



January 21, 2000

# SENATE BILL No. 394

DIGEST OF SB 394 (Updated January 18, 2000 6:26 PM - DI 51)

**Citations Affected:** IC 4-35; noncode.

**Synopsis:** Local certified equity pools. Provides a tax credit against the state tax liability of an investor in a local certified equity pool. Specifies that the tax credit is equal to 50% of a portion of the money, called restricted capital, invested by a local certified equity pool in an Indiana small business. Requires the Indiana development finance authority to operate a program to certify local certified equity pools. Sets standards for certification of a local certified equity pool. Establishes requirements for investments made by a local certified equity pool. Establishes the tax credit allocation advisory board to allocate tax credits among local certified equity pools. Establishes limitations on the amount of tax credits that may be allocated and claimed by investors. Provides that the tax credit is partially funded by taxes paid by companies that benefit from the investments.

**Effective:** Upon passage.

## Johnson, Simpson

January 10, 2000, read first time and referred to Committee on Planning and Economic Development.

January 20, 2000, amended, reported favorably — Do Pass; reassigned to Committee on Finance.

SB 394—LS 7073/DI 58+



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January 21, 2000

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

## SENATE BILL No. 394

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 4-35 IS ADDED TO THE INDIANA CODE AS A  
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON**  
3 **PASSAGE]:**  
4 **ARTICLE 35. LOCAL CERTIFIED EQUITY POOLS**  
5 **Chapter 1. Citation**  
6 **Sec. 1. This article may be cited as the Local Certified Equity**  
7 **Pool Law.**  
8 **Sec. 2. The primary purpose of this article is to provide the**  
9 **following:**  
10 (1) **Tax incentives to investors in small businesses that create**  
11 **high-wage, high-skilled positions in high-growth industries**  
12 **located in Indiana.**  
13 (2) **Encouragement for the formation of capital to make**  
14 **follow-on investments in these companies as they grow beyond**  
15 **the small business size regulations of the United States Small**  
16 **Business Administration's Small Business Investment**  
17 **Company program.**

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1 **Chapter 2. Definitions**

2 **Sec. 1. As used in this article, "affiliate of a local certified equity**  
 3 **pool" means the following:**

4 (1) A person, directly or indirectly, owning (whether through  
 5 rights, options, convertible interests, or otherwise),  
 6 controlling, or holding power to vote at least ten percent  
 7 (10%) of the outstanding voting securities or other ownership  
 8 interests of the local certified equity pool.

9 (2) A person in whom at least ten percent (10%) of the  
 10 outstanding voting securities or other ownership interests are  
 11 directly or indirectly beneficially owned (whether through  
 12 rights, options, convertible interests, or otherwise), controlled,  
 13 or held with power to vote by the local certified equity pool.

14 (3) A person directly or indirectly controlling, controlled by,  
 15 or under common control with the local certified equity pool.

16 (4) A partnership in which the local certified equity pool is a  
 17 general partner.

18 (5) A person who is an officer, a director, or an agent of the  
 19 local certified equity pool or an immediate family member of  
 20 an officer, director, or agent.

21 **Sec. 2. As used in this article, "authority" refers to the Indiana**  
 22 **development finance authority established by IC 4-4-11.**

23 **Sec. 3. As used in this article, "capital" means an investment of**  
 24 **cash by an investor in a local certified equity pool that fully funds**  
 25 **the purchase price of the investor's equity interest in the local**  
 26 **certified equity pool.**

27 **Sec. 4. As used in this article, "capital in a qualified Indiana**  
 28 **business" means the following acquired by a local certified equity**  
 29 **pool as a result of a transfer of cash to a business:**

30 (1) A debt.

31 (2) An equity.

32 (3) A hybrid security, including a debt instrument or security  
 33 that has the characteristics of debt but provides for  
 34 conversion into equity or equity participation instruments  
 35 such as options or warrants.

36 **The term does not include a secured debt instrument.**

37 **Sec. 5. As used in this article, "certification date" means the**  
 38 **date on which a local certified equity pool is certified by the**  
 39 **authority.**

40 **Sec. 6. As used in this article, "covered taxes" means the**  
 41 **following:**

42 (1) The state gross retail tax imposed under IC 6-2.5-2-1 or

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1 use tax imposed under IC 6-2.5-3-2.

2 (2) The gross income tax imposed under IC 6-2.1-2-2.

3 (3) The adjusted gross income tax imposed under IC 6-3-2-1.

4 (4) The supplemental net income tax imposed under IC 6-3-8.

5 Sec. 7. As used in this article, "director" means the director of  
6 the Indiana development finance authority or a person acting  
7 under the supervision of the director.

8 Sec. 8. As used in this article, "investor" means a person that  
9 contributes capital to a local certified equity pool.

10 Sec. 9. As used in this article, "local certified equity pool" means  
11 a for-profit partnership, corporation, trust, or limited liability  
12 company that:

13 (1) is located, headquartered, and registered to conduct  
14 business in Indiana;

15 (2) has as its primary business activity the investment of cash  
16 in qualified Indiana businesses; and

17 (3) is certified by the authority as meeting the criteria of this  
18 article.

19 Sec. 10. As used in this article, "person" means an individual or  
20 entity, including a corporation, general or limited partnership,  
21 trust, or limited liability company.

