

ASSEMBLY BILL

No. 482

Introduced by Assembly Member Davis

February 18, 1999

An act to add Chapter 3 (commencing with Section 14100) to Part 5 of Division 3 of Title 1 of the Corporations Code, and to add Sections 12207, 17059, and 23626 to the Revenue and Taxation Code, relating to business development.

LEGISLATIVE COUNSEL'S DIGEST

AB 482, as introduced, Davis. Business investments.

Existing law provides for various programs to provide financial assistance to small businesses and other enterprises. Among other things, existing law provides for the establishment of small business financial development corporations to provide financial assistance to small businesses. In general, those corporations are authorized to provide loans and loan guarantees.

This bill would enact the California Seed Capital and Early Stage Corporation Act. The bill would create the California Seed Capital and Early Stage Corporation, which would be independent of other state agencies, and which would be governed by a board of directors consisting of 7 members appointed by the Governor and Legislature, as specified. The board would appoint a chairperson and a director.

This bill would provide that the purpose of the corporation is to provide financial and other assistance to new and early stage enterprises in the state economy.

The bill would establish the California Seed Capital and Early Stage Corporation Fund.

The bill would express intent that the corporation become self-supporting by July 1, 2006.

The bill would authorize the corporation to certify an investment fund for the raising and investment of capital, as specified. Investors in the investment fund would be authorized to claim tax credits against their insurer gross premium, personal income, or bank and corporation tax liability to the extent that their investment in the investment fund fails to meet a scheduled rate of return, with the total amount of tax credits available not to exceed \$100,000,000.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3 (commencing with Section
2 14100) is added to Part 5 of Division 3 of Title 1 of the
3 Corporations Code, to read:

4

5 CHAPTER 3. CALIFORNIA SEED CAPITAL AND EARLY
6 STAGE CORPORATION

7

8 14100. This chapter shall be known and may be cited
9 as the California Seed Capital and Early Stage
10 Corporation Act.

11 14101. For purposes of this chapter, the following
12 words and terms shall have the following meanings unless
13 the context clearly indicates or requires another or
14 different meaning or intent:

15 (a) "Act" means the California Seed Capital and Early
16 Stage Corporation Act.

17 (b) "Fund" means the California Seed Capital and
18 Early Stage Corporation Fund.

19 (c) "Corporation" means the California Seed Capital
20 and Early Stage Corporation.

21 (d) "Board" means the board of directors of the
22 California Seed Capital and Early Stage Corporation
23 Fund.



1 (e) "Investor" means any individual, corporation,
2 partnership, or other lawfully organized entity.

3 (f) "Investment fund" means the fund designated and
4 certified by the corporation pursuant to Section 14113
5 and its investors.

6 (g) "Certificate" means the contract between the
7 corporation and the investment fund.

8 (h) "Tax credits" means tax credits available pursuant
9 to Sections 12207, 17059, or 23626 of the Revenue and
10 Taxation Code.

11 14102. (a) There is hereby established the California
12 Seed Capital and Early Stage Corporation.

13 (b) The California Seed Capital and Early Stage
14 Corporation is a corporation, and shall be independent of
15 any state agency.

16 14103. It shall be the purpose of the corporation to
17 mobilize private financial and other assistance to new and
18 early stage enterprises in the state economy.

19 14104. (a) The corporation shall be governed by a
20 seven-member board of directors.

21 (b) Five members of the board shall be appointed by
22 the Governor, one member by the Speaker of the
23 Assembly, and one member by the Senate Committee on
24 Rules.

25 (c) Members shall be representative of the private
26 sector and shall have prior investment experience.

27 (d) The members shall serve for four-year terms,
28 expiring on July 1, except that, to provide for staggered
29 terms, three members appointed by the Governor shall
30 have an initial term expiring on July 1, 2001, two members
31 appointed by the Governor shall have an initial term
32 expiring on July 1, 2004, the initial member appointed by
33 the Speaker of the Assembly shall have a term expiring on
34 July 1, 2003, and the initial member appointed by the
35 Senate Committee on Rules shall have a term expiring on
36 July 1, 2002.

37 14105. Members of the board shall serve without
38 compensation.

39 14106. (a) The members of the board and the
40 director shall be subject to the same restrictions as are



1 applicable to the officers and directors of a state agency,
2 including, but not limited to, the Political Reform Act of
3 1974 (Title 9 (commencing with Section 81000) of the
4 Government Code) and shall adopt a conflict-of-interest
5 code.

6 (b) Meetings of the board shall be public as provided
7 by the Bagley-Keene Open Meeting Act, but any meeting
8 in which business features of entities dealing with the
9 corporation may be disclosed shall not be required to be
10 open.

11 (c) The board may purchase insurance for its
12 fiduciaries or for itself to cover liability or losses occurring
13 by reason of the act or omission of a fiduciary, if the
14 insurance permits recourse by the insurer against the
15 fiduciary in the case of a breach of fiduciary obligation by
16 the fiduciary.

17 14107. (a) The board may contract with one or more
18 private entities to manage the affairs of the corporation,
19 including the management of the fund.

