

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 791 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

HOUSE BILL 1963

4
5 By: Representatives Wills, Ragland, Abernathy, Adcock, Allen, T. Baker, Barnett, Davenport, J.
6 Dickinson, Dismang, Dunn, J. Edwards, George, Hoyt, Lindsey, M. Martin, Maxwell, Reep, Reynolds,
7 Wells, Williams, Word
8 By: Senators Capps, B. Johnson, Altes, G. Baker, Bookout, Broadway, Bryles, Elliott, D. Johnson, J.
9 Key, Luker, Madison, P. Malone, Salmon, R. Thompson, Trusty, Whitaker

For An Act To Be Entitled

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11
12 AN ACT TO AMEND THE ARKANSAS RISK CAPITAL
13 MATCHING FUND ACT OF 2007; AND FOR OTHER
14 PURPOSES.
15

Subtitle

16
17
18 TO AMEND THE ARKANSAS RISK CAPITAL
19 MATCHING FUND ACT OF 2007.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23
24 SECTION 1. NOT TO BE CODIFIED. The General Assembly finds that the
25 Arkansas Risk Capital Matching Fund Act of 2007 requires technical amendments
26 to:

- 27 (1) Enhance the operation of the fund;
28 (2) Provide more flexibility to the trustees and the review
29 committee named in the enabling legislation to administer the fund;
30 (3) Lower the expense of administering the fund by eliminating
31 the requirement for a private sector professional fund manager; and
32 (4) Establish a private sector advisory committee to assist the
33 trustees of the fund and the review committee in discharging their duties.
34

35 SECTION 2. Arkansas Code 15-5-1603 is amended to read as follows:



1 15-5-1603. Definitions.

2 As used in this subchapter:

3 (1) "Angel investor" means a high net worth individual or a
4 network of high net worth individuals who invest in early stage technology-
5 based enterprises;

6 (2) "Enterprise Development Account" means a separate account
7 bearing that name and to be maintained within the Arkansas Risk Capital
8 Matching Fund, the moneys in which account shall be used for the purposes and
9 in the manner prescribed by this subchapter;

10 (3) "Equity capital" means capital invested in common stock or
11 preferred stock, royalty rights, limited partnership interests, limited
12 liability company interests, and any other equity, securities, or rights that
13 evidence ownership or investment in private enterprises;

14 ~~(4) "Fund manager" means a private sector entity hired by the~~
15 ~~trustees of the Venture Capital Investment Trust under this subchapter to~~
16 ~~develop recommendations, structure, and manage the investments of the~~
17 ~~Arkansas Risk Capital Matching Fund and to assist in the provision of~~
18 ~~financial assistance to technology-based enterprises at the early stages of~~
19 ~~development;~~

20 ~~(5)~~(4) "Near equity capital" means capital invested in
21 unsecured, undersecured, subordinated, or convertible loans or debt
22 securities;

23 (5) "Private sector advisory committee" means a committee
24 composed of individual representatives from the private sector in Arkansas,
25 established to offer assistance and advice to the trustees of the fund in:

26 (A) Developing rules; and

27 (B) Reviewing:

28 (i) Investments under consideration by the review
29 committee; and

30 (ii) Annual reports from the trustees of the Venture
31 Capital Investment Trust;

32 (6) "Review committee" means a committee comprised of the
33 President of the Arkansas Development Finance Authority, the President of the
34 Arkansas Science and Technology Authority, and the Director of the Arkansas
35 Economic Development Commission;

36 (7) "Technology-based enterprises" means a group of growing

1 businesses in one (1) or more of the following business sectors:

2 (A) Advanced materials and manufacturing systems;

3 (B) Agriculture, food, and environmental sciences;

4 (C) Biotechnology, bioengineering, medical technology, and
5 life sciences;

6 (D) Information technology;

7 (E) Transportation logistics; and

8 (F) Bio-based products;

9 (8) "Technology Validation Account" means the separate account
10 bearing that name and to be maintained as a separate account within the
11 Arkansas Risk Capital Matching Fund, the moneys in which account shall be
12 used for the purposes and in the manner prescribed by this subchapter; and

13 (9) "Venture Capital Investment Trust" means the public trust
14 formed July 21, 2003, under § 28-72-201 et seq., the trustees of which are
15 the President of the Arkansas Development Finance Authority, the President of
16 the Arkansas Science and Technology Authority, and the Director of the
17 Department of Finance and Administration and that has as a principal purpose
18 increasing the availability of equity capital and near equity capital for
19 emerging and expanding enterprises in the State of Arkansas.