22 Sec. 11. As used in this article, "qualified distribution" means  
23 a distribution or payment in connection with the following:

24 (1) The reasonable costs and expenses of forming, syndicating,  
25 managing, and operating the local certified equity pool,  
26 including an annual management fee payable from, plus  
27 reasonable and necessary fees paid for professional services  
28 (such as legal and accounting services) related to the  
29 operation of, the local certified equity pool.

30 (2) A projected increase in the federal or state taxes of the  
31 equity owners of a local certified equity pool resulting from  
32 the earnings or other tax liability of the local certified equity  
33 pool to the extent that the increase is related to the ownership,  
34 management, or operation of a local certified equity pool.

35 Sec. 12. As used in this article, "qualified Indiana business"  
36 means an independently owned and operated business that:

37 (1) is headquartered and located in Indiana; and

38 (2) has its principal business operations located in Indiana.

39 Sec. 13. As used in this article, "qualified investment" means an  
40 investment of cash by a local certified equity pool in a manner that  
41 enables the local certified equity pool to acquire capital in a  
42 qualified Indiana business.



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1           **Sec. 14.** As used in this article, "restricted capital" means  
2 either:

- 3           (1) the portion of an investor's capital that may only be  
4 invested in qualified Indiana businesses; or  
5           (2) the portion of a local certified equity pool's funds that may  
6 only be invested in qualified Indiana businesses.

7           **Sec. 15.** As used in this article, "state tax liability" means a  
8 taxpayer's total tax liability that is incurred under:

- 9           (1) IC 6-2.1 (the gross income tax);  
10           (2) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);  
11           (3) IC 6-3-8 (the supplemental net income tax);  
12           (4) IC 6-5-10 (the bank tax);  
13           (5) IC 6-5-11 (the savings and loan association tax);  
14           (6) IC 27-1-18-2 (the insurance premiums tax); and  
15           (7) IC 6-5.5 (the financial institutions tax);

16 as computed after the application of the credits that under  
17 IC 6-3.1-1-2 are to be applied before the credit provided by this  
18 article.

19           **Sec. 16.** As used in this article, "unrestricted capital" means  
20 either:

- 21           (1) the portion of an investor's capital that may be invested in  
22 a business other than a qualified Indiana business; or  
23           (2) the portion of a local certified equity pool's funds that may  
24 be invested in businesses other than a qualified Indiana  
25 business.

26 **Chapter 3. Requirements of a Qualified Indiana Business**

27 **Sec. 1.** A qualified Indiana business must:

- 28           (1) be a small business concern (as defined by the small  
29 business size regulations of the United States Small Business  
30 Administration's Small Business Investment Company (SBIC)  
31 program (13 CFR 121.301(c));  
32           (2) meet the eligibility criteria of IC 4-4-26-25 (the authority's  
33 triple cap loan guarantee program concerning high growth  
34 companies and high skilled jobs (as defined in  
35 IC 4-4-10.9-9.5));  
36           (3) have their headquarters located in Indiana;  
37           (4) employ at least seventy percent (70%) of its employees in  
38 Indiana; and  
39           (5) be in need of venture capital and unable to obtain the  
40 capital using conventional financing.

41           **Sec. 2.** A qualified Indiana business may not be involved in the  
42 following enterprises:



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- 1           **(1) Real estate.**  
 2           **(2) Real estate development.**  
 3           **(3) Insurance.**  
 4           **(4) Professional services provided by the following:**  
 5               **(A) Accountants.**  
 6               **(B) Lawyers.**  
 7               **(C) Physicians.**  
 8           **Sec. 3. A qualified Indiana business may not be involved in retail**  
 9           **sales. However, a qualified Indiana business may engage in**  
 10           **developing or supporting electronic commerce using the Internet.**  
 11           **Sec. 4. (a) Before making a proposed investment in a specific**  
 12           **business, a local certified equity pool may request from the**  
 13           **authority a written opinion that the business in which it proposes**  
 14           **to invest is a qualified Indiana business. The authority has ten (10)**  
 15           **days after receiving the request to notify the local certified equity**  
 16           **pool of the business's status and the explanation for the authority's**  
 17           **determination.**  
 18           **(b) Notwithstanding sections 1 through 3 of this chapter, if the**  
 19           **authority finds that the investment will further economic**  
 20           **development in Indiana, the authority may consider the business**  
 21           **a qualified Indiana business and approve the investment by the**  
 22           **local certified equity pool making the request under subsection (a).**  
 23           **(c) If the authority fails to notify the local certified equity pool**  
 24           **within the ten (10) day period, the business shall be considered a**  
 25           **qualified Indiana business.**  
 26           **Chapter 4. Certification**  
 27           **Sec. 1. The authority shall adopt rules under IC 4-22-2 to**  
 28           **establish the procedures for making an application to become a**  
 29           **local certified equity pool. The applicant shall pay a nonrefundable**  
 30           **fee of seven thousand five hundred dollars (\$7,500) at the time of**  
 31           **filing the application with the authority. The application must**  
 32           **include a criminal background investigation, fingerprint cards, and**  
 33           **resumes detailing work related experience for all principals.**  
 34           **Sec. 2. (a) A local certified equity pool's initial capitalization at**  
 35           **the time certification is sought must equal at least five hundred**  
 36           **thousand dollars (\$500,000).**  
 37           **(b) A local certified equity pool must maintain a liquid asset**  
 38           **base of at least five hundred thousand dollars (\$500,000) at all**  
 39           **times during the company's participation in the program**  
 40           **authorized by this article.**  
 41           **Sec. 3. (a) The authority shall review the:**  
 42               **(1) organizational documents for each applicant for**



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1 certification; and

2 (2) business history of the applicant.

