial
20 statements or has sophistication in financial matters
21 generally, has meaningful experience in the supervision or
22 management of venture capital or private equity investments,
23 has meaningful experience operating or managing investments in
24 businesses engaged in the industries or sectors targeted by
25 DCEO as candidates for investment by the Illinois Opportunity
26 Fund, or has meaningful experience managing or selecting

1 investments for institutional, seed, angel, mezzanine, or
2 community development venture capital funds or SBIC's; (ii) the
3 board includes minority and female representatives; (iii) a
4 majority of the board includes representatives of geographic
5 areas beyond Cook County and the collar counties; (iv) the
6 candidates recommended are noted for their lack of political
7 ties; and (v) the board includes at least 3 venture capital
8 professionals, including one or more representatives
9 associated with venture capital fund trade associations that
10 maintain a meaningful physical presence in the State of
11 Illinois. Directors shall endeavor to avoid conflicts of
12 interest that interfere with their ability to exercise their
13 fiduciary obligations to the Illinois Capital Investment
14 Corporation and its constituents, shall agree to make full
15 disclosure of any conflicts of interest involved in the
16 exercise of their duties, and shall abstain from participating
17 in any manner whatsoever in the consideration of a matter in
18 which they have an interest. The secretary of the Illinois
19 Capital Investment Corporation shall advise DCEO of the nature
20 of any such conflicts, and DCEO shall make recommendations to
21 the Governor if it believes that pervasive conflicts are
22 interfering with the ability of the board as a whole to
23 function efficiently and to give full effect to the intent and
24 purposes of this Act.

25 (f) In its selection of a private fund manager or managers
26 for the Illinois Opportunity Fund, the Illinois Capital

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

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

24 (h) Directors of the Illinois Capital Investment
25 Corporation shall be compensated for direct expenses and
26 mileage but shall not receive a director's fee or salary for

1 their service as directors.

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

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

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

12 Section 20. Illinois Opportunity Fund.

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

1 company under Illinois law pursuant to which the Illinois
2 Capital Investment Corporation shall be the general partner or
3 managing member, as the case may be.

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

8 (1) they may not otherwise have access to such
9 financing;

10 (2) they are in areas of Illinois experiencing a lack
11 of economic and job growth; and

12 (3) they are outside of Cook and neighboring counties.

13 (c) Qualified investors shall be permitted to invest in
14 equity interests or debt obligations of the Illinois
15 Opportunity Fund. Such interests or obligations shall provide
16 for a fixed or variable rate of return established by the
17 Illinois Capital Investment Corporation in consultation with
18 DCEO. DCEO may award contingent tax credits to investors in the
19 Illinois Opportunity Fund that shall be redeemable if the
20 Illinois Opportunity Fund fails to achieve results sufficient
21 to repay the amounts invested by such investors and provide
22 them with specified returns. Returns on investments generated
23 by the Illinois Opportunity Fund in excess of amounts required
24 to (i) repay the amounts invested by investors and provide them
25 with specified returns, and (ii) pay all or an agreed upon
26 portion of DCEO's costs for establishing and operating

1 specified business development programs designed to promote
2 economic development within the State of Illinois, including by
3 increasing the availability of viable investment opportunities
4 and business start-ups in all regions of the State, shall be
5 reinvested by the Illinois Opportunity Fund in investments in
6 private institutional, seed, angel, mezzanine, or community
7 development venture capital funds, SBIC's, or other entities in
8 the manner described in this Section.

9 (d) DCEO and the Capital Investment Corporation shall
10 consult any State agency that is also overseeing similar
11 venture capital and other business financing programs to ensure
12 that State financing and investment efforts are not duplicated
13 and that business projects in all areas of the State have
14 access to State venture capital and financing options.

15 (e) The Illinois Opportunity Fund shall operate primarily
16 as a fund of funds that invests principally in high-quality
17 institutional, seed, angel, mezzanine, and community
18 development venture capital funds and SBIC's that (i) maintain
19 a meaningful physical presence in the State of Illinois, (ii)
20 are managed by private investment managers who commit that
21 their funds will invest not less than the amount invested with
22 them by the Illinois Opportunity Fund in businesses that are
23 headquartered or maintain meaningful business operations in
24 the State of Illinois, and (iii) meet the investment objectives
25 and criteria established by DCEO and this Act. In establishing
26 these objectives and criteria, DCEO shall consult with leaders

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

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

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

24 (h) DCEO shall provide to the Governor and the General
25 Assembly reports on the performance of the Illinois Opportunity
26 Fund and other pertinent information concerning the Illinois

1 Opportunity Fund and the Illinois Capital Investment
2 Corporation, except for trade secrets and commercial or
3 financial information obtained from a person or business if the
4 information is proprietary, privileged, or confidential or if
5 disclosure may cause competitive harm or could reasonably be
6 expected to produce private gain or public loss.

