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HSB 507

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SF (HF) 2078

HOUSE FILE _____
BY (PROPOSED COMMITTEE ON WAYS AND
MEANS BILL BY CHAIRPERSON
VAN FOSSEN)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act creating an Iowa capital investment board, authorizing the
2 organization of an Iowa capital investment corporation and an
3 Iowa fund of funds, and authorizing the issuance of contingent
4 tax credits to investors in the Iowa fund of funds.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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VII

1 Section 1. NEW SECTION. 15E.221 FINDINGS -- PURPOSE.

2 The general assembly finds the following: Fundamental
3 changes have occurred in national and international financial
4 markets and in the financial markets of this state. A
5 critical shortage of seed and venture capital resources exists
6 in the state, and such shortage is impairing the growth of
7 commerce in the state. A need exists to increase the
8 availability of venture equity capital for emerging,
9 expanding, and restructuring enterprises in Iowa, including,
10 without limitation, enterprises in the life sciences, advanced
11 manufacturing, information technology, and value-added
12 agriculture areas. Such investments will create jobs for
13 Iowans and will help to diversify the state's economic base.

14 This division is enacted to fulfill the following purposes:

15 1. To mobilize private investment in a broad variety of
16 venture capital partnerships in diversified industries and
17 locales.

18 2. To retain the private-sector culture of focusing on
19 rate of return in the investing process.

20 3. To secure the services of the best managers in the
21 venture capital industry, regardless of location.

22 4. To facilitate the organization of the Iowa fund of
23 funds in which to seek such private investment and to create
24 interest in such investments by offering state incentives for
25 private persons to make investments in the Iowa fund of funds.

26 5. To enhance the venture capital culture and
27 infrastructure in the state of Iowa so as to increase venture
28 capital investment within the state and to promote venture
29 capital investing within Iowa.

30 6. To accomplish these purposes in such a manner as to
31 minimize any appropriations by the state of Iowa.

32 7. To effectuate specific, measurable results, including
33 all of the following:

34 a. The creation of five new venture capital fund offices
35 in Iowa within three years of the effective date of this Act.

1 b. The investment of a minimum of twenty-five million
2 dollars in Iowa businesses within three years of the effective
3 date of this Act.

4 c. A cumulative rate of return on venture investments of
5 the Iowa fund of funds equal to at least seventeen percent by
6 the end of five years following the effective date of this
7 Act.

8 Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.

9 As used in this division, unless the context otherwise
10 requires:

11 1. "Board" means the Iowa capital investment board created
12 in section 15E.223.

13 2. "Certificate" means a contract between the board and a
14 designated investor pursuant to which a tax credit is
15 available and issued to the designated investor.

16 3. "Designated investor" means a person, other than the
17 Iowa capital investment corporation, who purchases an equity
18 interest in the Iowa fund of funds or a transferee of a
19 certificate or tax credit.

20 4. "Iowa capital investment corporation" means a private,
21 nonprofit corporation created pursuant to section 15E.224.

22 5. "Iowa fund of funds" means a private, for-profit
23 limited partnership or limited liability company established
24 by the Iowa capital investment corporation pursuant to section
25 15E.225 in which a designated investor purchases an equity
26 interest.

27 6. "Tax credit" means a contingent tax credit issued
28 pursuant to section 15E.226 that is available against tax
29 liabilities imposed by chapter 422, divisions II, III, and V,
30 and by chapter 432.

31 Sec. 3. NEW SECTION. 15E.223 IOWA CAPITAL INVESTMENT
32 BOARD.

33 1. The Iowa capital investment board is created as a state
34 governmental board and the exercise by the board of powers
35 conferred by this division shall be deemed and held to be the

1 performance of essential public purposes. The purpose of the
2 board shall be to mobilize venture equity capital for
3 investment in such a manner that will result in a significant
4 potential to create jobs and to diversify and stabilize the
5 economy of the state.

6 2. The board shall consist of five voting members and two
7 nonvoting advisory members. The five voting members shall be
8 appointed by the governor and confirmed by the senate pursuant
9 to section 2.32. The five voting members shall be appointed
10 to five-year staggered terms that shall be structured to allow
11 the term of one member to expire each year. One nonvoting
12 member shall be appointed by the majority leader of the senate
13 after consultation with the president of the senate and the
14 minority leader of the senate. One nonvoting member shall be
15 appointed by the speaker of the house of representatives after
16 consultation with the majority and minority leaders of the
17 house of representatives. The nonvoting members shall be
18 appointed for two-year terms which shall expire upon the
19 convening of a new general assembly. Vacancies shall be
20 filled in the same manner as the appointment of the original
21 members. Members shall be compensated by the board for direct
22 expenses and mileage but members shall not receive a
23 director's fee, per diem, or salary for service on the board.
24 Members shall be selected based upon demonstrated expertise
25 and competence in the supervision of investment managers, in
26 the fiduciary management of investment funds, or in the
27 management and administration of tax credit allocation
28 programs. Members shall not have an interest in any person to
29 whom a tax credit is allocated and issued by the board.

30 3. The board shall have the power to engage consultants,
31 expend funds, invest funds, contract, bond or insure against
32 loss, or perform any other act necessary to carry out its
33 purpose, provided, however, that the board shall not hire
34 employees.

35 4. Members of the board shall be indemnified against loss

1 to the broadest extent permissible under chapter 669.

2 5. Meetings of the board shall, except to the extent
3 necessary to protect confidential information with respect to
4 investments in and investments made by the Iowa fund of funds,
5 be subject to chapter 21.

6 6. The board shall, in cooperation with the department of
7 revenue and finance, establish criteria and procedures for the
8 allocation and issuance of tax credits to designated investors
9 by means of certificates issued by the board. The criteria
10 shall include the contingencies that must be met for a
11 certificate to be redeemable by a designated investor or
12 transferee in order to receive a tax credit. The
13 contingencies to redemption shall be tied to the scheduled
14 rates of return and scheduled redemptions of equity interests
15 purchased by designated investors in the Iowa fund of funds.
16 The procedures established by the board, in cooperation with
17 the department of revenue and finance, shall relate to the
18 procedures for the issuance of the certificates and the
19 related tax credits, for the transfer of a certificate and
20 related tax credit by a designated investor, and for the
21 redemption of a certificate and related tax credit by a
22 designated investor or transferee. The board shall also
23 establish criteria and procedures for assessing the likelihood
24 of future certificate redemptions by designated investors and
25 transferees, including, without limitation, criteria and
26 procedures for evaluating the value of investments made by the
27 Iowa fund of funds and the returns from the Iowa fund of
28 funds.

29 7. Pursuant to section 15E.226, the board shall issue
30 certificates which may be redeemable for tax credits to
31 provide incentives to designated investors to make equity
32 investments in the Iowa fund of funds. The board shall issue
33 the certificates so that not more than twenty million dollars
34 of tax credits may be initially redeemable in any fiscal year.

35 8. The board may charge a placement fee to the Iowa fund

1 of funds with respect to the issuance of a certificate and
2 related tax credit to a designated investor, but the fee shall
3 be charged only to pay for reasonable and necessary costs of
4 the board and shall not exceed one-half of one percent of the
5 equity investment of the designated investor.

6 9. The board shall, in consultation with the Iowa capital
7 investment corporation, publish an annual report of the
8 activities conducted by the Iowa fund of funds, and present
9 the report to the governor and the general assembly. The
10 annual report shall include a copy of the audit of the Iowa
11 fund of funds and a valuation of the assets of the Iowa fund
12 of funds, review the progress of the investment fund
13 allocation manager in implementing its investment plan, and
14 describe any redemption or transfer of a certificate issued
15 pursuant to this division, provided, however, that the annual
16 report shall not identify any specific designated investor who
17 has redeemed or transferred a certificate. Every five years,
18 the board shall publish a progress report which shall evaluate
19 the progress of the state of Iowa in accomplishing the
20 purposes stated in section 15E.221.

21 10. The board shall redeem a certificate submitted to the
22 board by a designated investor and shall calculate the amount
23 of the allowable tax credit based upon the investment returns
24 received by the designated investor and its predecessors in
25 interest and the provisions of the certificate. Upon
26 submission of a certificate for redemption, the board shall
27 issue a verification to the department of revenue and finance
28 setting forth the maximum tax credit which may be claimed by
29 the designated investor with respect to the redemption of the
30 certificate.

31 11. The board shall adopt rules pursuant to chapter 17A
32 necessary to administer the duties of the board.

33 Sec. 4. NEW SECTION. 15E.224 IOWA CAPITAL INVESTMENT
34 CORPORATION.

35 1. An Iowa capital investment corporation may be organized

1 as a private, not-for-profit corporation under chapter 504A.
 2 The Iowa capital investment corporation is not a public
 3 corporation or instrumentality of the state and shall not
 4 enjoy any of the privileges and shall not be required to
 5 comply with any of the requirements of a state agency. Except
 6 as otherwise provided in this division, this division does not
 7 exempt the corporation from the requirements under state law
 8 which apply to other corporations organized under chapter
 9 504A. The purposes of an Iowa capital investment corporation
 10 shall be to organize the Iowa fund of funds, to select a
 11 venture capital investment fund allocation manager to select
 12 venture capital fund investments by the Iowa fund of funds, to
 13 negotiate the terms of a contract with the venture capital
 14 investment fund allocation manager, to execute the contract
 15 with the selected venture capital investment fund manager on
 16 behalf of the Iowa fund of funds, to receive investment
 17 returns from the Iowa fund of funds, and to reinvest the
 18 investment returns in additional venture capital investments
 19 designed to result in a significant potential to create jobs
 20 and to diversify and stabilize the economy of the state. The
 21 corporation shall not exercise governmental functions and
 22 shall not have members. The obligations of the corporation
 23 are not obligations of this state or any political subdivision
 24 of this state within the meaning of any constitutional or
 25 statutory debt limitations, but are obligations of the
 26 corporation payable solely and only from the corporation's
 27 funds. The corporation shall not pledge the credit or taxing
 28 power of this state or any political subdivision of this state
 29 or make its debts payable out of any moneys except those of
 30 the corporation.

31 2. To facilitate the organization of an Iowa capital
 32 investment corporation, both of the following persons shall
 33 serve as incorporators as provided in section 504A.28:

34 a. The chairperson of the Iowa economic development board
 35 or a designee of the chairperson.

1 b. The director of the department of economic development
2 or a designee of the director.

3 3. After incorporation, the initial board of directors
4 shall be elected by the members of an appointment committee.
5 The members of the appointment committee shall be appointed by
6 the Iowa economic development board. The initial board of
7 directors shall consist of five members. The persons elected
8 to the initial board of directors by the appointment committee
9 shall include persons who have an expertise in the areas of
10 the selection and supervision of investment managers or in the
11 fiduciary management of investment funds, and other areas of
12 expertise as deemed appropriate by the appointment committee.
13 After the election of the initial board of directors,
14 vacancies in the board of directors of the corporation shall
15 be elected by the remaining directors of the corporation.
16 Members of the board of directors shall be subject to any
17 restrictions on conflicts of interest specified in the
18 organizational documents and shall have no interest in any
19 venture capital investment fund allocation manager selected by
20 the corporation pursuant to the provisions of this division or
21 in any investments made by the Iowa fund of funds.

22 4. The members of the appointment committee shall exercise
23 due care to assure that persons elected to the initial board
24 of directors have the requisite financial experience necessary
25 in order to carry out the duties of the corporation as
26 established in this division, including in areas related to
27 venture capital investment, investment management, and
28 supervision of investment managers and investment funds.

29 5. Upon the election of the initial board of directors,
30 the terms of the members of the appointment committee shall
31 expire.

32 6. The department of economic development shall assist the
33 incorporators and the appointment committee in any manner
34 determined necessary and appropriate by the director of the
35 department in order to administer this section.

1 7. After incorporation, the Iowa capital investment
 2 corporation shall conduct a national solicitation for
 3 investment plan proposals from qualified venture capital
 4 investment fund allocation managers for the raising and
 5 investing of capital by the Iowa fund of funds in accordance
 6 with the requirements of this division. Any proposed
 7 investment plan shall address the applicant's level of
 8 experience, quality of management, investment philosophy and
 9 process, probability of success in fund-raising, prior
 10 investment fund results, and plan for achieving the purposes
 11 of this division. The selected venture capital investment
 12 fund allocation manager shall be a person with substantial,
 13 successful experience in the design, implementation, and
 14 management of seed and venture capital investment programs and
 15 in capital formation. The corporation shall only select a
 16 venture capital investment fund allocation manager with
 17 demonstrated expertise in the management and fund allocation
 18 of investments in venture capital funds. The corporation
 19 shall select the venture capital investment fund allocation
 20 manager deemed best qualified to generate the amount of
 21 capital required by this division and to invest the capital of
 22 the Iowa fund of funds.

23 8. The Iowa capital investment corporation may charge a
 24 management fee on assets under management in the Iowa fund of
 25 funds. The fee shall be in addition to any fee charged to the
 26 Iowa fund of funds by the venture capital investment fund
 27 allocation manager selected by the corporation, but the fee
 28 shall be charged only to pay for reasonable and necessary
 29 costs of the Iowa capital investment corporation and shall not
 30 exceed one-half of one percent per year of the value of assets
 31 under management.

32 9. Directors of the Iowa capital investment corporation
 33 shall be compensated for direct expenses and mileage but shall
 34 not receive a director's fee or salary for service as
 35 directors.

1 10. The Iowa capital investment corporation shall have the
2 power to engage consultants, expend funds, invest funds,
3 contract, bond or insure against loss, or perform any other
4 act necessary to carry out its purpose. However, the
5 corporation shall not hire staff as employees except to
6 administer the rural and small business loan guarantee program
7 of the Iowa fund of funds.

8 11. Upon the dissolution of the Iowa fund of funds, the
9 Iowa capital investment corporation shall be liquidated and
10 dissolved, and any assets owned by the corporation shall be
11 distributed to the state of Iowa and deposited in the general
12 fund.

13 Sec. 5. NEW SECTION. 15E.225 IOWA FUND OF FUNDS.

14 1. The Iowa capital investment corporation shall organize
15 the Iowa fund of funds. The Iowa fund of funds shall be
16 authorized to make investments in private seed and venture
17 capital partnerships or entities in a manner which will
18 encourage the availability of a wide variety of venture
19 capital in the state, strengthen the economy of the state,
20 help business in Iowa gain access to sources of capital, help
21 build a significant, permanent source of capital available to
22 serve the needs of Iowa businesses, and accomplish all these
23 benefits in a way that minimizes the use of tax credits.

24 2. The Iowa capital investment corporation shall organize
25 the Iowa fund of funds in the following manner:

26 a. The Iowa fund of funds shall be organized as a private,
27 for-profit, limited partnership or limited liability company
28 under Iowa law pursuant to which the Iowa capital investment
29 corporation shall be the general partner or manager. The
30 entity shall be organized so as to provide for equity
31 interests for designated investors which provide for a
32 designated scheduled rate of return and a scheduled redemption
33 which shall occur not less than five years following the
34 issuance of such equity interests. The interest of the Iowa
35 capital investment corporation in the Iowa fund of funds shall

1 be to serve as general partner or manager and to be paid a
 2 management fee for the service as provided in section 15E.224,
 3 subsection 8, and to receive investment returns of the Iowa
 4 fund of funds in excess of those payable to designated
 5 investors. Any returns in excess of those payable to
 6 designated investors shall be reinvested by the Iowa capital
 7 investment corporation by being held in the Iowa fund of funds
 8 as a revolving fund for reinvestment in venture capital funds
 9 or investments until the termination of the Iowa fund of
 10 funds. Any returns received from these reinvestments shall be
 11 deposited in the revolving fund.