3 (b) The authority shall determine whether the local certified  
4 equity pool's cash, marketable securities, and other liquid assets  
5 are at least five hundred thousand dollars (\$500,000). The  
6 authority shall determine whether the liquid asset base of each  
7 local certified equity pool is at least five hundred thousand dollars  
8 (\$500,000) at all times during the company's participation in the  
9 program authorized by this article.

10 Sec. 4. A principal of a local certified equity pool or a manager  
11 of the local certified equity pool must have at least five (5) years  
12 experience in the investment banking, finance, or venture capital  
13 industry.

14 Sec. 5. An offering of material involving the sale of securities of  
15 the local certified equity pool must include the following statement:

16 "By authorizing the formation of a local certified equity pool,  
17 the State of Indiana does not endorse the quality of  
18 management or the potential for earnings of a particular  
19 business and is not liable for damages or losses to an investor  
20 in the business. The use of the word "certified" in an offering  
21 does not constitute a recommendation or endorsement of the  
22 investment by the Indiana Development Finance Authority.  
23 Investments in a prospective local certified equity pool before  
24 the time the business is certified are not eligible for tax  
25 credits. If certain provisions of IC 4-35 are violated, the State  
26 of Indiana may require forfeiture of unused tax credits and  
27 repayment of used tax credits."

28 Sec. 6. Not later than sixty (60) days after the date of  
29 application, the authority shall either issue the certification or shall  
30 refuse the certification and communicate in detail to the applicant  
31 the grounds for the refusal, including the authority's suggestions  
32 for the removal of those grounds.

33 Sec. 7. The authority shall administer the tax credits authorized  
34 by this article.

35 **Chapter 5. Requirements for Continued Certification**

36 Sec. 1. (a) To continue to be certified, a local certified equity  
37 pool must, within five (5) years after receiving an allocation of tax  
38 credits, invest restricted capital in an amount equal to twice the  
39 amount of tax credits allocated to the local certified equity pool.

40 (b) A local certified equity pool may not make an investment in  
41 an affiliate of the local certified equity pool. For purposes of this  
42 subsection, if a legal entity is not an affiliate before a local certified



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1 equity pool initially invests in the entity, it will not be an affiliate if  
 2 a local certified equity pool provides additional investment in the  
 3 entity after its initial investment.

4 **Sec. 2.** A qualified investment may not be made at a cost to a  
 5 local certified equity pool greater than fifteen percent (15%) of the  
 6 total capital of the local certified equity pool at the time of  
 7 investment.

8 **Sec. 3.** A local certified equity pool shall report the following to  
 9 the authority:

- 10 (1) As soon as practicable after the receipt of capital:  
 11 (A) the name of each investor from which the capital was  
 12 received;  
 13 (B) the tax identification number of the investor;  
 14 (C) the amount of each investor's investment of capital;  
 15 (D) the tax credits computed without regard to any  
 16 limitations under IC 4-35-8-3; and  
 17 (E) the date on which the capital was received.  
 18 (2) Before March 31 of each year:  
 19 (A) the amount of the local certified equity pool's capital at  
 20 the end of the immediately preceding year;  
 21 (B) whether the local certified equity pool has invested  
 22 more than fifteen percent (15%) of the total capital under  
 23 management in any one (1) company; and  
 24 (C) all qualified investments that the local certified equity  
 25 pool made during the previous calendar year.  
 26 (3) Before March 31 of each year, for each qualified  
 27 investment made by the local certified equity pool:  
 28 (A) the number of employees of each qualified Indiana  
 29 business in which it made investments at the time of  
 30 investment and as of the end of the immediately preceding  
 31 year;  
 32 (B) the annual payroll of each qualified Indiana business in  
 33 which it made investments at the time of investment and as  
 34 of the end of the immediately preceding year; and  
 35 (C) the classification of each qualified Indiana business in  
 36 which it made investments according to industry sector.  
 37 (4) Within one hundred twenty (120) days of the end of the  
 38 fiscal year, provide annual audited financial statements that  
 39 include an opinion of an independent certified public  
 40 accountant.

41 **Sec. 4.** The audit required under section 3(4) of this chapter  
 42 must address the methods of operation and conduct of the business



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1 of the local certified equity pool to determine whether the local  
 2 certified equity pool is complying with the statutes and program  
 3 rules and that the funds received by the local certified equity pool  
 4 have been invested as required within the time limit set forth in  
 5 section 1(a) of this chapter.

6 **Sec. 5.** On or before January 31 of each year, a local certified  
 7 equity pool shall pay an annual, nonrefundable certification fee of  
 8 five thousand dollars (\$5,000) to the authority. However, the  
 9 authority may not require a certification fee under this section  
 10 within six (6) months of the initial certification date of a local  
 11 certified equity pool.

12 **Chapter 6. Distributions**

13 **Sec. 1.** A local certified equity pool may make qualified  
 14 distributions as defined in IC 4-35-2-11 at any time.

