

A BILL TO BE ENTITLED

AN ACT

relating to a franchise tax credit for certain investors that provide venture capital financing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle F, Title 4, Government Code, is amended by adding Chapter 483 to read as follows:

CHAPTER 483. VENTURE CAPITAL INVESTMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 483.001. DEFINITIONS. In this chapter:

(1) "Business entity" means a sole proprietorship, a partnership, a corporation, a limited liability company, or any other similar organization engaged in a business activity.

(2) "Committee" means a committee of five members appointed by the Governor. Such members shall be selected based on their knowledge and leadership, and shall possess experience in the management of investments similar in nature and in value to those of the fund.

(3) "Comptroller" means the Comptroller Public Accounts.

(4) "Designated investor" means the investor selected by the Comptroller under Section 483.052.

(5) "Equity capital" means capital invested in common or preferred stock, a royalty right, a limited partnership interest, a limited liability company interest, or any other

1 security or right that evidences ownership in a business entity.

2 (6) "Fund" means the private revolving fund to be  
3 established by the designed investor pursuant to Section 483.053.

4 (7) "Investor" means an individual, corporation,  
5 partnership, limited liability company, or other lawfully  
6 organized entity, or a group of any of these persons in the business  
7 of making investments in venture capital partnerships or other  
8 business investment entities.

9 (8) "Near equity capital" means capital invested in  
10 unsecured or underscored subordinated or convertible loans or debt  
11 securities.

12 Sec. 483.002. APPLICABILITY. This chapter applies only to  
13 a designated investor.

14 [Sections 483.003-483.050 reserved for expansion]

15 SUBCHAPTER B. VENTURE CAPITAL INVESTMENT

16 Sec. 483.051. VENTURE CAPITAL INVESTMENT PLAN. (a) An  
17 investor, in accordance with rules adopted by the comptroller under  
18 Section 483.056, may develop and submit to the comptroller a  
19 venture capital investment plan.

20 (b) The plan must state in detail the manner in which:

21 (1) the investor will raise up to \$200 million to  
22 finance the plan; and

23 (2) the money raised will be used for investment in  
24 venture capital partnerships or other business investment entities  
25 that help build the venture capital industry in this state and  
26 support investment in new and developing business entities that aid  
27 economic growth and development in this state.

1        (c) The plan must include:

2            (1) information concerning the investor's:

3                    (A) level of experience;

4                    (B) quality of management;

5                    (C) investment philosophy and process;

6                    (D) probability of success in fund-raising; and

7                    (E) plan for achieving the purpose of the act.

8            (2) other information required by the comptroller.

9        Sec. 483.052. SELECTION OF DESIGNATED INVESTOR. The  
10 comptroller shall solicit venture capital investment plans from  
11 investors and shall select one designated investor based on:

12            (1) the information provided by investors in the plans  
13 submitted under Section 483.051; and

14            (2) the comptroller's determination that the plan of  
15 the investor selected is the most likely to:

16                    (a) successfully contribute to the growth of a  
17 profitable, merit-based venture capital industry across this  
18 state;

19                    (b) mobilize a wide variety of equity and  
20 near-equity capital to serve the needs of entrepreneurs in this  
21 state; and

22                    (c) successfully provide entrepreneurs and  
23 developing business entities in this state with needed funding;

24                    (d) generate economic development and growth;  
25 and

26                    (e) help build a significant, permanent  
27 revolving resource available to support the future capital needs of

1 business in this state; and

2 (f) accomplish all these benefits in a way that  
3 minimizes the use of tax credits.

4 (3) Once the comptroller has selected the designated  
5 investor and approved the venture capital investment plan, the plan  
6 will be binding on the comptroller and the State of Texas, and once  
7 the designated investor has invested monies into the fund, the tax  
8 credits provided for herein may not be modified, terminated or  
9 rescinded.

10 (4) The comptroller shall convene the committee to  
11 solicit advice and counsel on the merits of venture capital  
12 investment plans.

13 Sec. 483.053. FUND. The designated investor shall raise  
14 commitments of up to \$200 million to capitalize a private revolving  
15 fund established by the designated investor as provided by the plan  
16 and comptroller rules. The designated investor shall invest money  
17 in the fund in venture capital partnerships or other business  
18 investment entities in accordance with the plan.

19 Sec. 483.054. ANNUAL REPORT. (a) During each year of  
20 operation of the plan, the designated investor shall prepare a  
21 report that:

22 (1) describes the investment activities of the fund;

23 (2) includes the results of an audit of the fund  
24 conducted within the year preceding the date of the report;

25 (3) states a schedule of anticipated returns for  
26 investments made;

27 (4) reviews the progress of the designated investor in

1 implementing the venture capital investment plan; and

2 (5) describes any use of tax credits.

3 (b) The designated investor shall submit the annual report  
4 to the comptroller, the governor, the lieutenant governor, and the  
5 speaker of the house of representatives.