7 (i) Fifty years after the formation of the Illinois
8 Opportunity Fund, it shall be liquidated and its assets shall
9 be distributed in accordance with law.

10 Section 25. Contingent tax credits.

11 (a) The State of Illinois hereby allows an aggregate of
12 \$200,000,000 of contingent tax credits, which may be allocated
13 and issued by DCEO to qualified investors in the Illinois
14 Opportunity Fund. DCEO shall not be obligated to issue
15 certificates equal to the full aggregate amount allowed by the
16 State of Illinois, and it may elect to suspend or terminate the
17 issuance of certificates at any time if it does not believe
18 that the continued issuance of certificates will assist the
19 State of Illinois in meeting the objectives of this Act. Tax
20 credits may be redeemed in any year redemption is permitted to
21 the extent the Illinois Opportunity Fund is unable to make
22 required repayments to its investors of the amounts invested by
23 them and provide them with specified fixed or variable rate
24 returns. Tax credits shall be redeemable not earlier than
25 January 1, 2013 nor later than December 31, 2036 as may be

1 specified in any certificate.

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

7 (c) All tax credits shall be evidenced by certificates.
8 DCEO shall establish and set forth in each certificate all
9 terms and conditions under which tax credits may be redeemed.
10 In establishing the terms of any tax credits and issuing
11 certificates, DCEO shall seek to promote the purposes of this
12 Act. Tax credits may not be redeemed except in accordance with
13 the terms of the certificate under which they have been issued.
14 The certificates shall, upon proper issuance to investors in
15 the Illinois Opportunity Fund, be binding on DCEO and the
16 Illinois Department of Revenue.

17 (d) Tax credits issued pursuant to this Section shall be
18 freely transferable by their holders. DCEO shall, in
19 conjunction with the Illinois Department of Revenue, develop a
20 system for registration of any tax credits allowed or
21 transferred pursuant to this Act that permits verification that
22 any tax credit claimed upon a tax return is valid and properly
23 taken in the year of claim, and that any transfers of the tax
24 credit are made in accordance with the requirements of this
25 Act.

26 (e) Tax credits allowed or transferred pursuant to this Act

1 shall not be considered securities under any Illinois law
2 relating to securities.

3 Section 30. Powers and effectiveness. Nothing contained in
4 this Act is or shall be construed as a restriction or
5 limitation upon any powers that DCEO might otherwise have under
6 any other law of this State, and the provisions of this Act are
7 cumulative to those powers. The provisions of this Act do and
8 shall be construed to provide a complete, additional, and
9 alternative method for the doing of the things authorized and
10 shall be regarded as supplemental and additional to powers
11 conferred by any other laws.

12 Section 35. Acceptable investments. Investments by
13 designated investors in the Illinois Opportunity Fund shall be
14 deemed permissible investments for State chartered banks and
15 for domestic insurance companies under the appropriate laws of
16 the State of Illinois.

17 Section 40. Business development grants. DCEO may
18 establish a business planning and development assistance grant
19 program to provide grant funds to help entrepreneurs with
20 business creation and expansion or related activities, subject
21 to appropriation.

22 Section 45. Illinois Opportunity Special Projects Fund.

1 The Illinois Opportunity Special Projects Fund is created as a
2 special fund in the State treasury. DCEO may accept
3 disbursements from the Illinois Opportunity Fund for deposit
4 into the Illinois Opportunity Special Projects Fund and expend
5 those funds for the purposes set forth in subsection (g) of
6 Section 15 and subsection (c) of Section 20 of this Act,
7 subject to appropriation.

8 Section 95. The State Finance Act is amended by adding
9 Section 5.708 as follows:

10 (30 ILCS 105/5.708 new)

11 Sec. 5.708. The Illinois Opportunity Special Projects
12 Fund.

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