15 **Sec. 2.** Cumulative distributions from a local certified equity  
 16 pool to its certified investors and equity holders, other than  
 17 qualified distributions, that exceed the local certified equity pool's  
 18 original certified capital and any additional capital contributions  
 19 to the local certified equity pool may be audited by a nationally  
 20 recognized certified public accounting firm acceptable to the  
 21 authority, at the expense of the local certified equity pool, if the  
 22 authority directs the audit to be conducted. The audit must  
 23 determine whether aggregate cumulative distributions from the  
 24 local certified equity pool to all certified investors and equity  
 25 holders, other than qualified distributions, have equaled the sum  
 26 of the local certified equity pool's original certified capital and any  
 27 additional capital contributions to the local certified equity pool. If  
 28 at the time of any such distribution made by the local certified  
 29 equity pool, the distribution taken together with all other such  
 30 distributions, exceeds in the aggregate the sum of the local certified  
 31 equity pool's original certified capital and any additional  
 32 contributions to the local certified equity pool, as determined by  
 33 the audit, the local certified equity pool shall pay to the department  
 34 of state revenue five percent (5%) of the part of the distribution  
 35 that exceeds the amount. Payments to the department of state  
 36 revenue may not exceed the aggregate amount of tax credits used  
 37 by all certified investors in the local certified equity pool.

38 **Chapter 7. Decertification**

39 **Sec. 1. (a)** The authority shall conduct an annual review of each  
 40 local certified equity pool to determine if the local certified equity  
 41 pool is abiding by the requirements of certification. The authority  
 42 shall advise the local certified equity pool as to the certification



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1 status of its qualified investments. The authority shall ensure that  
2 no investment has been made in violation of this article.

3 (b) The cost of the annual review shall be paid from the annual  
4 certification fee paid under IC 4-35-5-5.

5 Sec. 2. A material violation of IC 4-35-5 is grounds for  
6 decertification of the local certified equity pool. If the authority  
7 determines that a pool is not in compliance with the requirements  
8 for continuing certification, the authority shall provide written  
9 notice to the officers of the pool and the board of directors,  
10 managers, trustees, or general partners that the pool may be  
11 decertified in one hundred twenty (120) days from the date of  
12 mailing of the notice unless the pool corrects the deficiencies and  
13 is again in compliance with the requirements for certification.

14 Sec. 3. If the local certified equity pool is still not in compliance  
15 with the requirements of IC 4-35-5 at the end of the one hundred  
16 twenty (120) day period described in section 2 of this chapter, the  
17 authority may send a notice of decertification to the pool and to all  
18 other appropriate state agencies.

19 Sec. 4. If a local certified equity pool is decertified before  
20 meeting the requirements of IC 4-35-5-1, the state shall recapture  
21 from the decertified local certified equity pool the tax credits  
22 previously claimed by an investor under IC 4-35-8, and all future  
23 credits to be claimed by an investor with respect to its investment  
24 in the local certified equity pool are forfeited.

25 Sec. 5. Once a local certified equity pool has invested one  
26 hundred percent (100%) of its restricted capital in qualified  
27 Indiana businesses, all future tax credits to be claimed by investors  
28 with respect to the local certified equity pool under this article are  
29 nonforfeitable.

30 Sec. 6. Once a local certified equity pool has invested one  
31 hundred percent (100%) of its restricted capital in qualified  
32 Indiana businesses and has met all other requirements of this  
33 article, the company is no longer subject to regulation by the  
34 authority with the exception of the reporting requirements of  
35 IC 4-35-5-6(3).

36 Sec. 7. The authority shall send written notice to the address of  
37 each investor of the:

- 38 (1) decertification of the local certified equity pool;  
39 (2) recapture of the tax credit from the local certified equity  
40 pool; and  
41 (3) forfeiture of all future tax to be claimed by investors with  
42 respect to the investor's investment in the local certified



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1 equity pool;  
2 using the address shown on the last tax filing.

3 **Sec. 8.** The authority may revoke the certification of a local  
4 certified equity pool if a material representation to the authority  
5 in connection with the application process proves to have been  
6 falsely made or if the application materially violates any  
7 requirement established by the authority under this article.

8 **Chapter 8. Tax Credit**

9 **Sec. 1.** Subject to section 6 of this chapter, an investor that  
10 invests capital is entitled to a credit against the investor's state tax  
11 liability. The credit equals the investor's investment of restricted  
12 capital multiplied by fifty percent (50%).

13 **Sec. 2.** The amount of tax credit that an investor may claim in  
14 a taxable year may not exceed the amount of restricted capital  
15 deposited in the certified local equity pool.

16 **Sec. 3.** The aggregate amount of tax credits in qualified Indiana  
17 businesses after December 31, 2000, that may be allowed under this  
18 chapter may not exceed one hundred million dollars  
19 (\$100,000,000).

20 **Sec. 4.** The maximum amount of tax credits in a particular local  
21 certified equity pool that may be allowed under this chapter may  
22 not exceed seven million five hundred thousand dollars  
23 (\$7,500,000).

24 **Sec. 5.** An investor's tax credit allowed under this article may  
25 not exceed the investor's state tax liability. The amount of credit  
26 exceeding the investor's state tax liability may be carried forward  
27 until the credit is fully used. However, the credit may not be  
28 carried forward to a taxable year beginning more than ten (10)  
29 years after the certification date of the local certified equity pool  
30 for which the investor's investment entitled the investor to a tax  
31 credit.