12 b. The Iowa fund of funds shall principally make
 13 investments in high-quality venture capital funds managed by
 14 investment managers who have made a commitment to consider
 15 equity investments in businesses located within the state of
 16 Iowa and which have committed to maintain a physical presence
 17 within the state of Iowa. The investments by the Iowa fund of
 18 funds shall be focused principally on partnership interests in
 19 private venture capital funds and not in direct investments in
 20 individual businesses. The Iowa fund of funds shall invest in
 21 venture capital funds with experienced managers or management
 22 teams with demonstrated expertise and a successful history in
 23 the investment of venture capital funds. The Iowa fund of
 24 funds may invest in newly created venture capital funds as
 25 long as the managers or management teams of the funds have the
 26 experience, expertise, and a successful history in the
 27 investment of venture capital funds described in this
 28 paragraph.

29 c. The Iowa fund of funds shall establish and administer a
 30 program to provide loan guarantees and other related credit
 31 enhancements on loans to rural and small business borrowers
 32 within the state of Iowa. The Iowa fund of funds shall not
 33 invest more than five percent of its assets in investments for
 34 this program.

35 d. The Iowa fund of funds shall have the power to engage

1 consultants, expend funds, invest funds, contract, bond or
2 insure against loss, or perform any other act necessary to
3 carry out its purpose, including, without limitation, engaging
4 and agreeing to compensate a venture capital investment fund
5 allocation manager. Such compensation shall be in addition to
6 the management fee paid to the Iowa capital investment
7 corporation. However, the Iowa fund of funds shall not hire
8 employees except to administer its rural and small business
9 loan guarantee and credit enhancement program.

10 e. The Iowa fund of funds may issue debt and borrow such
11 funds as may be needed to accomplish its goals. However, such
12 debt shall not be secured by tax credits issued by the board.
13 The Iowa fund of funds may open and manage bank and short-term
14 investment accounts as deemed necessary by the venture capital
15 investment fund allocation manager.

16 f. The Iowa fund of funds may expend moneys to secure
17 investment ratings for investments by designated investors in
18 the Iowa fund of funds.

19 g. The Iowa fund of funds shall engage a certified public
20 accountant to conduct an annual audit of the activities of the
21 Iowa fund of funds. The audit shall be delivered to the Iowa
22 capital investment corporation and the board each year and
23 shall include a valuation of the assets owned by the Iowa fund
24 of funds as of the end of each year.

25 h. Fifty years after the organization of the Iowa fund of
26 funds, the Iowa capital investment corporation shall cause the
27 Iowa fund of funds to be liquidated with all of its assets
28 distributed to its owners in accordance with the provisions of
29 its organizational documents.

30 Sec. 6. NEW SECTION. 15E.226 CERTIFICATES AND TAX
31 CREDITS.

32 1. The board may issue certificates and related tax
33 credits to designated investors which, if redeemed for the
34 maximum possible amount, shall not exceed a total aggregate of
35 one hundred million dollars of tax credits. The certificates

1 shall be issued contemporaneously with an investment in the
 2 Iowa fund of funds by a designated investor. A certificate
 3 issued by the board shall have a specific calendar year
 4 maturity date designated by the board of not less than five
 5 years after the date of issuance and shall be redeemable on a
 6 schedule similar to the scheduled redemption of investments by
 7 designated investors. A certificate and the related tax
 8 credit shall be transferable by the designated investor. A
 9 tax credit shall not be claimed or redeemed except by a
 10 designated investor or transferee in accordance with the terms
 11 of a certificate from the board. A tax credit shall be
 12 claimed for a tax year that begins during the calendar year
 13 maturity date stated on the certificate. An individual may
 14 claim the credit of a partnership, limited liability company,
 15 S corporation, estate, or trust electing to have the income
 16 taxed directly to the individual. The amount claimed by the
 17 individual shall be based upon the pro rata share of the
 18 individual's earnings from the partnership, limited liability
 19 company, S corporation, estate, or trust. Any tax credit in
 20 excess of the taxpayer's tax liability for the tax year may be
 21 credited to the tax liability for the following seven years,
 22 or until depleted, whichever is earlier.

23 2. The board shall certify the maximum amount of a tax
 24 credit which could be issued to a designated investor and
 25 identify the specific calendar year the certificate may be
 26 redeemed pursuant to this division. The amount of the tax
 27 credit shall be limited to an amount equivalent to any
 28 difference between the scheduled aggregate return to the
 29 designated investor at rates of return authorized by the board
 30 and aggregate actual return received by the designated
 31 investor and any predecessor in interest of capital and
 32 interest on the capital. The rates, whether fixed rates or
 33 variable rates, shall be determined pursuant to a formula
 34 stipulated in the certificate. The board shall clearly
 35 indicate on the certificate the schedule, the amount of equity

1 investment, the calculation formula for determining the
2 scheduled aggregate return on invested capital, and the
3 calculation formula for determining the amount of the tax
4 credit that may be claimed. Once moneys are invested by a
5 designated investor, the certificate shall be binding on the
6 board and the department of revenue and finance and shall not
7 be modified, terminated, or rescinded.

8 3. If a designated investor elects to redeem a
9 certificate, the certificate shall be redeemed on June 30 of
10 the calendar year maturity date stated on the certificate. At
11 the time of redemption, the board shall determine the amount
12 of the tax credit that may be claimed by the designated
13 investor based upon the returns received by the designated
14 investor and its predecessors in interest and the provisions
15 of the certificate. The board shall issue a verification to
16 the department of revenue and finance setting forth the
17 maximum tax credit which can be claimed by the designated
18 investor with respect to the redemption of the certificate.

19 4. The board shall, in conjunction with the department of
20 revenue and finance, develop a system for registration of any
21 certificate and related tax credit issued or transferred
22 pursuant to this section and a system that permits
23 verification that any tax credit claimed upon a tax return is
24 valid and that any transfers of the certificate and related
25 tax credit are made in accordance with the requirements of
26 this division.

27 5. The board shall issue the tax credits in such a manner
28 that not more than twenty million dollars of tax credits may
29 be initially redeemable in any fiscal year.

30 6. A certificate or tax credit issued or transferred
31 pursuant to this division shall not be considered a security
32 pursuant to chapter 502.

33 7. In determining the one hundred million dollar maximum
34 limit in subsection 1 and the twenty million dollar limitation
35 in subsection 5, the board shall use the cumulative amount of

1 scheduled aggregate returns on certificates issued by the
2 board to designated investors. However, certificates and
3 related tax credits which have expired shall not be included
4 and certificates and related tax credits which have been
5 redeemed shall be included only to the extent of tax credits
6 actually allowed.

7 Sec. 7. NEW SECTION. 15E.227 POWERS AND EFFECTIVENESS.

8 This division shall not be construed as a restriction or
9 limitation upon any power which the board might otherwise have
10 under any other law of this state and the provisions of this
11 division are cumulative to such powers. This division shall
12 be construed to provide a complete, additional, and
13 alternative method for performing the duties authorized and
14 shall be regarded as supplemental and additional powers
15 conferred by any other laws. The level, timing, or degree of
16 success of the Iowa fund of funds or the investment funds in
17 which the Iowa fund of funds invests in, or the extent to
18 which the investment funds are invested in Iowa venture
19 capital projects, or are successful in accomplishing any
20 economic development objectives, shall not compromise,
21 diminish, invalidate, or affect the provisions of any contract
22 entered into by the board or the Iowa fund of funds.

23 Sec. 8. NEW SECTION. 15E.228 PERMISSIBLE INVESTMENTS.

24 Investments by designated investors in the Iowa fund of
25 funds shall be deemed permissible investments for state-
26 chartered banks and for domestic insurance companies under
27 applicable state laws.

28 EXPLANATION

29 This bill creates a state governmental entity, the Iowa
30 capital investment board, and authorizes the organization of a
31 private, not-for-profit corporation, the Iowa capital
32 investment corporation, and the organization of a for-profit,
33 limited partnership or limited liability company, the Iowa
34 fund of funds. The bill also authorizes the issuance of tax
35 credits to investors in the Iowa fund of funds.

1 The bill creates the Iowa capital investment board as a
2 governmental entity. The bill provides that the board shall
3 consist of five voting members and two nonvoting members. The
4 bill provides the board with powers to carry out its purpose
5 and prohibits the board from hiring employees. The bill
6 provides that board members are indemnified against loss under
7 Code chapter 669. The bill provides that board meetings shall
8 comply with open meetings laws, except to the extent necessary
9 to protect confidential information with respect to
10 investments in and investments made by the Iowa fund of funds.
11 The bill provides that the board, in cooperation with the
12 department of revenue and finance, shall establish criteria
13 and procedures for the allocation and issuance of tax credits
14 to designated investors by means of certificates issued by the
15 board. The bill provides that the board shall issue
16 certificates which may be redeemable for tax credits as
17 incentives to designated investors to make equity investments.
18 The bill provides that the board shall issue the certificates
19 so that not more than \$20 million of tax credits may be
20 initially redeemable in any fiscal year. The bill provides
21 that the board may charge a placement fee to the Iowa fund of
22 funds with respect to the issuance of a certificate and
23 related tax credit. The bill provides that the board, in
24 consultation with the Iowa capital investment corporation,
25 shall publish an annual report of the activities conducted by
26 the Iowa fund of funds. The bill provides that the board
27 shall redeem a certificate submitted by a designated investor,
28 shall calculate the amount of the allowable tax credit, and
29 issue a verification to the department of revenue and finance
30 setting forth the maximum tax credit which may be claimed.
31 The bill requires the board to adopt administrative rules
32 necessary to administer the duties of the board.
33 The bill authorizes the organization of an Iowa capital
34 investment corporation as a private, not-for-profit
35 corporation. The bill provides a method for incorporation,

1 including providing for incorporators, an appointment
 2 committee, and an initial board of directors. The bill
 3 provides that the department of economic development shall
 4 assist the incorporators and the appointment committee in any
 5 manner determined necessary and appropriate. The bill
 6 provides that the corporation shall conduct a national
 7 solicitation for an investment plan proposal. The bill
 8 provides that the corporation may charge a management fee on
 9 assets under management in the Iowa fund of funds which shall
 10 not exceed one-half of 1 percent per year of the value of the
 11 assets under management. The bill provides that the directors
 12 of the corporation shall be compensated for direct expenses
 13 and mileage, but shall not receive a director's fee or salary
 14 for their service. The bill provides the corporation with
 15 various business-related powers. The bill provides that, upon
 16 the dissolution of the Iowa fund of funds, the corporation
 17 shall be liquidated and dissolved, and any assets owned by it
 18 shall be distributed to the state of Iowa.

19 The bill provides for the organization of the Iowa fund of
 20 funds by the Iowa capital investment corporation. The bill
 21 provides that the Iowa fund of funds shall be organized as a
 22 for-profit limited partnership or limited liability company to
 23 which the Iowa capital investment corporation shall be the
 24 general partner or manager. The bill provides that the Iowa
 25 fund of funds shall be organized so as to provide for equity
 26 interests for designated investors which provide for a
 27 designated scheduled rate of return and a scheduled redemption
 28 which shall occur not less than five years following the
 29 issuance of such equity interests.

30 The bill provides that the Iowa fund of funds shall
 31 principally make investments in high-quality venture capital
 32 funds managed by investment managers who have made a
 33 commitment to consider equity investments in businesses
 34 located within the state of Iowa and which have committed to
 35 maintain a physical presence within the state of Iowa. The

1 bill provides that the Iowa fund of funds shall not invest
2 more than 5 percent of its assets in investments in the form
3 of loan guarantees and other related credit enhancements on
4 loans to rural and small business borrowers within the state
5 of Iowa. The bill provides the Iowa fund of funds with
6 certain business-related powers. The bill provides that the
7 Iowa fund of funds may issue debt and borrow and may open and
8 manage bank and short-term investment accounts. The bill
9 provides that the Iowa fund of funds may expend moneys to
10 secure investment ratings for investments by designated
11 investors. The bill provides that the Iowa fund of funds
12 shall engage a certified public accountant to conduct an
13 annual audit. The bill provides that the Iowa fund of funds
14 shall be liquidated 50 years following the organization of the
15 Iowa fund of funds.

16 The bill provides that the Iowa capital investment board
17 may issue to designated investors certificates and related tax
18 credits which shall not exceed a total aggregate of \$100
19 million of tax credits. The bill provides the certificates
20 shall be issued contemporaneously with an investment in the
21 Iowa fund of funds by a designated investor. The bill
22 provides that the certificates and tax credits are
23 transferable. The bill provides that a tax credit shall be
24 claimed for a tax year that begins during the calendar year
25 maturity date stated on the certificate. The bill provides
26 that the amount of the tax credit shall be limited to the
27 equivalent of any difference between the scheduled aggregate
28 return to the designated investor and the aggregate return on
29 invested capital at rates of return authorized by the board.
30 The bill provides that any tax credit in excess of the
31 designated investor's tax liability for the tax year may be
32 credited to the tax liability for the following seven years,
33 or until depleted, whichever is earlier. The bill provides
34 that the board, in conjunction with the department of revenue
35 and finance, develop a system for registration of any

1 certificate and related tax credit issued or transferred and a
 2 verification system. The bill provides that the board shall
 3 issue tax credits in such a manner that not more than \$20
 4 million of tax credits may be initially redeemable in any
 5 fiscal year. The bill provides that a certificate or tax
 6 credit issued pursuant to the bill is not considered a
 7 security.

8 The bill provides provisions relating to statutory
 9 construction and the powers of the Iowa capital investment
 10 board.

11 The bill provides that investments by designated investors
 12 in the Iowa fund of funds shall be deemed permissible
 13 investments for state-chartered banks and for domestic
 14 insurance companies under applicable state laws.

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Substitutes for SF 2025

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JAN 17 2002

WAYS & MEANS CALENDAR

HOUSE FILE 2078

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 507)

Passed House, Date ^{p. 155} 1-24-02 Passed Senate, Date ^{p. 105} 1-24-02
 Vote: Ayes 90 Nays 3 Vote: Ayes 39 Nays 5
 Approved February 28, 2002

A BILL FOR

1 An Act creating an Iowa capital investment board, authorizing the
 2 organization of an Iowa capital investment corporation and an
 3 Iowa fund of funds, and authorizing the issuance of contingent
 4 tax credits to investors in the Iowa fund of funds.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2018

1 Section 1. NEW SECTION. 15E.221 FINDINGS -- PURPOSE.

2 The general assembly finds the following: Fundamental
3 changes have occurred in national and international financial
4 markets and in the financial markets of this state. A
5 critical shortage of seed and venture capital resources exists
6 in the state, and such shortage is impairing the growth of
7 commerce in the state. A need exists to increase the
8 availability of venture equity capital for emerging,
9 expanding, and restructuring enterprises in Iowa, including,
10 without limitation, enterprises in the life sciences, advanced
11 manufacturing, information technology, and value-added
12 agriculture areas. Such investments will create jobs for
13 Iowans and will help to diversify the state's economic base.

14 This division is enacted to fulfill the following purposes:

15 1. To mobilize private investment in a broad variety of
16 venture capital partnerships in diversified industries and
17 locales.

18 2. To retain the private-sector culture of focusing on
19 rate of return in the investing process.

20 3. To secure the services of the best managers in the
21 venture capital industry, regardless of location.

22 4. To facilitate the organization of the Iowa fund of
23 funds in which to seek such private investment and to create
24 interest in such investments by offering state incentives for
25 private persons to make investments in the Iowa fund of funds.

26 5. To enhance the venture capital culture and
27 infrastructure in the state of Iowa so as to increase venture
28 capital investment within the state and to promote venture
29 capital investing within Iowa.

30 6. To accomplish these purposes in such a manner as to
31 minimize any appropriations by the state of Iowa.

32 7. To effectuate specific, measurable results, including
33 all of the following:

34 a. The creation of five new venture capital fund offices
35 in Iowa within three years of the effective date of this Act.

1 b. The investment of a minimum of twenty-five million
2 dollars in Iowa businesses within three years of the effective
3 date of this Act.

4 c. A cumulative rate of return on venture investments of
5 the Iowa fund of funds equal to at least seventeen percent by
6 the end of five years following the effective date of this
7 Act.