20

21 SECTION 3. Arkansas Code 15-5-1605 is amended to read as follows:

22 15-5-1605. Funding of Arkansas Risk Capital Matching Fund.

23 (a) The trustees of the Venture Capital Investment Trust may accept
24 moneys and funds for the Arkansas Risk Capital Matching Fund from any source.

25 (b) Moneys and funds received by the trustees of the Venture Capital
26 Investment Trust for the Arkansas Risk Capital Matching Fund shall be
27 dedicated and used solely as authorized in this subchapter.

28 (c)(1) Moneys and funds received by any of the Arkansas Development
29 Finance Authority, the Arkansas Science and Technology Authority, or the
30 Arkansas Economic Development Commission designated for use or ownership by
31 the Arkansas Risk Capital Matching Fund shall be deposited to the Venture
32 Capital Investment Trust and held in the Technology Validation Account and
33 the Enterprise Development Account of the Arkansas Risk Capital Matching
34 Fund, as applicable and as specified in this subchapter, until used for the
35 purposes of this subchapter.

36 (2)(A) Moneys deposited to the Venture Capital Investment Trust

1 for the purposes of providing financial assistance to technology-based
 2 enterprises under this subchapter shall be allocated between the Technology
 3 Validation Account and the Enterprise Development Account according to a
 4 ratio recommended by the private sector advisory committee and approved by
 5 the trustees of the Venture Capital Investment Trust from time to time.

6 (B) Until a different ratio is approved by the trustees,
 7 moneys shall be allocated as follows:

8 ~~(A)(i)~~ Seventy-five percent (75%) of the moneys shall be
 9 allocated to the Enterprise Development Account; and

10 ~~(B)(ii)~~ Twenty-five percent (25%) of the moneys shall be
 11 allocated to the Technology Validation Account.

12 (d) The trustees of the Venture Capital Investment Trust will
 13 establish separate accounting and tracking and will be responsible for
 14 administering the moneys in each of the Enterprise Development Account and
 15 the Technology Validation Account of the Arkansas Risk Capital Matching Fund.

16 (e) Proceeds received by the Venture Capital Investment Trust as a
 17 return on or in full or partial liquidation of any investments made from
 18 either the Enterprise Development Account or the Technology Validation
 19 Account, subject to § 15-5-1607, shall be restricted in their use and
 20 dedicated and retained in ~~the appropriate account from which the investment~~
 21 ~~was made~~ either the Enterprise Development Account or the Technology
 22 Development Account, or allocated between those accounts, as recommended by
 23 the private sector advisory committee and approved by the trustees of the
 24 Venture Capital Investment Trust and not commingled with other moneys held by
 25 the Venture Capital Investment Trust, and such proceeds may be used and
 26 reused from time to time for the purposes specified for moneys held in such
 27 accounts as provided by this subchapter.

28 (f) Moneys shall be withdrawn from either the Enterprise Development
 29 Account or the Technology Validation Account of the Arkansas Risk Capital
 30 Matching Fund, as appropriate, upon requisition from the trustees of the
 31 Venture Capital Investment Trust for achieving the purposes of this
 32 subchapter.