32 **Sec. 6.** The aggregate amount of credits allowed under this  
33 chapter may not exceed the following:

34 (1) For taxable years beginning after December 31, 2000, and  
35 before January 1, 2004, ten million dollars (\$10,000,000).

36 (2) For taxable years beginning after December 31, 2003, the  
37 sum of:

38 (A) seven million dollars (\$7,000,000); plus

39 (B) the amount approved under IC 4-35-9.

40 (3) For taxable years beginning after December 31, 2004, the  
41 sum of:

42 (A) three million dollars (\$3,000,000); plus



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1 (B) the amount approved under IC 4-35-9.

2 (4) For taxable years beginning after December 31, 2005, the  
3 amount approved under IC 4-35-9.

4 **Chapter 9. Determination of Additional Credit Amount**

5 **Sec. 1.** A qualified Indiana business receiving a capital  
6 investment from a local certified equity pool under this chapter  
7 must annually certify to the department of state revenue the total  
8 amount of covered taxes paid by the qualified Indiana business.

9 **Sec. 2.** The commissioner of the department of state revenue  
10 shall establish procedures and forms for certifying the amount of  
11 covered taxes under section 1 of this chapter.

12 **Sec. 3.** The commissioner of the department of state revenue  
13 shall total the covered taxes certified under section 1 of this  
14 chapter.

15 **Sec. 4.** The department of state revenue shall approve an  
16 additional credit amount for purposes of IC 4-35-8. The approved  
17 amount:

18 (1) may not exceed the covered taxes certified for the previous  
19 year plus any carry forwards from previous years; and

20 (2) may not cause the total credit amount to exceed ten million  
21 dollars (\$10,000,000) for a year.

22 **Sec. 5.** If the cumulative amount of covered taxes exceeds the  
23 cumulative approved amounts under section 4 of this chapter, the  
24 excess may be carried forward in computing approved amounts in  
25 succeeding years.

26 **Chapter 10. Amount of Tax Credits Available for Allocation**

27 **Sec. 1.** The aggregate amount of tax credits available for  
28 allocation is forty million dollars (\$40,000,000), plus the cumulative  
29 amount of tax credits approved by the commissioner of the  
30 department of state revenue as described in IC 4-35-9-4, less the  
31 cumulative amount of tax credits previously allocated by the  
32 advisory board in accordance with the provisions of IC 4-35-11.

33 **Sec. 2.** Tax credits reclaimed under IC 4-35-7 must be added to  
34 the total amount of tax credits available for allocation under  
35 section 1 of this chapter.

36 **Chapter 11. Allocation of Tax Credits**

37 **Sec. 1.** A tax credit allocation advisory board is established to  
38 allocate tax credits to local certified equity pools. The advisory  
39 board has six (6) members. The director of the authority serves as  
40 the secretary of the advisory board and is the member responsible  
41 for calling meetings and maintaining minutes of all advisory board  
42 meetings. The governor shall appoint the remaining five (5)



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1 members. The term of an appointed member is three (3) years. At  
 2 least three (3) members of the tax credit allocation advisory board  
 3 must also be members of the Indiana twenty-first century research  
 4 and technology fund board.

5 **Sec. 2.** To be eligible for an allocation of tax credits by the  
 6 advisory board, a local certified equity pool must submit to the tax  
 7 credit allocation advisory board copies of signed, binding  
 8 commitment letters from its investors. The commitment letters  
 9 must state the amount of funds to be invested in the local certified  
 10 equity pool subject only to confirmation of an allocation of tax  
 11 credits to the local certified equity pool.

12 **Sec. 3.** A local certified equity pool must have a minimum of ten  
 13 million dollars (\$10,000,000) in committed funds to be eligible for  
 14 an allocation of tax credits, of which five million dollars  
 15 (\$5,000,000) must be restricted capital.

16 **Sec. 4.** The tax credit allocation advisory board shall receive  
 17 requests from local certified equity pools for an allocation of tax  
 18 credits by the tax credit allocation advisory board on an on-going  
 19 basis. Not later than thirty (30) days after the date of application,  
 20 the authority shall either:

- 21 (1) issue a written confirmation of eligibility for an allocation
- 22 of tax credits; or
- 23 (2) refuse the application and communicate in detail to the
- 24 applicant the grounds for refusal, including the authority's
- 25 suggestions for the removal of those grounds.

26 **Sec. 5.** The tax credit allocation advisory board shall allocate tax  
 27 credits to a certified local equity pool equal to fifty percent (50%)  
 28 of the restricted capital to be invested in the certified local equity  
 29 pool.

30 **Sec. 6.** Once a year, during the first week in December, the tax  
 31 credit allocation advisory board shall allocate tax credits, subject  
 32 to their availability, to all eligible local certified equity pools under  
 33 section 5 of this chapter.

34 **Sec. 7.** The tax credit allocation advisory board shall allocate at  
 35 least fifteen million dollars (\$15,000,000) in tax credits to local  
 36 certified equity pools with their place of business located outside  
 37 the area within the Indianapolis Metropolitan Statistical Area  
 38 designated by the federal Office of Management and Budget (FIPS  
 39 Code 3480).