20 (b) The board shall select a chairperson from among
21 the members of the board.

22 14108. (a) The board shall select a director who shall
23 serve at the pleasure of, and under the direction of, the
24 board.

25 (b) The director shall manage and conduct the
26 business and affairs of the corporation subject to the
27 direction of the board.

28 (c) In administering and directing the operations of
29 the corporation, the director, or his or her designee, may
30 do any of the following if authorized by resolution of the
31 board:

32 (1) Enter into contracts for management, investment,
33 guarantee, or enhancement.

34 (2) Establish procedures, guidelines, criteria, terms,
35 conditions, or other requirements of any contract, bond,
36 grant, or program, as the case may be, in order to carry
37 out the intents and purposes of the board in authorizing
38 any bond, loan, or grant program pursuant to this division.



1 (3) Decline to guarantee any risk, or to enter into any
2 contract, in which the minimum requirements of the
3 corporation are not complied with.

4 (4) Reinsure any risk or any part of any risk.

5 (5) Make rules for payments and settlements of claims.

6 (6) Enter into any contracts or obligations relating to
7 the corporation.

8 (7) Invest and reinvest the moneys belonging to the
9 corporation.

10 (8) Enter into any contract or agreement, execute any
11 instrument, conduct all business and affairs, and perform
12 all acts relating to the corporation whether or not
13 specifically designated in this division.

14 14109. There is hereby established the California Seed
15 Capital and Early Stage Corporation Fund.

16 14110. All money received by the corporation,
17 including money appropriated to the corporation and
18 funds received from transaction fees and guarantee fees
19 shall be deposited into the fund. Money in the fund shall
20 be used exclusively for the purposes of this chapter.

21 14111. It is the intent of the Legislature that the
22 corporation shall be self-supporting from program
23 income by July 1, 2006.

24 14112. (a) The corporation shall mobilize
25 investment in private seed and venture capital
26 partnerships or entities pursuant to a general investment
27 policy prescribed by the corporation and implemented
28 through a single designated for-profit investment fund.

29 (b) The corporation shall certify an investment fund
30 for the raising and investment of capital in accordance
31 with the requirements of this chapter. In making the
32 certification, the corporation shall consider the
33 investment fund's quality of management, investment
34 philosophy and process, probability of success in fund
35 raising, and plan for achieving the purposes of this
36 chapter in a way that minimizes the use of tax credits. The
37 manager of the investment fund shall be a person with
38 demonstrated substantial successful experience in the
39 design, implementation, and management of
40 state-sponsored seed and venture capital investment



1 programs and in capital formation. The investment fund,
2 upon certification by the corporation, shall be authorized
3 to exercise all the rights provided in this chapter.

4 14113. (a) An investor in the investment fund may
5 claim a tax credit against the investor's tax liability
6 pursuant to Section 12207, 17059, or 23626 of the Revenue
7 and Taxation Code, consistent with the requirements of
8 this chapter. The tax credit allowed may be assigned to
9 affiliated corporations pursuant to subdivision (e) of
10 Section 23626 of the Revenue and Taxation Code;
11 however, no tax credit may be claimed before January 1,
12 2000, nor after December 31, 2025. Tax credits may not be
13 claimed except in accordance with a certificate from the
14 corporation.

15 (b) The corporation shall certify the amount of tax
16 credits to be allowed to investors in the investment fund
17 and the years those tax credits may first be claimed
18 pursuant to this chapter. The amount of tax credits shall
19 be sufficient to support the raising and investing of one
20 hundred million dollars (\$100,000,000) of investment
21 capital by the investment fund. The amount of tax credits
22 certified for use by the investment fund shall be limited
23 to an amount sufficient only to offset any shortfalls that
24 occur in the scheduled returns to investors of invested
25 capital and returns on invested capital at rates of return
26 authorized by the corporation. Those rates, whether fixed
27 rates or variable rates, shall be determined pursuant to a
28 formula stipulated in the certificate. The corporation
29 shall clearly indicate within the certificate the schedules
30 and formulas by which any shortfalls that occur in returns
31 of invested capital may be calculated, and thereby, the
32 amount of tax credits that may be claimed. The certificate
33 shall be binding on the Franchise Tax Board.

34 14114. The corporation shall biennially report to the
35 Legislature commencing January 1, 2003, on its
36 performance. The items to be included in this report shall
37 be determined by the board but shall minimally include
38 annual measures of return on investment, the number of
39 companies assisted by the corporation, and the number
40 of jobs created by companies assisted by the corporation,



1 broken down by Standard Industrial Classification Code.
2 Additional quantifiable benchmarks and performance
3 criteria shall be developed by the director upon
4 consultation with the board.

5 14115. Nothing in this chapter shall be construed as a
6 restriction or limitation upon the powers of the
7 corporation as may be granted by any other law. The
8 provisions of this chapter are intended to provide
9 additional and alternative methods for accomplishing the
10 authorized activities of the corporation.

11 SEC. 2. Section 12207 is added to the Revenue and
12 Taxation Code, to read:

13 12207. There shall be allowed as a credit against the
14 “tax” (as defined by Section 12201) a credit in an amount
15 prescribed in a certificate issued by the California Seed
16 Capital and Early Stage Corporation pursuant to Chapter
17 3 (commencing with Section 14100) of Part 5 of Division
18 3 of Title 1 of the Corporations Code.