6 Sec. 483.055. TAX CREDIT. For the designated investor to be  
7 eligible for a credit under Subchapter V, Chapter 171, Tax Code, the  
8 comptroller must certify that the designated investor incurred a  
9 loss for a reporting period of an amount equal to the unrealized  
10 anticipated returns of capital and returns on capital for that  
11 reporting period on investments made by the fund.

12 Sec. 843.056. RULEMAKING AUTHORITY. The comptroller shall  
13 adopt policies and rules as necessary to implement this chapter,  
14 including policies and rules that:

15 (1) create specific guidelines and procedures for the  
16 submission to the comptroller of a venture capital plan;

17 (2) explain the procedure for selecting the designated  
18 investor;

19 (3) create a certification process by which the  
20 designated investor qualifies for a credit provided by Subchapter  
21 V, Chapter 171, Tax Code;

22 (4) set standards that the designated investor must  
23 follow in choosing investments for the fund and achieving  
24 diversification within the fund;

25 (5) state the manner in which funds must be deposited  
26 and maintained;

27 (6) explain the manner in which funds may be raised;

1           (7) state the sources from which funds may be raised;

2           (8) state the agreements that the designated investor  
3 may enter into with funding sources to secure an investment from a  
4 source; and

5           (9) state the forms of securities that may be  
6 purchased by the fund.

7           SECTION 2. Chapter 171, Tax Code, is amended by adding  
8 Subchapter V to read as follows:

9           SUBCHAPTER V. TAX CREDIT FOR VENTURE CAPITAL INVESTMENT

10          Sec. 171.901. DEFINITIONS. In this subchapter:

11           (1) "Venture capital investment" means an investment  
12 made by the designated investor under Chapter 483, Government Code.

13          Sec. 171.902. APPLICATION OF SUBCHAPTER. This subchapter  
14 applies only to a designed investor that has incurred a loss  
15 certified by the comptroller under Chapter 483, Government Code,  
16 and any corporation to which credits are transferred.

17          Sec. 171.903. CREDIT. (a) A designated investor that  
18 meets the eligibility requirements under this subchapter is  
19 entitled to a credit in the amount allowed by this subchapter  
20 against the tax imposed under this chapter.

21           (b) Subject to Section 171.851, the amount of the credit is  
22 equal to the loss certified under Chapter 483, Government Code, for  
23 that reporting period and any carryforward credit under Section  
24 171.904.

25           (c) The credit allowed or transferred pursuant to this  
26 section, upon election by a recipient or transferee at utilization,  
27 will be treated as a payment or prepayment in lieu of tax imposed

1 under this chapter.

2 (d) The credits allowed or transferred pursuant to this  
3 section shall not be considered securities under Texas Statutes.

4 Sec. 171.904. CARRYFORWARD. If a corporation is eligible  
5 for a credit that exceeds the amount of tax due for the report, the  
6 corporation may carry the unused credit forward for not more than  
7 five consecutive reports.

8 Sec. 171.905. APPLICATION FOR CREDIT. (a) A designated  
9 investor or a corporation must apply for a credit under this  
10 subchapter on or with the tax report for the period for which the  
11 credit is claimed.

12 (b) The comptroller shall adopt a form for the application  
13 for the credit. A designated investor or a corporation must use the  
14 form in applying for the credit.

15 Sec. 171.906. SALE OF UNUSED CREDIT. (a) A designated  
16 investor or a corporation that has an unused credit or anticipates  
17 having an unused credit under this subchapter may apply to the  
18 comptroller to sell the credit to another corporation.

19 (b) The comptroller shall review applications under this  
20 section and shall approve the sale or purchase of an unused credit  
21 under this subchapter unless the comptroller determines that the  
22 credit is not being purchased for money in an amount equal to at  
23 least 95 percent of its value.

24 Sec. 171.907. RULES. The comptroller shall adopt rules  
25 necessary to implement this subchapter.

26 SECTION 3. (a) This Act takes effect immediately if it  
27 receives a vote of two-thirds of all the members elected to each

1 house, as provided by Section 39, Article III, Texas Constitution.  
2 If this Act does not receive the vote necessary for immediate  
3 effect, this Act takes effect September 1, 2003.

4 (b) A designated investor or corporation may claim a credit  
5 under Subchapter V, Chapter 171, Tax Code, as added by this Act,  
6 only for a certified loss incurred on or after January 1, 2007.

7 (c) Not later than October 1, 2004, the Comptroller of  
8 Public Accounts or any successor to the comptroller's duties shall  
9 adopt rules under Chapter 483, Government Code, as added by this  
10 Act.

11 (d) Before November 1, 2004, the Comptroller of Public  
12 Accounts or any successor to the comptroller's duties shall solicit  
13 venture capital investment plans from investors as required by  
14 Section 483.052, Government Code, as added by this Act. Not later  
15 than February 1, 2005, the Comptroller of Public Accounts or any  
16 successor to the comptroller's duties shall select a designated  
17 investor as required by Section 483.052, Government Code, as added  
18 by this Act.