40 **Sec. 8.** Whenever the total amount of requests for an allocation  
 41 of tax credits exceeds the total amount of tax credits available for  
 42 allocation as determined under IC 4-35-10 and this chapter, the tax



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1 credit allocation advisory board shall allocate tax credits according  
2 to the proportional amount of restricted capital invested in each  
3 local certified equity pool.

4 Chapter 12. Restrictions on Claims for Tax Credits

5 Sec. 1. The maximum amount of tax credits that may be claimed  
6 in a given year is ten million dollars (\$10,000,000), plus the  
7 cumulative sum of unclaimed tax credits from prior years.

8 Sec. 2. Whenever the dollar sum of claims for tax credits  
9 exceeds the total dollar amount of tax credits available as  
10 determined under section 1 of this chapter, tax credits must be  
11 awarded according to the proportional amount of tax credits  
12 claimed by each investor.

13 Sec. 3. Investors may carry forward to future taxable years any  
14 tax credits that were reduced under section 2 of this chapter.

15 Chapter 13. Reports

16 Sec. 1. Before June 1 of each year, the director shall submit a  
17 report to the legislative services agency for distribution to the  
18 legislative council. The report must include the following:

- 19 (1) The number of local certified equity pools holding capital.
- 20 (2) The amount of capital invested in each local certified  
21 equity pool.
- 22 (3) The cumulative amount that each local certified equity  
23 pool has invested in qualified Indiana businesses.
- 24 (4) The total amount of tax credits allowed under this article  
25 in the previous year and the cumulative total.
- 26 (5) The performance of each local certified equity pool with  
27 regard to the requirements of IC 4-35-5-1.
- 28 (6) The classification of companies in which each local  
29 certified equity pool has invested according to industry sector  
30 as defined by the authority.
- 31 (7) The total number of jobs of each qualified Indiana  
32 business before and after the qualified investments made by  
33 the local certified equity pool.
- 34 (8) The annual payroll of each qualified Indiana business  
35 before and after the qualified investments made by the local  
36 certified equity pool.
- 37 (9) The name of each local certified equity pool that is  
38 decertified or has its certification revoked together with the  
39 reasons for the decertification or revocation.

40 Chapter 14. Miscellaneous

41 Sec. 1. The authority shall adopt rules under IC 4-22-2 to  
42 implement this article.



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1           **Sec. 2. This article expires January 1, 2011. However, the**  
2 **expiration of this article does not affect tax credit carried forward**  
3 **for tax credits claimed for taxable years beginning before January**  
4 **1, 2011.**

5           **SECTION 2. [EFFECTIVE UPON PASSAGE] (a) IC 4-35-8, as**  
6 **added by this act, applies to taxable years beginning after**  
7 **December 31, 2000.**

8           **(b) Notwithstanding IC 4-35-4-1 and IC 4-35-14-1, both as**  
9 **added by this act, the authority (as defined in IC 4-35-2-2), as**  
10 **added by this act, may adopt rules to carry out IC 4-35, as added**  
11 **by this act, in the same manner as an emergency rule is adopted**  
12 **under IC 4-22-2-37.1. A rule adopted under this subsection is**  
13 **effective when it is filed with the secretary of state. A rule adopted**  
14 **under this subsection expires on the earlier of the following:**

15           **(1) The date that a rule is adopted under this subsection to**  
16 **repeal or supersede a prior rule adopted under this**  
17 **subsection.**

18           **(2) The date that a permanent rule is adopted under IC 4-22-2**  
19 **to repeal or supersede a rule adopted under this subsection.**

20           **(3) July 1, 2001.**

21           **SECTION 3. An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Simpson be added as second author of Senate Bill 394.

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## COMMITTEE REPORT

Mr. President: The Senate Committee on Planning and Economic Development, to which was referred Senate Bill No. 394, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 8, after "provide" insert "**the following:**".

Page 1, delete lines 9 through 12, begin a new line block indented and insert:

**"(1) Tax incentives to investors in small businesses that create high-wage, high-skilled positions in high-growth industries located in Indiana.**

**(2) Encouragement for the formation of capital to make follow-on investments in these companies as they grow beyond the small business size regulations of the United States Small Business Administration's Small Business Investment Company program."**

Page 3, line 4, delete "licensed to do business in Indiana".

Page 3, line 19, delete "to equity holders of a local certified".

Page 3, line 20, delete "equity pool".

Page 3, line 23, delete "in an amount that does" and insert "**payable from,**".

Page 3, delete line 24.

Page 3, line 25, delete "the local certified equity pool,".

Page 3, line 27, after "of" insert ",".

Page 3, line 36, delete "or" and insert "**and**".

Page 3, between lines 41 and 42, begin a new paragraph and insert:

**"Sec. 14. As used in this article, "restricted capital" means either:**

**(1) the portion of an investor's capital that may only be invested in qualified Indiana businesses; or**

**(2) the portion of a local certified equity pool's funds that may only be invested in qualified Indiana businesses."**

Page 3, line 42, delete "14" and insert "**15**".

Page 4, between lines 11 and 12, begin a new paragraph and insert:

**"Sec. 16. As used in this article, "unrestricted capital" means either:**

**(1) the portion of an investor's capital that may be invested in a business other than a qualified Indiana business; or**

**(2) the portion of a local certified equity pool's funds that may be invested in businesses other than a qualified Indiana business."**

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Page 4, line 14, delete "in Section 121.201" and insert "**by**".