8 Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.

9 As used in this division, unless the context otherwise
10 requires:

11 1. "Board" means the Iowa capital investment board created
12 in section 15E.223.

13 2. "Certificate" means a contract between the board and a
14 designated investor pursuant to which a tax credit is
15 available and issued to the designated investor.

16 3. "Designated investor" means a person, other than the
17 Iowa capital investment corporation, who purchases an equity
18 interest in the Iowa fund of funds or a transferee of a
19 certificate or tax credit.

20 4. "Iowa capital investment corporation" means a private,
21 nonprofit corporation created pursuant to section 15E.224.

22 5. "Iowa fund of funds" means a private, for-profit
23 limited partnership or limited liability company established
24 by the Iowa capital investment corporation pursuant to section
25 15E.225 in which a designated investor purchases an equity
26 interest.

27 6. "Tax credit" means a contingent tax credit issued
28 pursuant to section 15E.226 that is available against tax
29 liabilities imposed by chapter 422, divisions II, III, and V,
30 and by chapter 432.

31 Sec. 3. NEW SECTION. 15E.223 IOWA CAPITAL INVESTMENT
32 BOARD.

33 1. The Iowa capital investment board is created as a state
34 governmental board and the exercise by the board of powers
35 conferred by this division shall be deemed and held to be the

1 performance of essential public purposes. The purpose of the
2 board shall be to mobilize venture equity capital for
3 investment in such a manner that will result in a significant
4 potential to create jobs and to diversify and stabilize the
5 economy of the state.

6 2. The board shall consist of five voting members and two
7 nonvoting advisory members. The five voting members shall be
8 appointed by the governor and confirmed by the senate pursuant
9 to section 2.32. The five voting members shall be appointed
10 to five-year staggered terms that shall be structured to allow
11 the term of one member to expire each year. One nonvoting
12 member shall be appointed by the majority leader of the senate
13 after consultation with the president of the senate and the
14 minority leader of the senate. One nonvoting member shall be
15 appointed by the speaker of the house of representatives after
16 consultation with the majority and minority leaders of the
17 house of representatives. The nonvoting members shall be
18 appointed for two-year terms which shall expire upon the
19 convening of a new general assembly. Vacancies shall be
20 filled in the same manner as the appointment of the original
21 members. Members shall be compensated by the board for direct
22 expenses and mileage but members shall not receive a
23 director's fee, per diem, or salary for service on the board.
24 Members shall be selected based upon demonstrated expertise
25 and competence in the supervision of investment managers, in
26 the fiduciary management of investment funds, or in the
27 management and administration of tax credit allocation
28 programs. Members shall not have an interest in any person to
29 whom a tax credit is allocated and issued by the board.

30 3. The board shall have the power to engage consultants,
31 expend funds, invest funds, contract, bond or insure against
32 loss, or perform any other act necessary to carry out its
33 purpose, provided, however, that the board shall not hire
34 employees.

35 4. Members of the board shall be indemnified against loss

1 to the broadest extent permissible under chapter 669.

2 5. Meetings of the board shall, except to the extent
3 necessary to protect confidential information with respect to
4 investments in and investments made by the Iowa fund of funds,
5 be subject to chapter 21.

6 6. The board shall, in cooperation with the department of
7 revenue and finance, establish criteria and procedures for the
8 allocation and issuance of tax credits to designated investors
9 by means of certificates issued by the board. The criteria
10 shall include the contingencies that must be met for a
11 certificate to be redeemable by a designated investor or
12 transferee in order to receive a tax credit. The
13 contingencies to redemption shall be tied to the scheduled
14 rates of return and scheduled redemptions of equity interests
15 purchased by designated investors in the Iowa fund of funds.
16 The procedures established by the board, in cooperation with
17 the department of revenue and finance, shall relate to the
18 procedures for the issuance of the certificates and the
19 related tax credits, for the transfer of a certificate and
20 related tax credit by a designated investor, and for the
21 redemption of a certificate and related tax credit by a
22 designated investor or transferee. The board shall also
23 establish criteria and procedures for assessing the likelihood
24 of future certificate redemptions by designated investors and
25 transferees, including, without limitation, criteria and
26 procedures for evaluating the value of investments made by the
27 Iowa fund of funds and the returns from the Iowa fund of
28 funds.

29 7. Pursuant to section 15E.226, the board shall issue
30 certificates which may be redeemable for tax credits to
31 provide incentives to designated investors to make equity
32 investments in the Iowa fund of funds. The board shall issue
33 the certificates so that not more than twenty million dollars
34 of tax credits may be initially redeemable in any fiscal year.

35 8. The board may charge a placement fee to the Iowa fund

1 of funds with respect to the issuance of a certificate and
2 related tax credit to a designated investor, but the fee shall
3 be charged only to pay for reasonable and necessary costs of
4 the board and shall not exceed one-half of one percent of the
5 equity investment of the designated investor.

6 9. The board shall, in consultation with the Iowa capital
7 investment corporation, publish an annual report of the
8 activities conducted by the Iowa fund of funds, and present
9 the report to the governor and the general assembly. The
10 annual report shall include a copy of the audit of the Iowa
11 fund of funds and a valuation of the assets of the Iowa fund
12 of funds, review the progress of the investment fund
13 allocation manager in implementing its investment plan, and
14 describe any redemption or transfer of a certificate issued
15 pursuant to this division, provided, however, that the annual
16 report shall not identify any specific designated investor who
17 has redeemed or transferred a certificate. Every five years,
18 the board shall publish a progress report which shall evaluate
19 the progress of the state of Iowa in accomplishing the
20 purposes stated in section 15E.221.

21 10. The board shall redeem a certificate submitted to the
22 board by a designated investor and shall calculate the amount
23 of the allowable tax credit based upon the investment returns
24 received by the designated investor and its predecessors in
25 interest and the provisions of the certificate. Upon
26 submission of a certificate for redemption, the board shall
27 issue a verification to the department of revenue and finance
28 setting forth the maximum tax credit which may be claimed by
29 the designated investor with respect to the redemption of the
30 certificate.

31 11. The board shall adopt rules pursuant to chapter 17A
32 necessary to administer the duties of the board.

33 Sec. 4. NEW SECTION. 15E.224 IOWA CAPITAL INVESTMENT
34 CORPORATION.

35 1. An Iowa capital investment corporation may be organized

1 as a private, not-for-profit corporation under chapter 504A.
2 The Iowa capital investment corporation is not a public
3 corporation or instrumentality of the state and shall not
4 enjoy any of the privileges and shall not be required to
5 comply with the requirements of a state agency. Except as
6 otherwise provided in this division, this division does not
7 exempt the corporation from the requirements under state law
8 which apply to other corporations organized under chapter
9 504A. The purposes of an Iowa capital investment corporation
10 shall be to organize the Iowa fund of funds, to select a
11 venture capital investment fund allocation manager to select
12 venture capital fund investments by the Iowa fund of funds, to
13 negotiate the terms of a contract with the venture capital
14 investment fund allocation manager, to execute the contract
15 with the selected venture capital investment fund manager on
16 behalf of the Iowa fund of funds, to receive investment
17 returns from the Iowa fund of funds, and to reinvest the
18 investment returns in additional venture capital investments
19 designed to result in a significant potential to create jobs
20 and to diversify and stabilize the economy of the state. The
21 corporation shall not exercise governmental functions and
22 shall not have members. The obligations of the corporation
23 are not obligations of this state or any political subdivision
24 of this state within the meaning of any constitutional or
25 statutory debt limitations, but are obligations of the
26 corporation payable solely and only from the corporation's
27 funds. The corporation shall not and cannot pledge the credit
28 or taxing power of this state or any political subdivision of
29 this state or make its debts payable out of any moneys except
30 those of the corporation.

31 2. To facilitate the organization of an Iowa capital
32 investment corporation, both of the following persons shall
33 serve as incorporators as provided in section 504A.28:

34 a. The chairperson of the Iowa economic development board
35 or a designee of the chairperson.

1 b. The director of the department of economic development
2 or a designee of the director.

3 3. After incorporation, the initial board of directors
4 shall be elected by the members of an appointment committee.
5 The members of the appointment committee shall be appointed by
6 the Iowa economic development board. The initial board of
7 directors shall consist of five members. The persons elected
8 to the initial board of directors by the appointment committee
9 shall include persons who have an expertise in the areas of
10 the selection and supervision of investment managers or in the
11 fiduciary management of investment funds, and other areas of
12 expertise as deemed appropriate by the appointment committee.
13 After the election of the initial board of directors,
14 vacancies in the board of directors of the corporation shall
15 be elected by the remaining directors of the corporation.
16 Members of the board of directors shall be subject to any
17 restrictions on conflicts of interest specified in the
18 organizational documents and shall have no interest in any
19 venture capital investment fund allocation manager selected by
20 the corporation pursuant to the provisions of this division or
21 in any investments made by the Iowa fund of funds.

22 4. The members of the appointment committee shall exercise
23 due care to assure that persons elected to the initial board
24 of directors have the requisite financial experience necessary
25 in order to carry out the duties of the corporation as
26 established in this division, including in areas related to
27 venture capital investment, investment management, and
28 supervision of investment managers and investment funds.

29 5. Upon the election of the initial board of directors,
30 the terms of the members of the appointment committee shall
31 expire.

32 6. The department of economic development shall assist the
33 incorporators and the appointment committee in any manner
34 determined necessary and appropriate by the director of the
35 department in order to administer this section.

1 7. After incorporation, the Iowa capital investment
2 corporation shall conduct a national solicitation for
3 investment plan proposals from qualified venture capital
4 investment fund allocation managers for the raising and
5 investing of capital by the Iowa fund of funds in accordance
6 with the requirements of this division. Any proposed
7 investment plan shall address the applicant's level of
8 experience, quality of management, investment philosophy and
9 process, probability of success in fund-raising, prior
10 investment fund results, and plan for achieving the purposes
11 of this division. The selected venture capital investment
12 fund allocation manager shall be a person with substantial,
13 successful experience in the design, implementation, and
14 management of seed and venture capital investment programs and
15 in capital formation. The corporation shall only select a
16 venture capital investment fund allocation manager with
17 demonstrated expertise in the management and fund allocation
18 of investments in venture capital funds. The corporation
19 shall select the venture capital investment fund allocation
20 manager deemed best qualified to generate the amount of
21 capital required by this division and to invest the capital of
22 the Iowa fund of funds.

23 8. The Iowa capital investment corporation may charge a
24 management fee on assets under management in the Iowa fund of
25 funds. The fee shall be in addition to any fee charged to the
26 Iowa fund of funds by the venture capital investment fund
27 allocation manager selected by the corporation, but the fee
28 shall be charged only to pay for reasonable and necessary
29 costs of the Iowa capital investment corporation and shall not
30 exceed one-half of one percent per year of the value of assets
31 under management.

32 9. Directors of the Iowa capital investment corporation
33 shall be compensated for direct expenses and mileage but shall
34 not receive a director's fee or salary for service as
35 directors.

1 10. The Iowa capital investment corporation shall have the
2 power to engage consultants, expend funds, invest funds,
3 contract, bond or insure against loss, or perform any other
4 act necessary to carry out its purpose. However, the
5 corporation shall not hire staff as employees except to
6 administer the rural and small business loan guarantee program
7 of the Iowa fund of funds.

8 11. Upon the dissolution of the Iowa fund of funds, the
9 Iowa capital investment corporation shall be liquidated and
10 dissolved, and any assets owned by the corporation shall be
11 distributed to the state of Iowa and deposited in the general
12 fund.

13 Sec. 5. NEW SECTION. 15E.225 IOWA FUND OF FUNDS.

14 1. The Iowa capital investment corporation shall organize
15 the Iowa fund of funds. The Iowa fund of funds shall be
16 authorized to make investments in private seed and venture
17 capital partnerships or entities in a manner which will
18 encourage the availability of a wide variety of venture
19 capital in the state, strengthen the economy of the state,
20 help business in Iowa gain access to sources of capital, help
21 build a significant, permanent source of capital available to
22 serve the needs of Iowa businesses, and accomplish all these
23 benefits in a way that minimizes the use of tax credits.

24 2. The Iowa capital investment corporation shall organize
25 the Iowa fund of funds in the following manner:

26 a. The Iowa fund of funds shall be organized as a private,
27 for-profit, limited partnership or limited liability company
28 under Iowa law pursuant to which the Iowa capital investment
29 corporation shall be the general partner or manager. The
30 entity shall be organized so as to provide for equity
31 interests for designated investors which provide for a
32 designated scheduled rate of return and a scheduled redemption
33 which shall occur not less than five years following the
34 issuance of such equity interests. The interest of the Iowa
35 capital investment corporation in the Iowa fund of funds shall

1 be to serve as general partner or manager and to be paid a
2 management fee for the service as provided in section 15E.224,
3 subsection 8, and to receive investment returns of the Iowa
4 fund of funds in excess of those payable to designated
5 investors. Any returns in excess of those payable to
6 designated investors shall be reinvested by the Iowa capital
7 investment corporation by being held in the Iowa fund of funds
8 as a revolving fund for reinvestment in venture capital funds
9 or investments until the termination of the Iowa fund of
10 funds. Any returns received from these reinvestments shall be
11 deposited in the revolving fund.

12 b. The Iowa fund of funds shall principally make
13 investments in high-quality venture capital funds managed by
14 investment managers who have made a commitment to consider
15 equity investments in businesses located within the state of
16 Iowa and which have committed to maintain a physical presence
17 within the state of Iowa. The investments by the Iowa fund of
18 funds shall be focused principally on partnership interests in
19 private venture capital funds and not in direct investments in
20 individual businesses. The Iowa fund of funds shall invest in
21 venture capital funds with experienced managers or management
22 teams with demonstrated expertise and a successful history in
23 the investment of venture capital funds. The Iowa fund of
24 funds may invest in newly created venture capital funds as
25 long as the managers or management teams of the funds have the
26 experience, expertise, and a successful history in the
27 investment of venture capital funds described in this
28 paragraph.

29 c. The Iowa fund of funds shall establish and administer a
30 program to provide loan guarantees and other related credit
31 enhancements on loans to rural and small business borrowers
32 within the state of Iowa. The Iowa fund of funds shall not
33 invest more than five percent of its assets in investments for
34 this program.

35 d. The Iowa fund of funds shall have the power to engage

1 consultants, expend funds, invest funds, contract, bond or
2 insure against loss, or perform any other act necessary to
3 carry out its purpose, including, without limitation, engaging
4 and agreeing to compensate a venture capital investment fund
5 allocation manager. Such compensation shall be in addition to
6 the management fee paid to the Iowa capital investment
7 corporation. However, the Iowa fund of funds shall not hire
8 employees except to administer its rural and small business
9 loan guarantee and credit enhancement program.

10 e. The Iowa fund of funds may issue debt and borrow such
11 funds as may be needed to accomplish its goals. However, such
12 debt shall not be secured by tax credits issued by the board.
13 The Iowa fund of funds may open and manage bank and short-term
14 investment accounts as deemed necessary by the venture capital
15 investment fund allocation manager.

16 f. The Iowa fund of funds may expend moneys to secure
17 investment ratings for investments by designated investors in
18 the Iowa fund of funds.

19 g. The Iowa fund of funds shall engage a certified public
20 accountant to conduct an annual audit of the activities of the
21 Iowa fund of funds. The audit shall be delivered to the Iowa
22 capital investment corporation and the board each year and
23 shall include a valuation of the assets owned by the Iowa fund
24 of funds as of the end of each year.

25 h. Fifty years after the organization of the Iowa fund of
26 funds, the Iowa capital investment corporation shall cause the
27 Iowa fund of funds to be liquidated with all of its assets
28 distributed to its owners in accordance with the provisions of
29 its organizational documents.