33 (g)(1) Moneys and funds within the Technology Validation Account of
 34 the Arkansas Risk Capital Matching Fund shall be used within the parameters
 35 expressed in this subsection for the purpose of assisting very early stage
 36 technology-based enterprises in developing or achieving one (1) or more of

1 the following:

- 2 (A) A sound business plan;
- 3 (B) Market research;
- 4 (C) Marketing plans;
- 5 (D) Software or hardware and equipment relating to the

6 particular technology or technologies on which the technology-based
7 enterprise is being built;

- 8 (E) Development of laboratory, preclinical, or other
- 9 testing procedures and results;

- 10 (F) Attaining proof of concept;

- 11 (G) Building of experimental or pilot-scale models of
- 12 products or facilities; or

- 13 (H) Achieving other similar milestones required for the
- 14 advancement of very early stage technology-based enterprises as approved by
- 15 the ~~fund manager~~ private sector advisory committee and the review committee.

16 (2) Financial assistance provided from the Technology Validation
17 Account may be made in the form of equity capital or near equity capital, as
18 recommended by the ~~fund manager~~ private sector advisory committee and
19 approved by the review committee.

20 (3) Financial assistance made from the Technology Validation
21 Account may but shall not be required to be structured or approved based on a
22 market rate-based rate of return or other benchmark rate of return expected
23 to be achieved with respect to an investment, it being the primary purpose of
24 investments made from the Technology Validation Account, within the
25 reasonable discretion of the ~~fund manager and the~~ review committee, to assist
26 in validating the technology or technologies on which these enterprises rely
27 or are based, so that such enterprises may be better enabled to attract
28 additional investments by angel investors or other investors.

29 (4) Financial assistance made from the Technology Validation
30 Account shall be required to be matched by a contribution of equity capital
31 or near equity capital, or other sources of funds as set forth in this
32 section, in some proportion as determined by the review committee on a case-
33 by-case basis or as a matter of rule, but on not less than a one-to-nine
34 (1:9) basis with not less than one (1) dollar from the applicant technology-
35 based business for every nine (9) dollars from the account, from:

- 36 (A) One (1) or more owners of any technology-based

1 enterprise receiving financial assistance from the Arkansas Risk Capital
 2 Matching Fund;

3 (B) Proceeds of state or federal research grants,
 4 including without limitation federal Small Business Innovation Research
 5 grants, Small Business Technology Transfer Program grants, Department of
 6 Defense research grants, National Institutes of Health research grants, or
 7 from any successor programs or agency grants; or

8 (C) Community-based investment sources.

9 (5) Any technology-based enterprise receiving financial
 10 assistance to be disbursed from the Technology Validation Account shall have
 11 a business valuation as represented by the technology-based enterprise and
 12 approved by the ~~fund manager and the~~ review committee of not more than ~~one~~
 13 two million ~~five hundred thousand~~ dollars ~~(\$1,500,000)~~(\$2,000,000) determined
 14 as of prior to the making of the investment from the Technology Validation
 15 Account and as the maximum valuation may be adjusted from year to year by the
 16 review committee on recommendation of the ~~fund manager~~ private sector
 17 advisory committee to take into account the effects of inflation.

18 (6) The maximum investment that may be made to any one (1)
 19 technology-based enterprise from the Technology Validation Account of the
 20 Arkansas Risk Capital Matching Fund shall be one hundred thousand dollars
 21 (\$100,000), as may be adjusted from year to year by the review committee on
 22 recommendation of the ~~fund manager~~ private sector advisory committee to take
 23 into account the effects of inflation.

24 (h)(1) Moneys and funds within the Enterprise Development Account of
 25 the Arkansas Risk Capital Matching Fund shall be used within the parameters
 26 expressed in this subsection (h) for the purpose of assisting early stage
 27 technology-based enterprises in augmenting the investments made or proposed
 28 to be made in such enterprises from angel investors and other individual or
 29 institutional investors where established milestones for further development
 30 of such enterprises are set forth in a business plan to be approved by the
 31 fund manager and the review committee.

32 (2) Financial assistance provided from the Enterprise
 33 Development Account may be made in the form of equity capital or near equity
 34 capital, as recommended by the ~~fund manager~~ private sector advisory committee
 35 and approved by the review committee, and shall be on substantially the same
 36 terms and conditions as other investments proposed to be made by angel

1 investors or other investors contemporaneously with the assistance to be
 2 provided from the Arkansas Risk Capital Matching Fund.