Page 4, line 15, before "the small" delete "of".

Page 4, line 16, delete "Administration (13 C.F.R. 121.201));" and insert "**Administration's Small Business Investment Company (SBIC) program (13 CFR 121.301(c));**

**(2) meet the eligibility criteria of IC 4-4-26-25 (the authority's triple cap loan guarantee program concerning high growth companies and high skilled jobs (as defined in IC 4-4-10.9-9.5));**

**(3) have their headquarters located in Indiana;**"

Page 4, line 17, delete "(2)" and insert "**(4)**".

Page 4, line 19, delete "(3)" and insert "**(5)**".

Page 4, delete lines 33 through 41.

Page 4, line 42, delete "5" and insert "**4**".

Page 5, line 7, delete "4" and insert "**3**".

Page 5, delete lines 15 through 22.

Page 5, line 23, delete "5" and insert "**4**".

Page 6, line 32, delete "6" and insert "**5**".

Page 6, line 34, delete "make qualified investments according to the following" and insert "**, within five (5) years after receiving an allocation of tax credits, invest restricted capital in an amount equal to twice the amount of tax credits allocated to the local certified equity pool.**".

Page 6, delete lines 35 through 42.

Page 7, delete lines 1 through 2.

Page 7, delete lines 9 through 17.

Page 7, line 18, delete "3" and insert "**2**".

Page 7, delete lines 22 through 30.

Page 7, line 31, delete "6" and insert "**3**".

Page 7, line 39, delete "IC 4-35-9-3" and insert "**IC 4-35-8-3**".

Page 8, line 18, delete "ninety (90)" and insert "**one hundred twenty (120)**".

Page 8, line 21, delete "7" and insert "**4**".

Page 8, line 21, delete "6(4)" and insert "**3(4)**".

Page 8, line 26, delete "limits" and insert "**limit**".

Page 8, line 28, delete "8" and insert "**5**".

Page 8, line 34, delete "7" and insert "**6**".

Page 8, delete lines 37 through 42.

Page 9, delete lines 1 through 5.

Page 9, line 6, delete "4" and insert "**2**".

Page 9, line 25, delete "ten" and insert "**five**".

Page 9, line 25, delete "(10%" and insert "**(5%)**".

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- Page 9, line 29, delete "8" and insert "7".
- Page 9, line 37, delete "IC 4-35-6-8" and insert "IC 4-35-5-5".
- Page 9, line 38, delete "IC 4-35-6" and insert "IC 4-35-5".
- Page 10, line 6, delete "IC 4-35-6" and insert "IC 4-35-5".
- Page 10, line 11, delete "IC 4-35-6-1" and insert "IC 4-35-5-1".
- Page 10, line 11, after "recapture" insert "**from the decertified local certified equity pool**".
- Page 10, line 12, delete "IC 4-35-9" and insert "IC 4-35-8".
- Page 10, delete lines 15 through 26.
- Page 10, line 27, delete "6" and insert "5".
- Page 10, line 28, after "its" insert "**restricted**".
- Page 10, line 32, delete "7" and insert "6".
- Page 10, line 33, after "its" insert "**restricted**".
- Page 10, line 36, delete "IC 4-35-6-6(3)" and insert "**IC 4-35-5-6(3)**".
- Page 10, line 37, delete "8" and insert "7".
- Page 10, line 38, delete "whose tax credit has been subject to recapture or" and insert "**of the:**
- (1) **decertification of the local certified equity pool;**
  - (2) **recapture of the tax credit from the local certified equity pool; and**
  - (3) **forfeiture of all future tax to be claimed by investors with respect to the investor's investment in the local certified equity pool;**".
- Page 10, line 39, delete "forfeiture,".
- Page 10, line 39, before "using" begin a new line blocked left.
- Page 10, line 40, delete "9" and insert "8".
- Page 11, line 3, delete "9" and insert "8".
- Page 11, line 4, delete "5" and insert "6".
- Page 11, line 5, delete "in the year of the investor's".
- Page 11, line 6, delete "investment".
- Page 11, line 7, after "of" insert "**restricted**".
- Page 11, between lines 8 and 9, begin a new paragraph and insert:  
**"Sec. 2. The amount of tax credit that an investor may claim in a taxable year may not exceed the amount of restricted capital deposited in the certified local equity pool."**
- Page 11, line 9, delete "2" and insert "3".
- Page 11, line 13, delete "3" and insert "4".
- Page 11, line 15, delete "ten" and insert "**seven**".
- Page 11, line 15, after "million" insert "**five hundred thousand**".
- Page 11, line 15, delete "(\$10,000,000)" and insert "**(\$7,500,000)**".
- Page 11, line 16, delete "4" and insert "5".

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Page 11, line 20, delete "five (5)" and insert "**ten (10)**".

Page 11, line 24, delete "5" and insert "**6**".

Page 11, line 31, delete "IC 4-35-10" and insert "**IC 4-35-9**".

Page 11, line 35, delete "IC 4-35-10" and insert "**IC 4-35-9**".

Page 11, line 37, delete "IC 4-35-10" and insert "**IC 4-35-9**".

Page 11, delete lines 38 through 42.

Page 12, delete lines 1 through 9.

Page 12, line 10, delete "10" and insert "**9**".

Page 12, line 13, delete "budget director" and insert "**department of state revenue**".