30 Sec. 6. NEW SECTION. 15E.226 CERTIFICATES AND TAX
31 CREDITS.

32 1. The board may issue certificates and related tax
33 credits to designated investors which, if redeemed for the
34 maximum possible amount, shall not exceed a total aggregate of
35 one hundred million dollars of tax credits. The certificates

1 shall be issued contemporaneously with an investment in the
2 Iowa fund of funds by a designated investor. A certificate
3 issued by the board shall have a specific calendar year
4 maturity date designated by the board of not less than five
5 years after the date of issuance and shall be redeemable on a
6 schedule similar to the scheduled redemption of investments by
7 designated investors. A certificate and the related tax
8 credit shall be transferable by the designated investor. A
9 tax credit shall not be claimed or redeemed except by a
10 designated investor or transferee in accordance with the terms
11 of a certificate from the board. A tax credit shall be
12 claimed for a tax year that begins during the calendar year
13 maturity date stated on the certificate. An individual may
14 claim the credit of a partnership, limited liability company,
15 S corporation, estate, or trust electing to have the income
16 taxed directly to the individual. The amount claimed by the
17 individual shall be based upon the pro rata share of the
18 individual's earnings from the partnership, limited liability
19 company, S corporation, estate, or trust. Any tax credit in
20 excess of the taxpayer's tax liability for the tax year may be
21 credited to the tax liability for the following seven years,
22 or until depleted, whichever is earlier.

23 2. The board shall certify the maximum amount of a tax
24 credit which could be issued to a designated investor and
25 identify the specific calendar year the certificate may be
26 redeemed pursuant to this division. The amount of the tax
27 credit shall be limited to an amount equivalent to any
28 difference between the scheduled aggregate return to the
29 designated investor at rates of return authorized by the board
30 and aggregate actual return received by the designated
31 investor and any predecessor in interest of capital and
32 interest on the capital. The rates, whether fixed rates or
33 variable rates, shall be determined pursuant to a formula
34 stipulated in the certificate. The board shall clearly
35 indicate on the certificate the schedule, the amount of equity

1 investment, the calculation formula for determining the
2 scheduled aggregate return on invested capital, and the
3 calculation formula for determining the amount of the tax
4 credit that may be claimed. Once moneys are invested by a
5 designated investor, the certificate shall be binding on the
6 board and the department of revenue and finance and shall not
7 be modified, terminated, or rescinded.

8 3. If a designated investor elects to redeem a
9 certificate, the certificate shall be redeemed on June 30 of
10 the calendar year maturity date stated on the certificate. At
11 the time of redemption, the board shall determine the amount
12 of the tax credit that may be claimed by the designated
13 investor based upon the returns received by the designated
14 investor and its predecessors in interest and the provisions
15 of the certificate. The board shall issue a verification to
16 the department of revenue and finance setting forth the
17 maximum tax credit which can be claimed by the designated
18 investor with respect to the redemption of the certificate.

19 4. The board shall, in conjunction with the department of
20 revenue and finance, develop a system for registration of any
21 certificate and related tax credit issued or transferred
22 pursuant to this section and a system that permits
23 verification that any tax credit claimed upon a tax return is
24 valid and that any transfers of the certificate and related
25 tax credit are made in accordance with the requirements of
26 this division.

27 5. The board shall issue the tax credits in such a manner
28 that not more than twenty million dollars of tax credits may
29 be initially redeemable in any fiscal year.

30 6. A certificate or tax credit issued or transferred
31 pursuant to this division shall not be considered a security
32 pursuant to chapter 502.

33 7. In determining the one hundred million dollar maximum
34 limit in subsection 1 and the twenty million dollar limitation
35 in subsection 5, the board shall use the cumulative amount of

1 scheduled aggregate returns on certificates issued by the
2 board to designated investors. However, certificates and
3 related tax credits which have expired shall not be included
4 and certificates and related tax credits which have been
5 redeemed shall be included only to the extent of tax credits
6 actually allowed.

7 Sec. 7. NEW SECTION. 15E.227 POWERS AND EFFECTIVENESS.

8 This division shall not be construed as a restriction or
9 limitation upon any power which the board might otherwise have
10 under any other law of this state and the provisions of this
11 division are cumulative to such powers. This division shall
12 be construed to provide a complete, additional, and
13 alternative method for performing the duties authorized and
14 shall be regarded as supplemental and additional powers
15 conferred by any other laws. The level, timing, or degree of
16 success of the Iowa fund of funds or the investment funds in
17 which the Iowa fund of funds invests in, or the extent to
18 which the investment funds are invested in Iowa venture
19 capital projects, or are successful in accomplishing any
20 economic development objectives, shall not compromise,
21 diminish, invalidate, or affect the provisions of any contract
22 entered into by the board or the Iowa fund of funds.

23 Sec. 8. NEW SECTION. 15E.228 PERMISSIBLE INVESTMENTS.

24 Investments by designated investors in the Iowa fund of
25 funds shall be deemed permissible investments for state-
26 chartered banks and for domestic insurance companies under
27 applicable state laws.

28 EXPLANATION

29 This bill creates a state governmental entity, the Iowa
30 capital investment board, and authorizes the organization of a
31 private, not-for-profit corporation, the Iowa capital
32 investment corporation, and the organization of a for-profit,
33 limited partnership or limited liability company, the Iowa
34 fund of funds. The bill also authorizes the issuance of tax
35 credits to investors in the Iowa fund of funds.

1 The bill creates the Iowa capital investment board as a
2 governmental entity. The bill provides that the board shall
3 consist of five voting members and two nonvoting members. The
4 bill provides the board with powers to carry out its purpose
5 and prohibits the board from hiring employees. The bill
6 provides that board members are indemnified against loss under
7 Code chapter 669. The bill provides that board meetings shall
8 comply with open meetings laws, except to the extent necessary
9 to protect confidential information with respect to
10 investments in and investments made by the Iowa fund of funds.
11 The bill provides that the board, in cooperation with the
12 department of revenue and finance, shall establish criteria
13 and procedures for the allocation and issuance of tax credits
14 to designated investors by means of certificates issued by the
15 board. The bill provides that the board shall issue
16 certificates which may be redeemable for tax credits as
17 incentives to designated investors to make equity investments.
18 The bill provides that the board shall issue the certificates
19 so that not more than \$20 million of tax credits may be
20 initially redeemable in any fiscal year. The bill provides
21 that the board may charge a placement fee to the Iowa fund of
22 funds with respect to the issuance of a certificate and
23 related tax credit. The bill provides that the board, in
24 consultation with the Iowa capital investment corporation,
25 shall publish an annual report of the activities conducted by
26 the Iowa fund of funds. The bill provides that the board
27 shall redeem a certificate submitted by a designated investor,
28 shall calculate the amount of the allowable tax credit, and
29 issue a verification to the department of revenue and finance
30 setting forth the maximum tax credit which may be claimed.
31 The bill requires the board to adopt administrative rules
32 necessary to administer the duties of the board.
33 The bill authorizes the organization of an Iowa capital
34 investment corporation as a private, not-for-profit
35 corporation. The bill provides a method for incorporation,

1 including providing for incorporators, an appointment
2 committee, and an initial board of directors. The bill
3 provides that the department of economic development shall
4 assist the incorporators and the appointment committee in any
5 manner determined necessary and appropriate. The bill
6 provides that the corporation shall conduct a national
7 solicitation for an investment plan proposal. The bill
8 provides that the corporation may charge a management fee on
9 assets under management in the Iowa fund of funds which shall
10 not exceed one-half of 1 percent per year of the value of the
11 assets under management. The bill provides that the directors
12 of the corporation shall be compensated for direct expenses
13 and mileage, but shall not receive a director's fee or salary
14 for their service. The bill provides the corporation with
15 various business-related powers. The bill provides that, upon
16 the dissolution of the Iowa fund of funds, the corporation
17 shall be liquidated and dissolved, and any assets owned by it
18 shall be distributed to the state of Iowa.

19 The bill provides for the organization of the Iowa fund of
20 funds by the Iowa capital investment corporation. The bill
21 provides that the Iowa fund of funds shall be organized as a
22 for-profit limited partnership or limited liability company to
23 which the Iowa capital investment corporation shall be the
24 general partner or manager. The bill provides that the Iowa
25 fund of funds shall be organized so as to provide for equity
26 interests for designated investors which provide for a
27 designated scheduled rate of return and a scheduled redemption
28 which shall occur not less than five years following the
29 issuance of such equity interests.

30 The bill provides that the Iowa fund of funds shall
31 principally make investments in high-quality venture capital
32 funds managed by investment managers who have made a
33 commitment to consider equity investments in businesses
34 located within the state of Iowa and which have committed to
35 maintain a physical presence within the state of Iowa. The

1 bill provides that the Iowa fund of funds shall not invest
2 more than 5 percent of its assets in investments in the form
3 of loan guarantees and other related credit enhancements on
4 loans to rural and small business borrowers within the state
5 of Iowa. The bill provides the Iowa fund of funds with
6 certain business-related powers. The bill provides that the
7 Iowa fund of funds may issue debt and borrow and may open and
8 manage bank and short-term investment accounts. The bill
9 provides that the Iowa fund of funds may expend moneys to
10 secure investment ratings for investments by designated
11 investors. The bill provides that the Iowa fund of funds
12 shall engage a certified public accountant to conduct an
13 annual audit. The bill provides that the Iowa fund of funds
14 shall be liquidated 50 years following the organization of the
15 Iowa fund of funds.

16 The bill provides that the Iowa capital investment board
17 may issue to designated investors certificates and related tax
18 credits which shall not exceed a total aggregate of \$100
19 million of tax credits. The bill provides the certificates
20 shall be issued contemporaneously with an investment in the
21 Iowa fund of funds by a designated investor. The bill
22 provides that the certificates and tax credits are
23 transferable. The bill provides that a tax credit shall be
24 claimed for a tax year that begins during the calendar year
25 maturity date stated on the certificate. The bill provides
26 that the amount of the tax credit shall be limited to the
27 equivalent of any difference between the scheduled aggregate
28 return to the designated investor and the aggregate return on
29 invested capital at rates of return authorized by the board.
30 The bill provides that any tax credit in excess of the
31 designated investor's tax liability for the tax year may be
32 credited to the tax liability for the following seven years,
33 or until depleted, whichever is earlier. The bill provides
34 that the board, in conjunction with the department of revenue
35 and finance, develop a system for registration of any

1 certificate and related tax credit issued or transferred and a
2 verification system. The bill provides that the board shall
3 issue tax credits in such a manner that not more than \$20
4 million of tax credits may be initially redeemable in any
5 fiscal year. The bill provides that a certificate or tax
6 credit issued pursuant to the bill is not considered a
7 security.

8 The bill provides provisions relating to statutory
9 construction and the powers of the Iowa capital investment
10 board.

11 The bill provides that investments by designated investors
12 in the Iowa fund of funds shall be deemed permissible
13 investments for state-chartered banks and for domestic
14 insurance companies under applicable state laws.

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HOUSE FILE 2078
FISCAL NOTE

A fiscal note for **House File 2078** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 2078 creates a mechanism for a newly-created corporation to raise money to be invested in venture capital investment funds and provides State tax credits to be used to guarantee that the investors of the money receive all of the principal and an unspecified rate of return at the end of the investment period. The guarantee is in the form of contingent tax credits. If the full principal and promised rate of return are not available at the end of the investment period, State tax credits would be issued to the investor to make up any shortfall. The tax credits could be transferred in cases where the original investor did not have sufficient Iowa tax liability to fully utilize the credits.

Three entities are created to accomplish the intent of the Bill:

1. Iowa Capital Investment Board - A Board composed of five voting and two non-voting members. The voting members are appointed by the Governor and confirmed by the Senate. The Majority Leader of the Senate and the Speaker of the House each appoint one non-voting member. The duty of the Board is to establish criteria and procedures for allocation, issuance, and redemption of the contingent tax credits. The Board is also responsible for projecting the amount of contingent tax credits that may be redeemed in future years. The Board is limited to \$100.0 million in contingent tax credits, although tax credits not used can be reissued with new investments. The use of tax credits is further restricted to no more than \$20.0 million initially redeemable in any one year. No tax credits can be redeemable within the first five years of the program.
2. Iowa Capital Investment Corporation - The Corporation is created as a private, non-profit corporation separate from the State. The purpose of the Corporation is to organize the investment of money in, and to select an investment manager for, the newly-created Iowa "Fund of Funds." The Corporation's five-member Board of Directors shall be selected by an appointment committee selected by the Iowa Economic Development Board.
3. Iowa Fund of Funds - The Iowa Fund of Funds is created as a private for profit company authorized to make investments in new or existing private seed and venture capital entities. The Fund of Funds shall principally make investments in high quality venture capital funds managed by investment managers who have made a commitment to consider investments in businesses located in Iowa and have committed to maintenance of a physical presence in Iowa. The Fund of Funds shall also establish and administer a loan guarantee or other credit program for rural Iowa equal to no more than 5.0% of its assets. The Fund of Funds is liquidated 50 years after establishment, and remaining assets transferred to its owners.

ASSUMPTIONS

1. The Board will package the \$100.0 million in tax credits into investment packages of smaller sizes (\$10.0 million, for example). Each investment package will be accounted for separately (profits from one will not offset losses from another).
2. The rate of return promised to investors will be 6.3%, compounded annually.
3. The Iowa Capital Investment Board and the Iowa Capital Investment Corporation will each charge the 0.5% fee allowed under the Bill.
4. The investment manager hired by the Corporation will be paid an annual fee of 1.25% of the investment amount plus 20.0% of all capital gains resulting from the investment.
5. The Board will allow only "closed end" investment structures, and will require all investments to be fully closed prior to calculation of any tax credits due to the investor.

FISCAL IMPACT

The contingent tax credits used to guarantee the principal and rate of return of the original private capital investment do pose a potential risk to the State General Fund. The credits are limited under the Bill to no more than \$20.0 million per year and cannot be redeemed for at least five years. The total amount of credits that could be utilized is \$100.0 million over the life of the Program. The money subject to the contingent tax credits will be invested in various venture capital funds. Venture capital funds make or lose money in all economic conditions. It is not possible to predict whether the venture capital funds selected by the investment manager will make or lose money.

To ensure that no tax credits are issued, each investment package must return not only the original investment amount, but also sufficient capital gains to cover the promised return on investment and the fees charged by the Board, the Corporation, and the investment manager. Each investment package would have to return capital gains to the Fund of Funds of 8.36% or higher compounded annually, for no tax credits to be used.

For example, \$10.0 million is invested in the Fund of Funds at 6.3% for ten years. Corporation and Board fees reduce the amount to \$9.9 million which is then invested in various venture capital funds. After ten years, this investment package is closed and the value is now \$22.1 million, which equates to an 8.36% annual rate of return. The investment manager retains \$3.7 million for annual management fees and rate of return incentive. The investors receive their original \$10.0 million plus \$8.4 million in capital gains. In this example, no tax credits are issued and no excess capital gains are available for future investment.

The Iowa Capital Investment Board and the Iowa Capital Investment Corporation will not have any fiscal impact on State finances since all expenses will be paid from administrative fees charged against the invested funds. The issuance, redemption, and tracking of the contingent tax credits will have an administrative cost to the Department of Revenue and Finance. This cost should

-3-

be less than \$100,000 over ten years.

SOURCE

Iowa Department of Revenue and Finance
Legislative Fiscal Bureau

(LSB 5216hv, JWR)

FILED JANUARY 24, 2002

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 2078

H-8009

1 Amend House File 2078 as follows:
 2 1. Page 11, by striking lines 19 through 21, and
 3 inserting the following:
 4 "g. Each calendar year, the auditor of state shall
 5 conduct an annual audit of the activities of the Iowa
 6 fund of funds or shall engage an independent auditor
 7 to conduct the audit provided that the independent
 8 auditor has no business, contractual, or other
 9 connection to the Iowa capital investment corporation
 10 or the Iowa fund of funds. The corporation shall
 11 reimburse the auditor of state for costs associated
 12 with the annual audit. The audit shall be delivered
 13 to the Iowa".

