

1 AMENDMENT TO HOUSE BILL 3638

2 AMENDMENT NO. _____. Amend House Bill 3638 by replacing
3 the title with the following:

4 "AN ACT to increase the availability and facilitate the
5 delivery of venture capital to emerging and expanding
6 enterprises in the State of Illinois."; and

7 by replacing everything after the enacting clause with the
8 following:

9 "Section 1. Short title. This Act may be cited as the
10 Illinois Opportunity Fund Act.

11 Section 5. Findings and purposes.

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

1 provides for financial returns to private investors.

2 (b) Furthermore, the State of Illinois finds that
3 certain geographic areas and populations within the State
4 have been subject to economic disparities and have lacked
5 access to the private capital needed to create jobs and
6 economic opportunities.

7 (c) Venture capital shall be directed to geographic
8 areas and populations within the State that have been subject
9 to economic disparities and have lacked access to the private
10 capital needed to create jobs and economic opportunities, and
11 to sectors considered to be strategic industries for the
12 State of Illinois as determined by the Department of Commerce
13 and Community Affairs in coordination with the entities
14 formed under this Act.

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

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

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

6 "DCCA" means Department of Commerce and Community
7 Affairs, or its successor agency.

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

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

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

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

22 "Tax credits" means credits against taxes imposed
23 pursuant to Section 201 of the Illinois Income Tax Act for
24 any taxable year ending after December 31, 2009, and having
25 such terms as are established by DCCA in accordance with
26 Section 25 of this Act, including any contingencies on
27 redemption.

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

30 "CDFI" and "CDVC." CDFI means a "community development
31 financial institution" as defined in the Illinois Investment
32 and Development Authority Act, and CDVC means community
33 development venture capital, a type of CDFI specific to

1 investing equity interests in Illinois firms with the dual
2 goal of financial returns and economic and social benefit.

3 Section 15. Illinois Capital Investment Corporation.

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

17 (b) The Illinois Capital Investment Corporation shall
18 recommend and DCCA shall approve investment objectives and
19 criteria for the Illinois Opportunity Fund established to
20 provide financial returns to investors, create jobs, and
21 strengthen the economy of the State of Illinois. DCCA shall
22 supervise the operations of the Illinois Capital Investment
23 Corporation, assist the corporation in performing its duties,
24 and undertake such other responsibilities as are set forth in
25 this Act or as may be necessary or appropriate to give effect
26 to the intent and purposes of this Act.

27 (c) Subject to the direction and supervision of DCCA,
28 the Illinois Capital Investment Corporation shall receive
29 investment returns from the Illinois Opportunity Fund and
30 shall reinvest those funds in further venture capital
31 investments subject to the provisions of this Act, and shall
32 have responsibility for organizing and overseeing the
33 management of the Illinois Opportunity Fund, identifying and

1 engaging a private fund manager or managers for the Illinois
2 Opportunity Fund, and establishing investment objectives for
3 the Illinois Opportunity Fund designed to create jobs and
4 strengthen the economy of the State of Illinois.

5 (d) The Illinois Capital Investment Corporation shall
6 exercise no governmental functions. Without limiting the
7 authority of DCCA to issue tax credits pursuant to this Act
8 under certificates that are binding on DCCA and the Illinois
9 Department of Revenue, the obligations of the Illinois
10 Capital Investment Corporation are not obligations of the
11 State or any political subdivision of the State within the
12 meaning of any constitutional or statutory debt limitations,
13 but are obligations of the corporation payable solely and
14 only from the corporation's funds. The Illinois Capital
15 Investment Corporation shall itself have no authority to
16 pledge the credit or taxing power of the State or any
17 political subdivision of the State or make its debts payable
18 out of any moneys except those of the corporation.

19 (e) The board of directors of the Illinois Capital
20 Investment Corporation shall have not less than 7 nor more
21 than 11 members. The Director or Acting Director of DCCA or
22 his or her designee shall be a member of the board of
23 directors of the Illinois Capital Investment Corporation. The
24 Governor shall appoint the remaining members of the board of
25 directors of the Illinois Capital Investment Corporation and
26 fill any vacancies in consultation with DCCA and the
27 remaining directors. DCCA shall recommend to the Governor
28 candidates for the board and shall advise the Governor as to
29 the qualifications of any other candidates the Governor
30 desires to consider. In recommending and selecting directors,
31 DCCA and the Governor shall seek to ensure that (i) each
32 candidate has meaningful experience reviewing, preparing,
33 analyzing, or interpreting financial statements or has
34 sophistication in financial matters generally, has meaningful

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

29 (f) In its selection of a private fund manager or
30 managers for the Illinois Opportunity Fund, the Illinois
31 Capital Investment Corporation shall consider each
32 applicant's level of experience in institutional, seed,
33 angel, mezzanine, or community development venture capital or
34 SBIC's investing, its quality of management, its investment