3 (3) Financial assistance made from the Enterprise Development
 4 Account shall be required to be matched by investments from angel investors
 5 or other investors in some proportion, as determined by the review committee
 6 on a case-by-case basis or as a matter of rule, but on not less than a ~~one-~~
 7 ~~to four (1:4) basis~~ four-to-one (4:1) basis with not less than four dollars
 8 (\$4.00) from the applicant technology-based business for every one dollar
 9 (\$1.00) from the account.

10 (4) Any technology-based enterprise receiving financial
 11 assistance to be disbursed from the Enterprise Development Account shall have
 12 a business valuation as represented by the technology-based enterprise and
 13 approved by the fund manager and the review committee, of not more than
 14 twenty-five million dollars (\$25,000,000), determined prior to the making of
 15 the investment from the Enterprise Development Account, and as the maximum
 16 valuation may be adjusted from year to year by the review committee on
 17 recommendation of the ~~fund manager~~ private sector advisory committee to take
 18 into account the effects of inflation.

19 (5) The maximum investment that may be made to any one (1)
 20 technology-based enterprise from the Enterprise Development Account of the
 21 Arkansas Risk Capital Matching Fund shall be seven hundred fifty thousand
 22 dollars (\$750,000), as may be adjusted from year to year by the review
 23 committee on recommendation of the ~~fund manager~~ private sector advisory
 24 committee to take into account the effects of inflation.

25
 26 SECTION 4. Arkansas Code 15-5-1606 is amended to read as follows:

27 15-5-1606. ~~Fund manager~~ Private sector advisory committee.

28 (a)~~(1)~~ The trustees of the Venture Capital Investment Trust shall,
 29 ~~using as guidelines the professional selection policy of any one (1) or more~~
 30 ~~of the Arkansas Development Finance Authority, the Arkansas Science and~~
 31 ~~Technology Authority, or the Arkansas Economic Development Commission,~~
 32 ~~solicit proposals from fund managers for investing of capital and providing~~
 33 ~~financial assistance in accordance with the requirements of this subchapter~~
 34 appoint a private sector advisory committee, to consist of not less than five
 35 (5) nor more than nine (9) individuals from the private sector in Arkansas
 36 who have demonstrated personal or professional experience in assisting one

1 (1) or more of the financing, growth, and development of very early-stage and
 2 early-stage technology-based businesses.

3 ~~(2) Investment and management proposals shall address, in~~
 4 ~~addition to any other information required pursuant to such guidelines:~~

5 ~~(A) The level of experience of the fund manager;~~

6 ~~(B) The experience of management of the fund manager;~~

7 ~~(C) The investment philosophy of the fund manager as it~~
 8 ~~relates to investing in early stage technology based enterprises; and~~

9 ~~(D) Plans for achieving the purposes of this subchapter.~~

10 ~~(b)(1) The trustees of the Venture Capital Investment Trust shall~~
 11 ~~consider and select the investment and management plans and shall select one~~
 12 ~~(1) fund manager meeting the requirements of the professional selection~~
 13 ~~guidelines used by the trustees and best qualified to:~~

14 ~~(A) Utilize the Arkansas Risk Capital Matching Fund in the~~
 15 ~~most effective and efficient manner; and~~

16 ~~(B) Invest the moneys in the fund in a manner that best~~
 17 ~~promotes the growth of technology based enterprises in Arkansas.~~

18 ~~(2) The fund manager shall employ an individual who will be~~
 19 ~~active in the management of the fund, and who has demonstrated experience in~~
 20 ~~design, structure, implementation, and management of investments in early~~
 21 ~~stage technology based enterprises.~~

22 (b)(1) The private sector advisory committee shall serve for terms as
 23 determined by the trustees of the Venture Capital Investment Trust.

24 (2) Members of the private sector advisory committee may serve
 25 successive terms.

26 (3) Members of the private sector advisory committee may be
 27 reimbursed for actual expenses incurred in the performance of their duties as
 28 determined by the trustees of the Venture Capital Investment Trust.