By SHOULTZ of Black Hawk

H-8009 FILED JANUARY 24, 2002

Adopted
1-24-02

HOUSE FILE 2078

H-8010

1 Amend House File 2078 as follows:
 2 1. Page 4, by inserting after line 34 the
 3 following:
 4 "7A. The board shall include, in its criteria and
 5 procedures for allocation and issuance of certificates
 6 and related tax credits, procedures for allocating ten
 7 percent of the tax credits for purchase by designated
 8 small individual investors. A designated small
 9 individual investor may invest one thousand dollars or
 10 more. The board shall develop a marketing strategy
 11 for attracting designated small individual investors
 12 to participate in this opportunity, including
 13 educational materials regarding the potential
 14 advantages and disadvantages of making an investment
 15 subject to this division."
 16 2. By renumbering as necessary.

By SHOULTZ of Black Hawk

H-8010 FILED JANUARY 24, 2002

o/o
1/24/02

HOUSE FILE 2078

H-8004

1 Amend House File 2078 as follows:
 2 1. Page 14, by inserting after line 27, the
 3 following:
 4 "Sec. ____ . NEW SECTION. 15E.229 ENFORCEMENT.
 5 The attorney general may enforce the provisions of
 6 this division and conduct any investigations necessary
 7 for such enforcement."
 8 2. By renumbering as necessary.

By TEIG of Hamilton

H-8004 FILED JANUARY 23, 2002

Adopted
1-24-02

HOUSE FILE 2078**H-8006**

1 Amend House File 2078 as follows:
2 1. Page 1, line 34, by striking the word "five"
3 and inserting the following: "three".
4 2. Page 2, by striking lines 1 through 7 and
5 inserting the following:
6 "b. The investment of resources from the Iowa fund
7 of funds in Iowa businesses within three years of the
8 effective date of this Act.
9 c. A cumulative rate of return on venture
10 investments of the Iowa fund of funds equal to a
11 minimum of one and one-half percentage points above
12 the ten-year treasury bill rate in effect at the end
13 of five years following the effective date of this
14 Act."
15 3. Page 4, line 4, by striking the words "and
16 investments made by".
17 4. Page 4, line 34, by inserting after the word
18 "year." the following: "The board shall indicate on
19 the tax certificate the principal amount of the tax
20 credit and the taxable year or years for which the
21 credit may be claimed."
22 5. Page 11, by inserting after line 29 the
23 following:
24 "i. Upon the liquidation of the Iowa fund of
25 funds, the Iowa capital investment corporation shall
26 file a report with the general assembly stating how
27 many jobs in this state were created through
28 investments made by the Iowa fund of funds."
29 6. Page 13, line 29, by inserting after the word
30 "year." the following: "The board shall indicate on
31 the tax certificate the principal amount of the tax
32 credit and the taxable year or years for which the
33 credit may be claimed."

By TEIG of Hamilton

H-8006 FILED JANUARY 23, 2002

adapted
1-24-02

HOUSE FILE 2078**H-8008**

1 Amend House File 2078 as follows:
2 1. Page 2, line 30, by inserting after the figure
3 "432" the following: "and against the moneys and
4 credits tax imposed by section 533.24".
5 2. Page 14, line 26, by inserting after the word
6 "banks" the following: ", for credit unions,".

By VAN FOSSEN of Scott

H-8008 FILED JANUARY 23, 2002

adapted
1-24-02

HOUSE FILE 2078

BY COMMITTEE ON WAYS AND MEANS

(SUCCESSOR TO HSB 507)

(As Amended and Passed by the House January 24, 2002)

Passed House, Date ^{P.189} 1/29/02 Passed Senate, ^{P.105} Date 1-24-02
 Vote: Ayes 74 Nays 25 Vote: Ayes 39 Nays 5
 Approved Jan. 28, 2002

A BILL FOR

1 An Act creating an Iowa capital investment board, authorizing the
 2 organization of an Iowa capital investment corporation and an
 3 Iowa fund of funds, and authorizing the issuance of contingent
 4 tax credits to investors in the Iowa fund of funds.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____
 Deleted Language *

1 Section 1. NEW SECTION. 15E.221 FINDINGS -- PURPOSE.

2 The general assembly finds the following: Fundamental
3 changes have occurred in national and international financial
4 markets and in the financial markets of this state. A
5 critical shortage of seed and venture capital resources exists
6 in the state, and such shortage is impairing the growth of
7 commerce in the state. A need exists to increase the
8 availability of venture equity capital for emerging,
9 expanding, and restructuring enterprises in Iowa, including,
10 without limitation, enterprises in the life sciences, advanced
11 manufacturing, information technology, and value-added
12 agriculture areas. Such investments will create jobs for
13 Iowans and will help to diversify the state's economic base.

14 This division is enacted to fulfill the following purposes:

15 1. To mobilize private investment in a broad variety of
16 venture capital partnerships in diversified industries and
17 locales.

18 2. To retain the private-sector culture of focusing on
19 rate of return in the investing process.

20 3. To secure the services of the best managers in the
21 venture capital industry, regardless of location.

22 4. To facilitate the organization of the Iowa fund of
23 funds in which to seek such private investment and to create
24 interest in such investments by offering state incentives for
25 private persons to make investments in the Iowa fund of funds.

26 5. To enhance the venture capital culture and
27 infrastructure in the state of Iowa so as to increase venture
28 capital investment within the state and to promote venture
29 capital investing within Iowa.

30 6. To accomplish these purposes in such a manner as to
31 minimize any appropriations by the state of Iowa.

32 7. To effectuate specific, measurable results, including
33 all of the following:

34 a. The creation of three new venture capital fund offices
35 in Iowa within three years of the effective date of this Act.

1 b. The investment of resources from the Iowa fund of funds
2 in Iowa businesses within three years of the effective date of
3 this Act.

4 c. A cumulative rate of return on venture investments of
5 the Iowa fund of funds equal to a minimum of one and one-half
6 percentage points above the ten-year treasury bill rate in
7 effect at the end of five years following the effective date
8 of this Act.

9 Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.

10 As used in this division, unless the context otherwise
11 requires:

12 1. "Board" means the Iowa capital investment board created
13 in section 15E.223.

14 2. "Certificate" means a contract between the board and a
15 designated investor pursuant to which a tax credit is
16 available and issued to the designated investor.

17 3. "Designated investor" means a person, other than the
18 Iowa capital investment corporation, who purchases an equity
19 interest in the Iowa fund of funds or a transferee of a
20 certificate or tax credit.

21 4. "Iowa capital investment corporation" means a private,
22 nonprofit corporation created pursuant to section 15E.224.

23 5. "Iowa fund of funds" means a private, for-profit
24 limited partnership or limited liability company established
25 by the Iowa capital investment corporation pursuant to section
26 15E.225 in which a designated investor purchases an equity
27 interest.

28 6. "Tax credit" means a contingent tax credit issued
29 pursuant to section 15E.226 that is available against tax
30 liabilities imposed by chapter 422, divisions II, III, and V,
31 and by chapter 432 and against the moneys and credits tax
32 imposed by section 533.24.

33 Sec. 3. NEW SECTION. 15E.223 IOWA CAPITAL INVESTMENT
34 BOARD.

35 1. The Iowa capital investment board is created as a state

1 governmental board and the exercise by the board of powers
2 conferred by this division shall be deemed and held to be the
3 performance of essential public purposes. The purpose of the
4 board shall be to mobilize venture equity capital for
5 investment in such a manner that will result in a significant
6 potential to create jobs and to diversify and stabilize the
7 economy of the state.

8 2. The board shall consist of five voting members and two
9 nonvoting advisory members. The five voting members shall be
10 appointed by the governor and confirmed by the senate pursuant
11 to section 2.32. The five voting members shall be appointed
12 to five-year staggered terms that shall be structured to allow
13 the term of one member to expire each year. One nonvoting
14 member shall be appointed by the majority leader of the senate
15 after consultation with the president of the senate and the
16 minority leader of the senate. One nonvoting member shall be
17 appointed by the speaker of the house of representatives after
18 consultation with the majority and minority leaders of the
19 house of representatives. The nonvoting members shall be
20 appointed for two-year terms which shall expire upon the
21 convening of a new general assembly. Vacancies shall be
22 filled in the same manner as the appointment of the original
23 members. Members shall be compensated by the board for direct
24 expenses and mileage but members shall not receive a
25 director's fee, per diem, or salary for service on the board.
26 Members shall be selected based upon demonstrated expertise
27 and competence in the supervision of investment managers, in
28 the fiduciary management of investment funds, or in the
29 management and administration of tax credit allocation
30 programs. Members shall not have an interest in any person to
31 whom a tax credit is allocated and issued by the board.

32 3. The board shall have the power to engage consultants,
33 expend funds, invest funds, contract, bond or insure against
34 loss, or perform any other act necessary to carry out its
35 purpose, provided, however, that the board shall not hire

1 employees.

2 4. Members of the board shall be indemnified against loss
3 to the broadest extent permissible under chapter 669.

4 5. Meetings of the board shall, except to the extent
5 necessary to protect confidential information with respect to
* 6 investments in the Iowa fund of funds, be subject to chapter
7 21.

8 6. The board shall, in cooperation with the department of
9 revenue and finance, establish criteria and procedures for the
10 allocation and issuance of tax credits to designated investors
11 by means of certificates issued by the board. The criteria
12 shall include the contingencies that must be met for a
13 certificate to be redeemable by a designated investor or
14 transferee in order to receive a tax credit. The
15 contingencies to redemption shall be tied to the scheduled
16 rates of return and scheduled redemptions of equity interests
17 purchased by designated investors in the Iowa fund of funds.
18 The procedures established by the board, in cooperation with
19 the department of revenue and finance, shall relate to the
20 procedures for the issuance of the certificates and the
21 related tax credits, for the transfer of a certificate and
22 related tax credit by a designated investor, and for the
23 redemption of a certificate and related tax credit by a
24 designated investor or transferee. The board shall also
25 establish criteria and procedures for assessing the likelihood
26 of future certificate redemptions by designated investors and
27 transferees, including, without limitation, criteria and
28 procedures for evaluating the value of investments made by the
29 Iowa fund of funds and the returns from the Iowa fund of
30 funds.

31 7. Pursuant to section 15E.226, the board shall issue
32 certificates which may be redeemable for tax credits to
33 provide incentives to designated investors to make equity
34 investments in the Iowa fund of funds. The board shall issue
35 the certificates so that not more than twenty million dollars

1 of tax credits may be initially redeemable in any fiscal year.
2 The board shall indicate on the tax certificate the principal
3 amount of the tax credit and the taxable year or years for
4 which the credit may be claimed.

5 8. The board may charge a placement fee to the Iowa fund
6 of funds with respect to the issuance of a certificate and
7 related tax credit to a designated investor, but the fee shall
8 be charged only to pay for reasonable and necessary costs of
9 the board and shall not exceed one-half of one percent of the
10 equity investment of the designated investor.

11 9. The board shall, in consultation with the Iowa capital
12 investment corporation, publish an annual report of the
13 activities conducted by the Iowa fund of funds, and present
14 the report to the governor and the general assembly. The
15 annual report shall include a copy of the audit of the Iowa
16 fund of funds and a valuation of the assets of the Iowa fund
17 of funds, review the progress of the investment fund
18 allocation manager in implementing its investment plan, and
19 describe any redemption or transfer of a certificate issued
20 pursuant to this division, provided, however, that the annual
21 report shall not identify any specific designated investor who
22 has redeemed or transferred a certificate. Every five years,
23 the board shall publish a progress report which shall evaluate
24 the progress of the state of Iowa in accomplishing the
25 purposes stated in section 15E.221.

26 10. The board shall redeem a certificate submitted to the
27 board by a designated investor and shall calculate the amount
28 of the allowable tax credit based upon the investment returns
29 received by the designated investor and its predecessors in
30 interest and the provisions of the certificate. Upon
31 submission of a certificate for redemption, the board shall
32 issue a verification to the department of revenue and finance
33 setting forth the maximum tax credit which may be claimed by
34 the designated investor with respect to the redemption of the
35 certificate.

1 11. The board shall adopt rules pursuant to chapter 17A
2 necessary to administer the duties of the board.

3 Sec. 4. NEW SECTION. 15E.224 IOWA CAPITAL INVESTMENT
4 CORPORATION.

5 1. An Iowa capital investment corporation may be organized
6 as a private, not-for-profit corporation under chapter 504A.
7 The Iowa capital investment corporation is not a public
8 corporation or instrumentality of the state and shall not
9 enjoy any of the privileges and shall not be required to
10 comply with the requirements of a state agency. Except as
11 otherwise provided in this division, this division does not
12 exempt the corporation from the requirements under state law
13 which apply to other corporations organized under chapter
14 504A. The purposes of an Iowa capital investment corporation
15 shall be to organize the Iowa fund of funds, to select a
16 venture capital investment fund allocation manager to select
17 venture capital fund investments by the Iowa fund of funds, to
18 negotiate the terms of a contract with the venture capital
19 investment fund allocation manager, to execute the contract
20 with the selected venture capital investment fund manager on
21 behalf of the Iowa fund of funds, to receive investment
22 returns from the Iowa fund of funds, and to reinvest the
23 investment returns in additional venture capital investments
24 designed to result in a significant potential to create jobs
25 and to diversify and stabilize the economy of the state. The
26 corporation shall not exercise governmental functions and
27 shall not have members. The obligations of the corporation
28 are not obligations of this state or any political subdivision
29 of this state within the meaning of any constitutional or
30 statutory debt limitations, but are obligations of the
31 corporation payable solely and only from the corporation's
32 funds. The corporation shall not and cannot pledge the credit
33 or taxing power of this state or any political subdivision of
34 this state or make its debts payable out of any moneys except
35 those of the corporation.

1 2. To facilitate the organization of an Iowa capital
2 investment corporation, both of the following persons shall
3 serve as incorporators as provided in section 504A.28:
4 a. The chairperson of the Iowa economic development board
5 or a designee of the chairperson.
6 b. The director of the department of economic development
7 or a designee of the director.
8 3. After incorporation, the initial board of directors
9 shall be elected by the members of an appointment committee.
10 The members of the appointment committee shall be appointed by
11 the Iowa economic development board. The initial board of
12 directors shall consist of five members. The persons elected
13 to the initial board of directors by the appointment committee
14 shall include persons who have an expertise in the areas of
15 the selection and supervision of investment managers or in the
16 fiduciary management of investment funds, and other areas of
17 expertise as deemed appropriate by the appointment committee.
18 After the election of the initial board of directors,
19 vacancies in the board of directors of the corporation shall
20 be elected by the remaining directors of the corporation.
21 Members of the board of directors shall be subject to any
22 restrictions on conflicts of interest specified in the
23 organizational documents and shall have no interest in any
24 venture capital investment fund allocation manager selected by
25 the corporation pursuant to the provisions of this division or
26 in any investments made by the Iowa fund of funds.
27 4. The members of the appointment committee shall exercise
28 due care to assure that persons elected to the initial board
29 of directors have the requisite financial experience necessary
30 in order to carry out the duties of the corporation as
31 established in this division, including in areas related to
32 venture capital investment, investment management, and
33 supervision of investment managers and investment funds.
34 5. Upon the election of the initial board of directors,
35 the terms of the members of the appointment committee shall

1 expire.

2 6. The department of economic development shall assist the
3 incorporators and the appointment committee in any manner
4 determined necessary and appropriate by the director of the
5 department in order to administer this section.

6 7. After incorporation, the Iowa capital investment
7 corporation shall conduct a national solicitation for
8 investment plan proposals from qualified venture capital
9 investment fund allocation managers for the raising and
10 investing of capital by the Iowa fund of funds in accordance
11 with the requirements of this division. Any proposed
12 investment plan shall address the applicant's level of
13 experience, quality of management, investment philosophy and
14 process, probability of success in fund-raising, prior
15 investment fund results, and plan for achieving the purposes
16 of this division. The selected venture capital investment
17 fund allocation manager shall be a person with substantial,
18 successful experience in the design, implementation, and
19 management of seed and venture capital investment programs and
20 in capital formation. The corporation shall only select a
21 venture capital investment fund allocation manager with
22 demonstrated expertise in the management and fund allocation
23 of investments in venture capital funds. The corporation
24 shall select the venture capital investment fund allocation
25 manager deemed best qualified to generate the amount of
26 capital required by this division and to invest the capital of
27 the Iowa fund of funds.