19 SEC. 3. Section 17059 is added to the Revenue and
20 Taxation Code, to read:

21 17059. (a) For each taxable year beginning on or
22 after January 1, 2000, and before January 1, 2026, there
23 shall be allowed as a credit against the “net tax” (as
24 defined by Section 17039) a credit in an amount
25 prescribed in a certificate issued by the California Seed
26 Capital and Early Stage Corporation pursuant to Chapter
27 3 (commencing with Section 14100) of Part 5 of Division
28 3 of Title 1 of the Corporations Code.

29 (b) The California Seed Capital and Early Stage
30 Corporation shall do all of the following:

31 (1) Certify the amount of tax credit allowed to each
32 taxpayer pursuant to Section 14113 of the Corporations
33 Code and the taxable year the credit may first be claimed
34 by the taxpayer.

35 (2) Obtain the taxpayer’s taxpayer identification
36 number, or each partner’s taxpayer identification
37 number in the case of a partnership, for tax
38 administration purposes.

39 (3) Provide an annual listing to the Franchise Tax
40 Board, in the form and manner agreed upon by the



1 Franchise Tax Board and the California Seed Capital and
2 Early Stage Corporation, containing the names, taxpayer
3 identification numbers pursuant to paragraph (2), and
4 total amount of credit certified to each taxpayer.

5 (c) The taxpayer shall do all of the following:

6 (1) Retain a copy of the certification issued by the
7 California Seed Capital and Early Stage Corporation as
8 specified in paragraph (1) of subdivision (b).

9 (2) Provide the certification specified in paragraph
10 (1) of subdivision (b) to the Franchise Tax Board upon
11 request.

12 (3) Provide the California Seed Capital and Early
13 Stage Corporation with the taxpayer's identification
14 number, or in the case of a partnership, the taxpayer
15 identification numbers of all partners.

16 (d) For purposes of this section only, "taxpayer"
17 means an investor, as defined by subdivision (e) of
18 Section 14101 of the Corporations Code.

19 (e) This section shall remain in effect only until
20 December 1, 2026, and as of that date is repealed.

21 SEC. 4. Section 23626 is added to the Revenue and
22 Taxation Code, to read:

23 23626. (a) For each income year beginning on or
24 after January 1, 2000, and before January 1, 2026, there
25 shall be allowed as a credit against the "tax" (as defined
26 by Section 23036) a credit in an amount prescribed in a
27 certificate issued by the California Seed Capital and Early
28 Stage Corporation pursuant to Chapter 3 (commencing
29 with Section 14100) of Part 5 of Division 3 of Title 1 of the
30 Corporations Code.

31 (b) The California Seed Capital and Early Stage
32 Corporation shall do all of the following:

33 (1) Certify the amount of tax credit allowed to each
34 taxpayer pursuant to Section 14113 of the Corporations
35 Code and the income year the credit may first be claimed
36 by the taxpayer.

37 (2) Obtain the taxpayer's taxpayer identification
38 number, or each shareholder's taxpayer identification
39 number in the case of a subchapter S corporation, for tax
40 administration purposes.



1 (3) Provide an annual listing to the Franchise Tax
2 Board, in the form and manner agreed upon by the
3 Franchise Tax Board and the California Seed Capital and
4 Early Stage Corporation, containing the names, taxpayer
5 identification numbers pursuant to paragraph (2), and
6 total amount of credit certified to each taxpayer.

7 (c) The taxpayer shall do all of the following:

8 (1) Retain a copy of the certification issued by the
9 California Seed Capital and Early Stage Corporation as
10 specified in paragraph (1) of subdivision (b).

11 (2) Provide the certification specified in paragraph
12 (1) of subdivision (b) to the Franchise Tax Board upon
13 request.

14 (3) Provide the California Seed Capital and Early
15 Stage Corporation with the taxpayer's identification
16 number, or in the case of a subchapter S corporation, the
17 taxpayer identification numbers of all shareholders.

18 (d) For purposes of this section only, "taxpayer"
19 means an investor, as defined by subdivision (e) of
20 Section 14101 of the Corporations Code.

21 (e) (1) A corporation may elect to assign any portion
22 of any credit allowed under this section to one or more
23 affiliated corporations for each income year in which the
24 credit is allowed. For purposes of this subdivision,
25 "affiliated corporation" means a corporation that is a
26 member of a commonly controlled group as defined in
27 Section 25105, as of the last day of the income year in
28 which the credit is allowed.

29 (2) The election provided in paragraph (1):

30 (A) May be based on any method selected by the
31 corporation that originally receives the credit.

32 (B) Shall be irrevocable for the income year the credit
33 is allowed, once made.

34 (C) May be changed for any subsequent income year
35 if the election to make the assignment is expressly shown
36 on each of the returns of the affiliated corporations that
37 assign and receive the credits.



1 (f) This section shall remain in effect only until
2 December 1, 2026, and as of that date is repealed.

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