Page 12, line 15, delete "budget director" and insert "**commissioner of the department of state revenue**".

Page 12, line 18, delete "budget director" and insert "**commissioner of the department of state revenue**".

Page 12, line 20, delete "After review by the budget committee, the budget" and insert "**The department of state revenue**".

Page 12, line 21, delete "director".

Page 12, line 22, delete "IC 4-35-9" and insert "**IC 4-35-8**".

Page 12, between lines 30 and 31, begin a new paragraph and insert:  
**"Chapter 10. Amount of Tax Credits Available for Allocation**

**Sec. 1. The aggregate amount of tax credits available for allocation is forty million dollars (\$40,000,000), plus the cumulative amount of tax credits approved by the commissioner of the department of state revenue as described in IC 4-35-9-4, less the cumulative amount of tax credits previously allocated by the advisory board in accordance with the provisions of IC 4-35-11.**

**Sec. 2. Tax credits reclaimed under IC 4-35-7 must be added to the total amount of tax credits available for allocation under section 1 of this chapter.**

#### **Chapter 11. Allocation of Tax Credits**

**Sec. 1. A tax credit allocation advisory board is established to allocate tax credits to local certified equity pools. The advisory board has six (6) members. The director of the authority serves as the secretary of the advisory board and is the member responsible for calling meetings and maintaining minutes of all advisory board meetings. The governor shall appoint the remaining five (5) members. The term of an appointed member is three (3) years. At least three (3) members of the tax credit allocation advisory board must also be members of the Indiana twenty-first century research and technology fund board.**

**Sec. 2. To be eligible for an allocation of tax credits by the advisory board, a local certified equity pool must submit to the tax**



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credit allocation advisory board copies of signed, binding commitment letters from its investors. The commitment letters must state the amount of funds to be invested in the local certified equity pool subject only to confirmation of an allocation of tax credits to the local certified equity pool.

**Sec. 3.** A local certified equity pool must have a minimum of ten million dollars (\$10,000,000) in committed funds to be eligible for an allocation of tax credits, of which five million dollars (\$5,000,000) must be restricted capital.

**Sec. 4.** The tax credit allocation advisory board shall receive requests from local certified equity pools for an allocation of tax credits by the tax credit allocation advisory board on an on-going basis. Not later than thirty (30) days after the date of application, the authority shall either:

- (1) issue a written confirmation of eligibility for an allocation of tax credits; or
- (2) refuse the application and communicate in detail to the applicant the grounds for refusal, including the authority's suggestions for the removal of those grounds.

**Sec. 5.** The tax credit allocation advisory board shall allocate tax credits to a certified local equity pool equal to fifty percent (50%) of the restricted capital to be invested in the certified local equity pool.

**Sec. 6.** Once a year, during the first week in December, the tax credit allocation advisory board shall allocate tax credits, subject to their availability, to all eligible local certified equity pools under section 5 of this chapter.

**Sec. 7.** The tax credit allocation advisory board shall allocate at least fifteen million dollars (\$15,000,000) in tax credits to local certified equity pools with their place of business located outside the area within the Indianapolis Metropolitan Statistical Area designated by the federal Office of Management and Budget (FIPS Code 3480).

**Sec. 8.** Whenever the total amount of requests for an allocation of tax credits exceeds the total amount of tax credits available for allocation as determined under IC 4-35-10 and this chapter, the tax credit allocation advisory board shall allocate tax credits according to the proportional amount of restricted capital invested in each local certified equity pool.

#### **Chapter 12. Restrictions on Claims for Tax Credits**

**Sec. 1.** The maximum amount of tax credits that may be claimed in a given year is ten million dollars (\$10,000,000), plus the

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cumulative sum of unclaimed tax credits from prior years.

**Sec. 2. Whenever the dollar sum of claims for tax credits exceeds the total dollar amount of tax credits available as determined under section 1 of this chapter, tax credits must be awarded according to the proportional amount of tax credits claimed by each investor.**

**Sec. 3. Investors may carry forward to future taxable years any tax credits that were reduced under section 2 of this chapter."**

Page 12, line 31, delete "11" and insert "**13**".

Page 13, line 1, delete "IC 4-35-6-1" and insert "**IC 4-35-5-1**".

Page 13, line 14, delete "12" and insert "**14**".

Page 13, line 21, delete "IC 4-35-9" and insert "**(a) IC 4-35-8**".

Page 13, between lines 23 and 24, begin a new paragraph and insert:

**"(b) Notwithstanding IC 4-35-4-1 and IC 4-35-14-1, both as added by this act, the authority (as defined in IC 4-35-2-2), as added by this act, may adopt rules to carry out IC 4-35, as added by this act, in the same manner as an emergency rule is adopted under IC 4-22-2-37.1. A rule adopted under this subsection is effective when it is filed with the secretary of state. A rule adopted under this subsection expires on the earlier of the following:**

- (1) The date that a rule is adopted under this subsection to repeal or supersede a prior rule adopted under this subsection.**
- (2) The date that a permanent rule is adopted under IC 4-22-2 to repeal or supersede a rule adopted under this subsection.**
- (3) July 1, 2001."**

and when so amended that said bill do pass and be reassigned to the Senate Committee on Finance.

(Reference is to SB 394 as introduced.)

LUBBERS, Chairperson

Committee Vote: Yeas 10, Nays 0.



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