28 8. The Iowa capital investment corporation may charge a
29 management fee on assets under management in the Iowa fund of
30 funds. The fee shall be in addition to any fee charged to the
31 Iowa fund of funds by the venture capital investment fund
32 allocation manager selected by the corporation, but the fee
33 shall be charged only to pay for reasonable and necessary
34 costs of the Iowa capital investment corporation and shall not
35 exceed one-half of one percent per year of the value of assets

1 under management.

2 9. Directors of the Iowa capital investment corporation
3 shall be compensated for direct expenses and mileage but shall
4 not receive a director's fee or salary for service as
5 directors.

6 10. The Iowa capital investment corporation shall have the
7 power to engage consultants, expend funds, invest funds,
8 contract, bond or insure against loss, or perform any other
9 act necessary to carry out its purpose. However, the
10 corporation shall not hire staff as employees except to
11 administer the rural and small business loan guarantee program
12 of the Iowa fund of funds.

13 11. Upon the dissolution of the Iowa fund of funds, the
14 Iowa capital investment corporation shall be liquidated and
15 dissolved, and any assets owned by the corporation shall be
16 distributed to the state of Iowa and deposited in the general
17 fund.

18 Sec. 5. NEW SECTION. 15E.225 IOWA FUND OF FUNDS.

19 1. The Iowa capital investment corporation shall organize
20 the Iowa fund of funds. The Iowa fund of funds shall be
21 authorized to make investments in private seed and venture
22 capital partnerships or entities in a manner which will
23 encourage the availability of a wide variety of venture
24 capital in the state, strengthen the economy of the state,
25 help business in Iowa gain access to sources of capital, help
26 build a significant, permanent source of capital available to
27 serve the needs of Iowa businesses, and accomplish all these
28 benefits in a way that minimizes the use of tax credits.

29 2. The Iowa capital investment corporation shall organize
30 the Iowa fund of funds in the following manner:

31 a. The Iowa fund of funds shall be organized as a private,
32 for-profit, limited partnership or limited liability company
33 under Iowa law pursuant to which the Iowa capital investment
34 corporation shall be the general partner or manager. The
35 entity shall be organized so as to provide for equity

1 interests for designated investors which provide for a
2 designated scheduled rate of return and a scheduled redemption
3 which shall occur not less than five years following the
4 issuance of such equity interests. The interest of the Iowa
5 capital investment corporation in the Iowa fund of funds shall
6 be to serve as general partner or manager and to be paid a
7 management fee for the service as provided in section 15E.224,
8 subsection 8, and to receive investment returns of the Iowa
9 fund of funds in excess of those payable to designated
10 investors. Any returns in excess of those payable to
11 designated investors shall be reinvested by the Iowa capital
12 investment corporation by being held in the Iowa fund of funds
13 as a revolving fund for reinvestment in venture capital funds
14 or investments until the termination of the Iowa fund of
15 funds. Any returns received from these reinvestments shall be
16 deposited in the revolving fund.

17 b. The Iowa fund of funds shall principally make
18 investments in high-quality venture capital funds managed by
19 investment managers who have made a commitment to consider
20 equity investments in businesses located within the state of
21 Iowa and which have committed to maintain a physical presence
22 within the state of Iowa. The investments by the Iowa fund of
23 funds shall be focused principally on partnership interests in
24 private venture capital funds and not in direct investments in
25 individual businesses. The Iowa fund of funds shall invest in
26 venture capital funds with experienced managers or management
27 teams with demonstrated expertise and a successful history in
28 the investment of venture capital funds. The Iowa fund of
29 funds may invest in newly created venture capital funds as
30 long as the managers or management teams of the funds have the
31 experience, expertise, and a successful history in the
32 investment of venture capital funds described in this
33 paragraph.

34 c. The Iowa fund of funds shall establish and administer a
35 program to provide loan guarantees and other related credit

1 enhancements on loans to rural and small business borrowers
2 within the state of Iowa. The Iowa fund of funds shall not
3 invest more than five percent of its assets in investments for
4 this program.

5 d. The Iowa fund of funds shall have the power to engage
6 consultants, expend funds, invest funds, contract, bond or
7 insure against loss, or perform any other act necessary to
8 carry out its purpose, including, without limitation, engaging
9 and agreeing to compensate a venture capital investment fund
10 allocation manager. Such compensation shall be in addition to
11 the management fee paid to the Iowa capital investment
12 corporation. However, the Iowa fund of funds shall not hire
13 employees except to administer its rural and small business
14 loan guarantee and credit enhancement program.

15 e. The Iowa fund of funds may issue debt and borrow such
16 funds as may be needed to accomplish its goals. However, such
17 debt shall not be secured by tax credits issued by the board.
18 The Iowa fund of funds may open and manage bank and short-term
19 investment accounts as deemed necessary by the venture capital
20 investment fund allocation manager.

21 f. The Iowa fund of funds may expend moneys to secure
22 investment ratings for investments by designated investors in
23 the Iowa fund of funds.

24 g. Each calendar year, the auditor of state shall conduct
25 an annual audit of the activities of the Iowa fund of funds or
26 shall engage an independent auditor to conduct the audit
27 provided that the independent auditor has no business,
28 contractual, or other connection to the Iowa capital
29 investment corporation or the Iowa fund of funds. The
30 corporation shall reimburse the auditor of state for costs
31 associated with the annual audit. The audit shall be
32 delivered to the Iowa capital investment corporation and the
33 board each year and shall include a valuation of the assets
34 owned by the Iowa fund of funds as of the end of each year.

35 h. Fifty years after the organization of the Iowa fund of

1 funds, the Iowa capital investment corporation shall cause the
2 Iowa fund of funds to be liquidated with all of its assets
3 distributed to its owners in accordance with the provisions of
4 its organizational documents.

5 i. Upon the liquidation of the Iowa fund of funds, the
6 Iowa capital investment corporation shall file a report with
7 the general assembly stating how many jobs in this state were
8 created through investments made by the Iowa fund of funds.

9 Sec. 6. NEW SECTION. 15E.226 CERTIFICATES AND TAX

10 CREDITS.

11 1. The board may issue certificates and related tax
12 credits to designated investors which, if redeemed for the
13 maximum possible amount, shall not exceed a total aggregate of
14 one hundred million dollars of tax credits. The certificates
15 shall be issued contemporaneously with an investment in the
16 Iowa fund of funds by a designated investor. A certificate
17 issued by the board shall have a specific calendar year
18 maturity date designated by the board of not less than five
19 years after the date of issuance and shall be redeemable on a
20 schedule similar to the scheduled redemption of investments by
21 designated investors. A certificate and the related tax
22 credit shall be transferable by the designated investor. A
23 tax credit shall not be claimed or redeemed except by a
24 designated investor or transferee in accordance with the terms
25 of a certificate from the board. A tax credit shall be
26 claimed for a tax year that begins during the calendar year
27 maturity date stated on the certificate. An individual may
28 claim the credit of a partnership, limited liability company,
29 S corporation, estate, or trust electing to have the income
30 taxed directly to the individual. The amount claimed by the
31 individual shall be based upon the pro rata share of the
32 individual's earnings from the partnership, limited liability
33 company, S corporation, estate, or trust. Any tax credit in
34 excess of the taxpayer's tax liability for the tax year may be
35 credited to the tax liability for the following seven years,

1 or until depleted, whichever is earlier.

2 2. The board shall certify the maximum amount of a tax
3 credit which could be issued to a designated investor and
4 identify the specific calendar year the certificate may be
5 redeemed pursuant to this division. The amount of the tax
6 credit shall be limited to an amount equivalent to any
7 difference between the scheduled aggregate return to the
8 designated investor at rates of return authorized by the board
9 and aggregate actual return received by the designated
10 investor and any predecessor in interest of capital and
11 interest on the capital. The rates, whether fixed rates or
12 variable rates, shall be determined pursuant to a formula
13 stipulated in the certificate. The board shall clearly
14 indicate on the certificate the schedule, the amount of equity
15 investment, the calculation formula for determining the
16 scheduled aggregate return on invested capital, and the
17 calculation formula for determining the amount of the tax
18 credit that may be claimed. Once moneys are invested by a
19 designated investor, the certificate shall be binding on the
20 board and the department of revenue and finance and shall not
21 be modified, terminated, or rescinded.

22 3. If a designated investor elects to redeem a
23 certificate, the certificate shall be redeemed on June 30 of
24 the calendar year maturity date stated on the certificate. At
25 the time of redemption, the board shall determine the amount
26 of the tax credit that may be claimed by the designated
27 investor based upon the returns received by the designated
28 investor and its predecessors in interest and the provisions
29 of the certificate. The board shall issue a verification to
30 the department of revenue and finance setting forth the
31 maximum tax credit which can be claimed by the designated
32 investor with respect to the redemption of the certificate.

33 4. The board shall, in conjunction with the department of
34 revenue and finance, develop a system for registration of any
35 certificate and related tax credit issued or transferred

1 pursuant to this section and a system that permits
2 verification that any tax credit claimed upon a tax return is
3 valid and that any transfers of the certificate and related
4 tax credit are made in accordance with the requirements of
5 this division.

6 5. The board shall issue the tax credits in such a manner
7 that not more than twenty million dollars of tax credits may
8 be initially redeemable in any fiscal year. The board shall
9 indicate on the tax certificate the principal amount of the
10 tax credit and the taxable year or years for which the credit
11 may be claimed.

12 6. A certificate or tax credit issued or transferred
13 pursuant to this division shall not be considered a security
14 pursuant to chapter 502.

15 7. In determining the one hundred million dollar maximum
16 limit in subsection 1 and the twenty million dollar limitation
17 in subsection 5, the board shall use the cumulative amount of
18 scheduled aggregate returns on certificates issued by the
19 board to designated investors. However, certificates and
20 related tax credits which have expired shall not be included
21 and certificates and related tax credits which have been
22 redeemed shall be included only to the extent of tax credits
23 actually allowed.

24 Sec. 7. NEW SECTION. 15E.227 POWERS AND EFFECTIVENESS.

25 This division shall not be construed as a restriction or
26 limitation upon any power which the board might otherwise have
27 under any other law of this state and the provisions of this
28 division are cumulative to such powers. This division shall
29 be construed to provide a complete, additional, and
30 alternative method for performing the duties authorized and
31 shall be regarded as supplemental and additional powers
32 conferred by any other laws. The level, timing, or degree of
33 success of the Iowa fund of funds or the investment funds in
34 which the Iowa fund of funds invests in, or the extent to
35 which the investment funds are invested in Iowa venture

1 capital projects, or are successful in accomplishing any
2 economic development objectives, shall not compromise,
3 diminish, invalidate, or affect the provisions of any contract
4 entered into by the board or the Iowa fund of funds.

5 Sec. 8. NEW SECTION. 15E.228 PERMISSIBLE INVESTMENTS.

6 Investments by designated investors in the Iowa fund of
7 funds shall be deemed permissible investments for state-
8 chartered banks, for credit unions, and for domestic insurance
9 companies under applicable state laws.

10 Sec. 9. NEW SECTION. 15E.229 ENFORCEMENT.

11 The attorney general may enforce the provisions of this
12 division and conduct any investigations necessary for such
13 enforcement.

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HOUSE FILE 2078

S-5003

1 Amend House File 2078, as amended, passed, and
 2 reprinted by the House as follows:
 3 1. Page 8, lines 4 and 5, by striking the words
 4 "director of the department", and inserting the
 5 following: "incorporators and appointment committee".
 6 2. Page 11, lines 2 and 3, by striking the words
 7 "shall not invest more than", and inserting the
 8 following: "shall invest".
 9 3. Page 15, by inserting after line 13 the
 10 following:
 11 "Sec. 501. Section 422.8, subsection 2, paragraph
 12 b, subparagraph (2), Code 2001, is amended to read as
 13 follows:
 14 (2) Any cash or the value of property
 15 distributions which are made only to the extent that
 16 they are paid from income upon which Iowa income tax
 17 has not been paid, as determined under rules of the
 18 director, reduced by ~~fifty percent~~ of the amount of
 19 any of these distributions that are made to enable the
 20 shareholder to pay federal income tax on items of
 21 income, loss, and expenses from the corporation.
 22 Sec. 502. APPLICABILITY PROVISION. Section 501 of
 23 this Act applies retroactively to January 1, 2002, for
 24 tax years beginning on or after that date."
 25 4. Title page, line 1, by inserting after the
 26 words "An Act" the following: "relating to economic
 27 stimulus measures for businesses by".
 28 5. Title page, line 4, by inserting after the
 29 word "funds" the following: "; establishing a small
 30 business growth initiative by adjusting the allocation
 31 to Iowa of income earned by an S corporation for
 32 purposes of the state individual income tax; and
 33 including a retroactive applicability date provision".
 34 6. By renumbering as necessary.

By LARRY MCKIBBEN

S-5003 FILED JANUARY 24, 2002
 DIV A - ADOPTED; DIV B - ADOPTED
 1-24-02

HOUSE FILE 2078

S-5004

1 Amend the amendment, S-5003, to House File 2078, as
 2 amended, passed, and reprinted by the House, as
 3 follows:
 4 1. Page 1, line 8, by inserting after the word
 5 "invest" the following: "at least".

By MARK SHEARER

S-5004 FILED JANUARY 24, 2002
 LOST 1-24-02

HOUSE FILE 2078**S-5005**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, line 18, by inserting after the word
4 "plan," the following: "specify the number of jobs
5 created in Iowa as a result of the investments and the
6 range of hourly wages and benefits paid for these
7 jobs,".

By JOE BOLKCOM

S-5005 FILED JANUARY 24, 2002

LOST *1/24/02*

HOUSE FILE 2078**S-5006**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 10, lines 19 and 20, by striking the
4 words "consider equity investments" and inserting the
5 following: "invest at least thirty percent of the
6 equity investments of the fund".

By JOE BOLKCOM

S-5006 FILED JANUARY 24, 2002

LOST *1-24-02*

HOUSE FILE 2078**S-5007**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. By striking page 3, line 35, through page 4,
4 line 1, and inserting the following: "purposes."

By THOMAS FIEGEN

S-5007 FILED JANUARY 24, 2002

WITHDRAWN *1-24-02*

HOUSE FILE 2078**S-5008**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 3, line 7, by inserting after the word
4 "state" the following: "of Iowa".

By THOMAS FIEGEN

S-5008 FILED JANUARY 24, 2002

WITHDRAWN *1-24-02*

HOUSE FILE 2078**S-5009**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 5, line 18, by inserting after the word
4 "plan," the following: "a list of businesses which
5 have received moneys from venture capital funds
6 receiving moneys from the Iowa fund of funds, a list
7 of sales of businesses which have received moneys from
8 venture capital funds receiving moneys from the Iowa
9 fund of funds, a list of the total employees and the
10 average wage of employees at businesses which have
11 received moneys from venture capital funds receiving
12 moneys from the Iowa fund of funds, a list of
13 dividends paid by businesses which have received
14 moneys from venture capital funds receiving moneys
15 from the Iowa fund of funds, a list of the net profits
16 by businesses which have received moneys from venture
17 capital funds receiving moneys from the Iowa fund of
18 funds,".

By THOMAS FIEGEN

S-5009 FILED JANUARY 24, 2002
LOST 1-24-02

HOUSE FILE 2078**S-5010**

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House, as follows:
3 1. Page 10, line 22, by inserting after the words
4 "of Iowa." the following: "The Iowa fund of funds
5 shall require venture capital funds receiving
6 investments from the Iowa fund of funds to maintain a
7 portfolio with at least one-third of the value of the
8 portfolio of investments in Iowa businesses, at least
9 ten percent of the value of the portfolio of
10 investments in rural businesses, and at least ten
11 percent of the value of the portfolio of investments
12 in businesses with less than one hundred employees."