29 (c) The trustees of the Venture Capital Investment Trust in their
 30 discretion shall have the right to:

31 ~~(1) Remove remove and replace the fund manager members of the~~
 32 ~~private sector advisory committee; and~~

33 ~~(2) Effect the assignment of all assets, liabilities,~~
 34 ~~guarantees, and other contracts of this program to a new fund manager.~~

35 (d) The trustees of the Venture Capital Investment Trust, in
 36 consultation with the ~~fund manager~~ private sector advisory committee and the

1 review committee, shall develop guidelines for investments of Arkansas Risk
 2 Capital Matching Fund assets in technology-based enterprises consistent with
 3 the provisions of this subchapter.

4 (e) It shall not be a prohibited conflict of interest for a member of
 5 the private sector advisory committee to have a direct or indirect pecuniary
 6 interest in any technology-based enterprise applying for assistance from the
 7 Arkansas Risk Capitol Matching Fund so long as the member:

8 (1) Makes full disclosure of his or her interest before the
 9 consideration of the application by the private sector advisory committee;

10 (2) Does not vote on the application; and

11 (3) Excuses himself or herself from any deliberations of the
 12 private sector advisory committee regarding the application.

13
 14 SECTION 5. Arkansas Code § 15-5-1607 is amended to read as follows:

15 15-5-1607. Review committee.

16 The review committee shall:

17 ~~(1) Participate in the professional selection process conducted~~
 18 ~~by the trustees of the Venture Capital Investment Trust in the selection of~~
 19 ~~the fund manager;~~

20 ~~(2) Recommend to the trustees the payment of fees and expenses~~
 21 ~~out of the Arkansas Risk Capital Matching Fund for the operation of the fund~~
 22 ~~and the payment of the fund manager; and~~

23 (3) Review and give final approval to the recommendations made
 24 by the ~~fund manager~~ private sector advisory committee with regard to fund
 25 investments.

26
 27 SECTION 6. Arkansas Code § 15-5-1608 is amended to read as follows:

28 15-5-1608. Annual report.

29 The ~~fund manager~~ trustees of the Venture Capital Investment Trust shall
 30 publish an annual report within ~~three (3)~~ five (5) months after the close of
 31 each fiscal year that shall:

32 (1) Include ~~its~~ an annual audit of the Arkansas Risk Capitol
 33 Matching Fund's activities conducted by the ~~fund manager~~ trustees with the
 34 assistance of the review committee and the private sector advisory committee;

35 (2) Be presented in writing, and by testimony if requested, to
 36 the:

- 1 (A) Governor;
- 2 (B) House Interim Committee on Agriculture, Forestry, and
- 3 Economic Development;
- 4 (C) Senate Interim Committee on Agriculture, Forestry, and
- 5 Economic Development;
- 6 (D) Arkansas Development Finance Authority;
- 7 (E) Arkansas Science and Technology Authority; and
- 8 (F) Arkansas Economic Development Commission; and

9 (3) Document and review the progress of the ~~fund manager~~
 10 trustees of the Arkansas Risk Capital Investment Trust and the review
 11 committee in implementing ~~its~~ the investment and financial assistance ~~plan~~
 12 activities under this subchapter.

13
 14 SECTION 7. EMERGENCY CLAUSE. It is found and determined by the
 15 General Assembly of the State of Arkansas that economic development and the
 16 creation of jobs is a critical need for the State of Arkansas, that this act
 17 will provide a more flexible and efficient approach to assisting in the
 18 development and retention of technology-based enterprises, and that it is
 19 critical that the provisions of this act become effective as soon as possible
 20 to accomplish its intent. Therefore, an emergency is declared to exist and
 21 this act being immediately necessary for the preservation of the public
 22 peace, health, and safety shall become effective on:

- 23 (1) The date of its approval by the Governor;
- 24 (2) If the bill is neither approved nor vetoed by the Governor,
- 25 the expiration of the period of time during which the Governor may veto the
- 26 bill; or
- 27 (3) If the bill is vetoed by the Governor and the veto is
- 28 overridden, the date the last house overrides the veto.

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 30 **APPROVED: 4/3/2009**

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