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

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

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

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

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

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

1 Section 20. Illinois Opportunity Fund.

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

19 (b) Qualified investors shall be permitted to invest in
20 equity interests or debt obligations of the Illinois
21 Opportunity Fund. Such interests or obligations shall provide
22 for a fixed or variable rate of return established by the
23 Illinois Capital Investment Corporation and approved by DCCA.
24 DCCA may award contingent tax credits to investors in the
25 Illinois Opportunity Fund that shall be redeemable if the
26 Illinois Opportunity Fund fails to achieve results sufficient
27 to repay the amounts invested by such investors and provide
28 them with specified returns. Returns on investments generated
29 by the Illinois Opportunity Fund in excess of amounts
30 required to (i) repay the amounts invested by investors and
31 provide them with specified returns, and (ii) pay all or an
32 agreed upon portion of DCCA's costs for establishing and
33 operating specified business development programs designed to
34 promote economic development within the State of Illinois,

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

8 (c) The Illinois Opportunity Fund shall operate
9 primarily as a fund of funds that invests principally in
10 high-quality institutional, seed, angel, mezzanine, and
11 community development venture capital funds and SBIC's that
12 (i) maintain a meaningful physical presence in the State of
13 Illinois, (ii) are managed by private investment managers who
14 commit that their funds will invest not less than the amount
15 invested with them by the Illinois Opportunity Fund in
16 businesses that are headquartered or maintain meaningful
17 business operations in the State of Illinois, and (iii) meet
18 the investment objectives and criteria established by DCCA
19 and this Act. In establishing these objectives and criteria,
20 DCCA shall consult with leaders in business, science, and
21 government to identify strategic industries and sectors that
22 offer the potential to create high-quality and sustainable
23 employment opportunities for Illinoisans and create domestic
24 and global markets for the products and services of investee
25 companies. In addition, in establishing these objectives and
26 criteria, DCCA shall seek to ensure that funds will be
27 available for investment by the Illinois Opportunity Fund in
28 seed funds, angel funds, and CDVC or other CDFI funds in
29 diverse geographies within Illinois.

30 (d) The Illinois Opportunity Fund shall have the power
31 to engage consultants, expend funds, invest funds, contract,
32 bond or insure against loss, and perform any other act
33 necessary to carry out its mission. Without limiting the
34 foregoing, the Illinois Opportunity Fund may (i) issue debt

1 or equity securities and borrow such funds as may be needed
2 to accomplish its goals, (ii) open and manage bank and
3 short-term investment accounts as deemed necessary by its
4 fund manager or managers, and (iii) expend funds to secure
5 investment ratings. The Illinois Opportunity Fund shall adopt
6 investment and diversification policies.

7 (e) The Illinois Opportunity Fund shall engage a
8 certified public accountant to conduct an annual audit of its
9 financial condition and results of operations.

10 (f) DCCA shall provide to the Governor and the General
11 Assembly reports on the performance of the Illinois
12 Opportunity Fund and other pertinent information concerning
13 the Illinois Opportunity Fund and the Illinois Capital
14 Investment Corporation, except for trade secrets and
15 commercial or financial information obtained from a person or
16 business if the information is proprietary, privileged, or
17 confidential or if disclosure may cause competitive harm or
18 could reasonably be expected to produce private gain or
19 public loss.

20 (g) Fifty years after the formation of the Illinois
21 Opportunity Fund, it shall be liquidated and its assets shall
22 be distributed in accordance with law.

23 Section 25. Contingent tax credits.

24 (a) The State of Illinois hereby allows an aggregate of
25 \$200,000,000 of contingent tax credits, which may be
26 allocated and issued by DCCA to qualified investors in the
27 Illinois Opportunity Fund. DCCA shall not be obligated to
28 issue certificates equal to the full aggregate amount allowed
29 by the State of Illinois, and it may elect to suspend or
30 terminate the issuance of certificates at any time if it does
31 not believe that the continued issuance of certificates will
32 assist the State of Illinois in meeting the objectives of
33 this Act. Tax credits may be redeemed in any year redemption

1 is permitted to the extent the Illinois Opportunity Fund is
2 unable to make required repayments to its investors of the
3 amounts invested by them and provide them with specified
4 fixed or variable rate returns. Tax credits shall be
5 redeemable not earlier than January 1, 2010 nor later than
6 December 31, 2033 as may be specified in any certificate.

7 (b) DCCA shall determine the amount of tax credits to be
8 allowed to investors in the Illinois Opportunity Fund and the
9 years those tax credits may first be redeemed. The aggregate
10 redemptions of tax credits issued by DCCA, however, shall not
11 exceed \$40,000,000 in any fiscal year of the State of
12 Illinois.

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

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

32 (e) Tax credits allowed or transferred pursuant to this
33 Act shall not be considered securities under any Illinois law
34 relating to securities.

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

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

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

20 Section 45. Illinois Opportunity Special Projects Fund.
21 The Illinois Opportunity Special Projects Fund is created as
22 a special fund in the State treasury. DCCA may accept
23 disbursements from the Illinois Opportunity Fund for deposit
24 into the Illinois Opportunity Special Projects Fund and
25 expend those funds for the purposes set forth in Sections
26 15(g) and 20(b) of this Act, subject to appropriation.

27 Section 95. The State Finance Act is amended by adding
28 Section 5.595 as follows:

29 (30 ILCS 105/5.595 new)

1 Sec. 5.595. The Illinois Opportunity Special Projects
2 Fund.

3 Section 99. Effective date. This Act takes effect upon
4 becoming law."