By THOMAS FIEGEN

S-5010 FILED JANUARY 24, 2002
LOST 1-24-02

SEVENTY-NINTH GENERAL ASSEMBLY
2001 REGULAR SESSION
DAILY
HOUSE CLIP SHEET
JANUARY 29, 2002

SENATE AMENDMENT TO HOUSE FILE 2078

H-8012

1 Amend House File 2078, as amended, passed, and
2 reprinted by the House as follows:
3 1. Page 8, lines 4 and 5, by striking the words
4 "director of the department", and inserting the
5 following: "incorporators and appointment committee".
6 2. Page 11, lines 2 and 3, by striking the words
7 "shall not invest more than", and inserting the
8 following: "shall invest".
9 3. Page 15, by inserting after line 13 the
10 following:
11 "Sec. 501. Section 422.8, subsection 2, paragraph
12 b, subparagraph (2), Code 2001, is amended to read as
13 follows:
14 (2) Any cash or the value of property
15 distributions which are made only to the extent that
16 they are paid from income upon which Iowa income tax
17 has not been paid, as determined under rules of the
18 director, reduced by ~~fifty percent~~ of the amount of
19 any of these distributions that are made to enable the
20 shareholder to pay federal income tax on items of
21 income, loss, and expenses from the corporation.
22 Sec. 502. APPLICABILITY PROVISION. Section 501 of
23 this Act applies retroactively to January 1, 2002, for
24 tax years beginning on or after that date."
25 4. Title page, line 1, by inserting after the
26 words "An Act" the following: "relating to economic
27 stimulus measures for businesses by".
28 5. Title page, line 4, by inserting after the
29 word "funds" the following: "; establishing a small
30 business growth initiative by adjusting the allocation
31 to Iowa of income earned by an S corporation for
32 purposes of the state individual income tax; and
33 including a retroactive applicability date provision".
34 6. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-8012 FILED JANUARY 28, 2002

Senate House Concurred 1/29/02

HOUSE FILE 2078

H-8013

1 Amend the Senate amendment, H-8012, to House File
2 2078, as amended, passed, and reprinted by the House,
3 as follows:
4 1. Page 1, by striking lines 9 through 33.
By KREIMAN of Davis

H-8013 FILED JANUARY 28, 2002

Lost 1/29/02

HOUSE FILE 2078

H-8014

1 Amend the Senate amendment, H-8012, to House File
2 2078, as amended, passed, and reprinted by the House,
3 as follows:

4 1. Page 1, by striking lines 11 through 24 and
5 inserting the following:

6 ""Sec. 401. Section 422.5, subsection 1, paragraph
7 j, subparagraph (2), unnumbered paragraph 1, Code
8 2001, is amended to read as follows:

9 The tax imposed upon the taxable income of a
10 resident shareholder in an S corporation which has in
11 effect for the tax year an election under subchapter S
12 of the Internal Revenue Code or of a resident member
13 of a limited liability company which has elected to
14 have its income taxed directly to the member and
15 carries on business within and without the state may
16 be computed by reducing the amount determined pursuant
17 to paragraphs "a" through "i" by the amounts of
18 nonrefundable credits under this division and by
19 multiplying this resulting amount by a fraction of
20 which the resident's net income allocated to Iowa, as
21 determined in section 422.8, subsection 2, paragraph
22 "b", is the numerator and the resident's total net
23 income computed under section 422.7 is the
24 denominator. If a resident shareholder or resident
25 member has elected to take advantage of this
26 subparagraph, and for the next tax year elects not to
27 take advantage of this subparagraph, the resident
28 shareholder or resident member shall not reelect to
29 take advantage of this subparagraph for the three tax
30 years immediately following the first tax year for
31 which the shareholder or member elected not to take
32 advantage of this subparagraph, unless the director
33 consents to the reelection. This subparagraph also
34 applies to individuals who are residents of Iowa for
35 less than the entire tax year.

36 Sec. 402. Section 422.5, subsection 1, paragraph
37 k, unnumbered paragraph 4, Code 2001, is amended to
38 read as follows:

39 In the case of a resident, including a resident
40 estate or trust, the state's apportioned share of the
41 state alternative minimum tax is one hundred percent
42 of the state alternative minimum tax computed in this
43 subsection. In the case of a resident or part-year
44 resident shareholder in an S corporation which has in
45 effect for the tax year an election under subchapter S
46 of the Internal Revenue Code or of a resident or part-
47 year resident member of a limited liability company
48 which has elected to have its income taxed directly to
49 the member and carries on business within and without
50 the state, a nonresident, including a nonresident

H-8014

H-8014

Page 2

1 estate or trust, or an individual, estate, or trust
2 that is domiciled in the state for less than the
3 entire tax year, the state's apportioned share of the
4 state alternative minimum tax is the amount of tax
5 computed under this subsection, reduced by the
6 applicable credits in sections 422.10 through 422.12
7 and this result multiplied by a fraction with a
8 numerator of the sum of state net income allocated to
9 Iowa as determined in section 422.8, subsection 2,
10 paragraph "a" or "b" as applicable, plus tax
11 preference items, adjustments, and losses under
12 subparagraph (1) attributable to Iowa and with a
13 denominator of the sum of total net income computed
14 under section 422.7 plus all tax preference items,
15 adjustments, and losses under subparagraph (1). In
16 computing this fraction, those items excludable under
17 subparagraph (1) shall not be used in computing the
18 tax preference items. Married taxpayers electing to
19 file separate returns or separately on a combined
20 return must allocate the minimum tax computed in this
21 subsection in the proportion that each spouse's
22 respective preference items, adjustments, and losses
23 under subparagraph (1) bear to the combined preference
24 items, adjustments, and losses under subparagraph (1)
25 of both spouses.

26 Sec. 403. Section 422.8, subsection 2, paragraph
27 b, Code 2001, is amended to read as follows:

28 b. A resident's income allocable to Iowa is the
29 income determined under section 422.7 reduced by items
30 of income and expenses from an S corporation or
31 limited liability company that carries on business
32 within and without the state when those items of
33 income and expenses pass directly to the shareholders
34 or members under provisions of the Internal Revenue
35 Code. These items of income and expenses are
36 increased by the greater of the following:

37 (1) The net income or loss of the S corporation or
38 limited liability company which is fairly and
39 equitably attributable to this state under section
40 422.33, subsections 2 and 3.

41 (2) Any cash or the value of property
42 distributions which are made only to the extent that
43 they are paid from income upon which Iowa income tax
44 has not been paid, as determined under rules of the
45 director, reduced by ~~fifty percent~~ of the amount of
46 any of these distributions that are made to enable the
47 shareholder or member to pay federal income tax on
48 items of income, loss, and expenses from the S
49 corporation or limited liability company.

50 Sec. 404. Section 422.8, subsection 6, Code 2001,

H-8014

H-8014

Page 3

1 is amended to read as follows:
 2 6. If the resident or part-year resident is a
 3 shareholder of an S corporation which has in effect an
 4 election under subchapter S of the Internal Revenue
 5 Code or is a member of a limited liability company
 6 which has elected to have its income taxed directly to
 7 its members, subsections 1 and 3 do not apply to any
 8 income taxes paid to another state or foreign country
 9 on the income from the S corporation which has in
 10 effect an election under subchapter S of the Internal
 11 Revenue Code or from the limited liability company
 12 which has elected to have its income taxed directly to
 13 its members.

14 Sec. 405. APPLICABILITY PROVISION. Sections 401
 15 through 404 of this Act apply retroactively to January
 16 1, 2002, for tax years beginning on or after that
 17 date.""

18 2. Page 1, line 31, by inserting after the word
 19 "by" the following: "a limited liability company or".

By GRUNDBERG of Polk

H-8014 FILED JANUARY 28, 2002

*W/D
1/29/02*

HOUSE FILE 2078

H-8016

1 Amend the Senate amendment, H-8012, to House File
 2 2078, as amended, passed, and reprinted by the House,
 3 as follows:

4 1. Page 1, line 23, by striking the words and
 5 figures "applies retroactively to January 1, 2002" and
 6 inserting the following: "takes effect January 1,
 7 2003".

8 2. Page 1, line 33, by striking the words "a
 9 retroactive" and inserting the following: "an".

By RICHARDSON of Warren

H-8016 FILED JANUARY 28, 2002

*Lost
1/29/02*

Legislative Fiscal Bureau

Fiscal Note

Iowa Capital Formation Act, Venture Capital (LSB 5216 8012)

Analyst: Jeff Robinson (Phone: (515) 281-6767) (Jeff.Robinson@legis.state.ia.us)

Fiscal Note Version – Amendment Only

Description

Amendment H-8012 to HF 2078 is the Senate amendment to the Venture Capital Contingent Tax Credit Bill passed by the House on January 24, 2002. The amendment allows taxpayers who elect to allocate income from S-corporations between Iowa and other states to deduct 100.0% of federal income taxes paid in determining the share of the S-corporation income that is subject to Iowa income tax. Currently, only 50.0% of federal income taxes paid may be deducted in determining the amount of S-corporation income that is subject to Iowa income tax. The Bill applies retroactively to January 1, 2002.

Background

The Department of Revenue and Finance conducted a study of tax year 1998 returns to estimate the amount of deduction taken for federal taxes paid on S-corporation income. The analysis was based on a sample of returns claiming "Other Iowa Credits" on line 54 of the 1998 Iowa Individual Income Tax Long Form IA 1040. Based on the sample, \$8.6 million of S-corporation apportionment credits were estimated to have been claimed. To obtain an estimate of the impact of increasing the deduction for federal income taxes from 50.0% to 100.0%, the amount of the credit was reestimated for the 1,121 returns in the sample. With the change in the deduction, the reestimated credit amount increased to \$9.4 million.

Fiscal Impact

Amendment H-8012 to House File 2078 will result in a decrease in General Fund revenues equal to \$0.9 million in FY 2003 and \$0.8 million in FY 2004.

Assumptions

1. Tax year 1998 was a typical year relative to the number of taxpayers reporting income from S-corporations and electing to apportion income between Iowa and other states.
2. The share of other credits claimed accounted for by the S-corporation apportionment credit remains relatively constant from year-to-year at approximately 60.0%.
3. The distribution of S-corporation apportionment credits by amount of the claim and adjusted gross income bracket of the taxpayers remains relatively constant from year-to-year.
4. For tax year 2002, all of the deduction change impact will be realized on the tax return filed in FY 2003.
5. For tax year 2003, 12.5% of the impact will be realized in estimate payments made in FY 2003, 37.5% will be realized in estimate payments made in FY 2004, and 50.0% will be realized on final returns filed in FY 2004.

Source

Iowa Department of Revenue and Finance

_____/s/ Dennis C Prouty_____

January 28, 2002

HOUSE FILE 2078

AN ACT
RELATING TO ECONOMIC STIMULUS MEASURES FOR BUSINESSES BY
CREATING AN IOWA CAPITAL INVESTMENT BOARD, AUTHORIZING THE
ORGANIZATION OF AN IOWA CAPITAL INVESTMENT CORPORATION AND
AN IOWA FUND OF FUNDS, AND AUTHORIZING THE ISSUANCE OF
CONTINGENT TAX CREDITS TO INVESTORS IN THE IOWA FUND OF FUNDS;
ESTABLISHING A SMALL BUSINESS GROWTH INITIATIVE BY ADJUSTING
THE ALLOCATION TO IOWA OF INCOME EARNED BY AN S CORPORATION
FOR PURPOSES OF THE STATE INDIVIDUAL INCOME TAX; AND INCLUDING
A RETROACTIVE APPLICABILITY DATE PROVISION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 15E.221 FINDINGS -- PURPOSE.

The general assembly finds the following: Fundamental changes have occurred in national and international financial markets and in the financial markets of this state. A critical shortage of seed and venture capital resources exists in the state, and such shortage is impairing the growth of commerce in the state. A need exists to increase the availability of venture equity capital for emerging, expanding, and restructuring enterprises in Iowa, including, without limitation, enterprises in the life sciences, advanced manufacturing, information technology, and value-added agriculture areas. Such investments will create jobs for Iowans and will help to diversify the state's economic base.

This division is enacted to fulfill the following purposes:

1. To mobilize private investment in a broad variety of venture capital partnerships in diversified industries and locales.
2. To retain the private-sector culture of focusing on rate of return in the investing process.

3. To secure the services of the best managers in the venture capital industry, regardless of location.
 4. To facilitate the organization of the Iowa fund of funds in which to seek such private investment and to create interest in such investments by offering state incentives for private persons to make investments in the Iowa fund of funds.
 5. To enhance the venture capital culture and infrastructure in the state of Iowa so as to increase venture capital investment within the state and to promote venture capital investing within Iowa.
 6. To accomplish these purposes in such a manner as to minimize any appropriations by the state of Iowa.
 7. To effectuate specific, measurable results, including all of the following:
 - a. The creation of three new venture capital fund offices in Iowa within three years of the effective date of this Act.
 - b. The investment of resources from the Iowa fund of funds in Iowa businesses within three years of the effective date of this Act.
 - c. A cumulative rate of return on venture investments of the Iowa fund of funds equal to a minimum of one and one-half percentage points above the ten-year treasury bill rate in effect at the end of five years following the effective date of this Act.
- Sec. 2. NEW SECTION. 15E.222 DEFINITIONS.
- As used in this division, unless the context otherwise requires:
1. "Board" means the Iowa capital investment board created in section 15E.223.
 2. "Certificate" means a contract between the board and a designated investor pursuant to which a tax credit is available and issued to the designated investor.
 3. "Designated investor" means a person, other than the Iowa capital investment corporation, who purchases an equity interest in the Iowa fund of funds or a transferee of a certificate or tax credit.

4. "Iowa capital investment corporation" means a private, nonprofit corporation created pursuant to section 15E.224.

5. "Iowa fund of funds" means a private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation pursuant to section 15E.225 in which a designated investor purchases an equity interest.

6. "Tax credit" means a contingent tax credit issued pursuant to section 15E.226 that is available against tax liabilities imposed by chapter 422, divisions II, III, and V, and by chapter 432 and against the moneys and credits tax imposed by section 533.24.

Sec. 3. NEW SECTION. 15E.223 IOWA CAPITAL INVESTMENT BOARD.

1. The Iowa capital investment board is created as a state governmental board and the exercise by the board of powers conferred by this division shall be deemed and held to be the performance of essential public purposes. The purpose of the board shall be to mobilize venture equity capital for investment in such a manner that will result in a significant potential to create jobs and to diversify and stabilize the economy of the state.

2. The board shall consist of five voting members and two nonvoting advisory members. The five voting members shall be appointed by the governor and confirmed by the senate pursuant to section 2.32. The five voting members shall be appointed to five-year staggered terms that shall be structured to allow the term of one member to expire each year. One nonvoting member shall be appointed by the majority leader of the senate after consultation with the president of the senate and the minority leader of the senate. One nonvoting member shall be appointed by the speaker of the house of representatives after consultation with the majority and minority leaders of the house of representatives. The nonvoting members shall be appointed for two-year terms which shall expire upon the

convening of a new general assembly. Vacancies shall be filled in the same manner as the appointment of the original members. Members shall be compensated by the board for direct expenses and mileage but members shall not receive a director's fee, per diem, or salary for service on the board. Members shall be selected based upon demonstrated expertise and competence in the supervision of investment managers, in the fiduciary management of investment funds, or in the management and administration of tax credit allocation programs. Members shall not have an interest in any person to whom a tax credit is allocated and issued by the board.

3. The board shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, provided, however, that the board shall not hire employees.

4. Members of the board shall be indemnified against loss to the broadest extent permissible under chapter 669.

5. Meetings of the board shall, except to the extent necessary to protect confidential information with respect to investments in the Iowa fund of funds, be subject to chapter 21.

6. The board shall, in cooperation with the department of revenue and finance, establish criteria and procedures for the allocation and issuance of tax credits to designated investors by means of certificates issued by the board. The criteria shall include the contingencies that must be met for a certificate to be redeemable by a designated investor or transferee in order to receive a tax credit. The contingencies to redemption shall be tied to the scheduled rates of return and scheduled redemptions of equity interests purchased by designated investors in the Iowa fund of funds. The procedures established by the board, in cooperation with the department of revenue and finance, shall relate to the procedures for the issuance of the certificates and the

related tax credits, for the transfer of a certificate and related tax credit by a designated investor, and for the redemption of a certificate and related tax credit by a designated investor or transferee. The board shall also establish criteria and procedures for assessing the likelihood of future certificate redemptions by designated investors and transferees, including, without limitation, criteria and procedures for evaluating the value of investments made by the Iowa fund of funds and the returns from the Iowa fund of funds.

7. Pursuant to section 15E.226, the board shall issue certificates which may be redeemable for tax credits to provide incentives to designated investors to make equity investments in the Iowa fund of funds. The board shall issue the certificates so that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

8. The board may charge a placement fee to the Iowa fund of funds with respect to the issuance of a certificate and related tax credit to a designated investor, but the fee shall be charged only to pay for reasonable and necessary costs of the board and shall not exceed one-half of one percent of the equity investment of the designated investor.

9. The board shall, in consultation with the Iowa capital investment corporation, publish an annual report of the activities conducted by the Iowa fund of funds, and present the report to the governor and the general assembly. The annual report shall include a copy of the audit of the Iowa fund of funds and a valuation of the assets of the Iowa fund of funds, review the progress of the investment fund allocation manager in implementing its investment plan, and describe any redemption or transfer of a certificate issued pursuant to this division, provided, however, that the annual

report shall not identify any specific designated investor who has redeemed or transferred a certificate. Every five years, the board shall publish a progress report which shall evaluate the progress of the state of Iowa in accomplishing the purposes stated in section 15E.221.

10. The board shall redeem a certificate submitted to the board by a designated investor and shall calculate the amount of the allowable tax credit based upon the investment returns received by the designated investor and its predecessors in interest and the provisions of the certificate. Upon submission of a certificate for redemption, the board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which may be claimed by the designated investor with respect to the redemption of the certificate.

11. The board shall adopt rules pursuant to chapter 17A necessary to administer the duties of the board.

Sec. 4. NEW SECTION. 15E.224 IOWA CAPITAL INVESTMENT CORPORATION.

1. An Iowa capital investment corporation may be organized as a private, not-for-profit corporation under chapter 504A. The Iowa capital investment corporation is not a public corporation or instrumentality of the state and shall not enjoy any of the privileges and shall not be required to comply with the requirements of a state agency. Except as otherwise provided in this division, this division does not exempt the corporation from the requirements under state law which apply to other corporations organized under chapter 504A. The purposes of an Iowa capital investment corporation shall be to organize the Iowa fund of funds, to select a venture capital investment fund allocation manager to select venture capital fund investments by the Iowa fund of funds, to negotiate the terms of a contract with the venture capital investment fund allocation manager, to execute the contract with the selected venture capital investment fund manager on

behalf of the Iowa fund of funds, to receive investment returns from the Iowa fund of funds, and to reinvest the investment returns in additional venture capital investments designed to result in a significant potential to create jobs and to diversify and stabilize the economy of the state. The corporation shall not exercise governmental functions and shall not have members. The obligations of the corporation are not obligations of this state or any political subdivision of this state within the meaning of any constitutional or statutory debt limitations, but are obligations of the corporation payable solely and only from the corporation's funds. The corporation shall not and cannot pledge the credit or taxing power of this state or any political subdivision of this state or make its debts payable out of any moneys except those of the corporation.

2. To facilitate the organization of an Iowa capital investment corporation, both of the following persons shall serve as incorporators as provided in section 504A.28:

a. The chairperson of the Iowa economic development board or a designee of the chairperson.

b. The director of the department of economic development or a designee of the director.

3. After incorporation, the initial board of directors shall be elected by the members of an appointment committee. The members of the appointment committee shall be appointed by the Iowa economic development board. The initial board of directors shall consist of five members. The persons elected to the initial board of directors by the appointment committee shall include persons who have an expertise in the areas of the selection and supervision of investment managers or in the fiduciary management of investment funds, and other areas of expertise as deemed appropriate by the appointment committee. After the election of the initial board of directors, vacancies in the board of directors of the corporation shall be elected by the remaining directors of the corporation.

Members of the board of directors shall be subject to any restrictions on conflicts of interest specified in the organizational documents and shall have no interest in any venture capital investment fund allocation manager selected by the corporation pursuant to the provisions of this division or in any investments made by the Iowa fund of funds.

4. The members of the appointment committee shall exercise due care to assure that persons elected to the initial board of directors have the requisite financial experience necessary in order to carry out the duties of the corporation as established in this division, including in areas related to venture capital investment, investment management, and supervision of investment managers and investment funds.

5. Upon the election of the initial board of directors, the terms of the members of the appointment committee shall expire.

6. The department of economic development shall assist the incorporators and the appointment committee in any manner determined necessary and appropriate by the incorporators and appointment committee in order to administer this section.

7. After incorporation, the Iowa capital investment corporation shall conduct a national solicitation for investment plan proposals from qualified venture capital investment fund allocation managers for the raising and investing of capital by the Iowa fund of funds in accordance with the requirements of this division. Any proposed investment plan shall address the applicant's level of experience, quality of management, investment philosophy and process, probability of success in fund-raising, prior investment fund results, and plan for achieving the purposes of this division. The selected venture capital investment fund allocation manager shall be a person with substantial, successful experience in the design, implementation, and management of seed and venture capital investment programs and in capital formation. The corporation shall only select a

venture capital investment fund allocation manager with demonstrated expertise in the management and fund allocation of investments in venture capital funds. The corporation shall select the venture capital investment fund allocation manager deemed best qualified to generate the amount of capital required by this division and to invest the capital of the Iowa fund of funds.

8. The Iowa capital investment corporation may charge a management fee on assets under management in the Iowa fund of funds. The fee shall be in addition to any fee charged to the Iowa fund of funds by the venture capital investment fund allocation manager selected by the corporation, but the fee shall be charged only to pay for reasonable and necessary costs of the Iowa capital investment corporation and shall not exceed one-half of one percent per year of the value of assets under management.

9. Directors of the Iowa capital investment corporation shall be compensated for direct expenses and mileage but shall not receive a director's fee or salary for service as directors.

10. The Iowa capital investment corporation shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose. However, the corporation shall not hire staff as employees except to administer the rural and small business loan guarantee program of the Iowa fund of funds.

11. Upon the dissolution of the Iowa fund of funds, the Iowa capital investment corporation shall be liquidated and dissolved, and any assets owned by the corporation shall be distributed to the state of Iowa and deposited in the general fund.

Sec. 5. NEW SECTION. 15E.225 IOWA FUND OF FUNDS.

1. The Iowa capital investment corporation shall organize the Iowa fund of funds. The Iowa fund of funds shall be

authorized to make investments in private seed and venture capital partnerships or entities in a manner which will encourage the availability of a wide variety of venture capital in the state, strengthen the economy of the state, help business in Iowa gain access to sources of capital, help build a significant, permanent source of capital available to serve the needs of Iowa businesses, and accomplish all these benefits in a way that minimizes the use of tax credits.

2. The Iowa capital investment corporation shall organize the Iowa fund of funds in the following manner:

a. The Iowa fund of funds shall be organized as a private, for-profit, limited partnership or limited liability company under Iowa law pursuant to which the Iowa capital investment corporation shall be the general partner or manager. The entity shall be organized so as to provide for equity interests for designated investors which provide for a designated scheduled rate of return and a scheduled redemption which shall occur not less than five years following the issuance of such equity interests. The interest of the Iowa capital investment corporation in the Iowa fund of funds shall be to serve as general partner or manager and to be paid a management fee for the service as provided in section 15E.224, subsection 8, and to receive investment returns of the Iowa fund of funds in excess of those payable to designated investors. Any returns in excess of those payable to designated investors shall be reinvested by the Iowa capital investment corporation by being held in the Iowa fund of funds as a revolving fund for reinvestment in venture capital funds or investments until the termination of the Iowa fund of funds. Any returns received from these reinvestments shall be deposited in the revolving fund.

b. The Iowa fund of funds shall principally make investments in high-quality venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of

Iowa and which have committed to maintain a physical presence within the state of Iowa. The investments by the Iowa fund of funds shall be focused principally on partnership interests in private venture capital funds and not in direct investments in individual businesses. The Iowa fund of funds shall invest in venture capital funds with experienced managers or management teams with demonstrated expertise and a successful history in the investment of venture capital funds. The Iowa fund of funds may invest in newly created venture capital funds as long as the managers or management teams of the funds have the experience, expertise, and a successful history in the investment of venture capital funds described in this paragraph.

c. The Iowa fund of funds shall establish and administer a program to provide loan guarantees and other related credit enhancements on loans to rural and small business borrowers within the state of Iowa. The Iowa fund of funds shall invest five percent of its assets in investments for this program.

d. The Iowa fund of funds shall have the power to engage consultants, expend funds, invest funds, contract, bond or insure against loss, or perform any other act necessary to carry out its purpose, including, without limitation, engaging and agreeing to compensate a venture capital investment fund allocation manager. Such compensation shall be in addition to the management fee paid to the Iowa capital investment corporation. However, the Iowa fund of funds shall not hire employees except to administer its rural and small business loan guarantee and credit enhancement program.

e. The Iowa fund of funds may issue debt and borrow such funds as may be needed to accomplish its goals. However, such debt shall not be secured by tax credits issued by the board. The Iowa fund of funds may open and manage bank and short-term investment accounts as deemed necessary by the venture capital investment fund allocation manager.

f. The Iowa fund of funds may expend moneys to secure investment ratings for investments by designated investors in the Iowa fund of funds.

g. Each calendar year, the auditor of state shall conduct an annual audit of the activities of the Iowa fund of funds or shall engage an independent auditor to conduct the audit provided that the independent auditor has no business, contractual, or other connection to the Iowa capital investment corporation or the Iowa fund of funds. The corporation shall reimburse the auditor of state for costs associated with the annual audit. The audit shall be delivered to the Iowa capital investment corporation and the board each year and shall include a valuation of the assets owned by the Iowa fund of funds as of the end of each year.

h. Fifty years after the organization of the Iowa fund of funds, the Iowa capital investment corporation shall cause the Iowa fund of funds to be liquidated with all of its assets distributed to its owners in accordance with the provisions of its organizational documents.

i. Upon the liquidation of the Iowa fund of funds, the Iowa capital investment corporation shall file a report with the general assembly stating how many jobs in this state were created through investments made by the Iowa fund of funds.

Sec. 6. NEW SECTION. 15E.226 CERTIFICATES AND TAX CREDITS.

1. The board may issue certificates and related tax credits to designated investors which, if redeemed for the maximum possible amount, shall not exceed a total aggregate of one hundred million dollars of tax credits. The certificates shall be issued contemporaneously with an investment in the Iowa fund of funds by a designated investor. A certificate issued by the board shall have a specific calendar year maturity date designated by the board of not less than five years after the date of issuance and shall be redeemable on a schedule similar to the scheduled redemption of investments by

designated investors. A certificate and the related tax credit shall be transferable by the designated investor. A tax credit shall not be claimed or redeemed except by a designated investor or transferee in accordance with the terms of a certificate from the board. A tax credit shall be claimed for a tax year that begins during the calendar year maturity date stated on the certificate. An individual may claim the credit of a partnership, limited liability company, S corporation, estate, or trust electing to have the income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust. Any tax credit in excess of the taxpayer's tax liability for the tax year may be credited to the tax liability for the following seven years, or until depleted, whichever is earlier.

2. The board shall certify the maximum amount of a tax credit which could be issued to a designated investor and identify the specific calendar year the certificate may be redeemed pursuant to this division. The amount of the tax credit shall be limited to an amount equivalent to any difference between the scheduled aggregate return to the designated investor at rates of return authorized by the board and aggregate actual return received by the designated investor and any predecessor in interest of capital and interest on the capital. The rates, whether fixed rates or variable rates, shall be determined pursuant to a formula stipulated in the certificate. The board shall clearly indicate on the certificate the schedule, the amount of equity investment, the calculation formula for determining the scheduled aggregate return on invested capital, and the calculation formula for determining the amount of the tax credit that may be claimed. Once moneys are invested by a designated investor, the certificate shall be binding on the board and the department of revenue and finance and shall not be modified, terminated, or rescinded.

3. If a designated investor elects to redeem a certificate, the certificate shall be redeemed on June 30 of the calendar year maturity date stated on the certificate. At the time of redemption, the board shall determine the amount of the tax credit that may be claimed by the designated investor based upon the returns received by the designated investor and its predecessors in interest and the provisions of the certificate. The board shall issue a verification to the department of revenue and finance setting forth the maximum tax credit which can be claimed by the designated investor with respect to the redemption of the certificate.

4. The board shall, in conjunction with the department of revenue and finance, develop a system for registration of any certificate and related tax credit issued or transferred pursuant to this section and a system that permits verification that any tax credit claimed upon a tax return is valid and that any transfers of the certificate and related tax credit are made in accordance with the requirements of this division.

5. The board shall issue the tax credits in such a manner that not more than twenty million dollars of tax credits may be initially redeemable in any fiscal year. The board shall indicate on the tax certificate the principal amount of the tax credit and the taxable year or years for which the credit may be claimed.

6. A certificate or tax credit issued or transferred pursuant to this division shall not be considered a security pursuant to chapter 502.

7. In determining the one hundred million dollar maximum limit in subsection 1 and the twenty million dollar limitation in subsection 5, the board shall use the cumulative amount of scheduled aggregate returns on certificates issued by the board to designated investors. However, certificates and related tax credits which have expired shall not be included and certificates and related tax credits which have been

redeemed shall be included only to the extent of tax credits actually allowed.

Sec. 7. NEW SECTION. 15E.227 POWERS AND EFFECTIVENESS.

This division shall not be construed as a restriction or limitation upon any power which the board might otherwise have under any other law of this state and the provisions of this division are cumulative to such powers. This division shall be construed to provide a complete, additional, and alternative method for performing the duties authorized and shall be regarded as supplemental and additional powers conferred by any other laws. The level, timing, or degree of success of the Iowa fund of funds or the investment funds in which the Iowa fund of funds invests in, or the extent to which the investment funds are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objectives, shall not compromise, diminish, invalidate, or affect the provisions of any contract entered into by the board or the Iowa fund of funds.

Sec. 8. NEW SECTION. 15E.228 PERMISSIBLE INVESTMENTS.

Investments by designated investors in the Iowa fund of funds shall be deemed permissible investments for state-chartered banks, for credit unions, and for domestic insurance companies under applicable state laws.

Sec. 9. NEW SECTION. 15E.229 ENFORCEMENT.

The attorney general may enforce the provisions of this division and conduct any investigations necessary for such enforcement.

Sec. 10. Section 422.8, subsection 2, paragraph b, subparagraph (2), Code 2001, is amended to read as follows:

(2) Any cash or the value of property distributions which are made only to the extent that they are paid from income upon which Iowa income tax has not been paid, as determined under rules of the director, reduced by ~~fifty-percent-of~~ the amount of any of these distributions that are made to enable the shareholder to pay federal income tax on items of income, loss, and expenses from the corporation.

Sec. 11. APPLICABILITY PROVISION. Section 10 of this Act applies retroactively to January 1, 2002, for tax years beginning on or after that date.

BRENT SIEGRIST
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2078, Seventy-ninth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

Approved Feb. 28th, 2002

THOMAS J. VILSACK
Governor