

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 1025 of the Regular Session

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

As Engrossed: S3/21/07

A Bill

SENATE BILL 1000

5 *By: Senators B. Johnson, Altes, Argue, Broadway, Bryles, Baker, Trusty, Malone, Madison*
6 *By: Representatives Dickinson, Abernathy, Allen, Berry, Cooper, Davenport, Dunn, L. Evans, Everett,*
7 *George, Jeffrey, Kenney, Medley, Rosenbaum, Sample, L. Smith, Wills, M. Martin, D. Evans, Ragland,*
8 *Hyde, Maxwell*
9
10

For An Act To Be Entitled

11
12 AN ACT FOR THE PURPOSE OF ECONOMIC DEVELOPMENT
13 AND CREATING HIGH-PAYING JOBS; TO AUTHORIZE THE
14 CREATION OF THE ARKANSAS RISK CAPITAL MATCHING
15 FUND TO ASSIST IN THE DEVELOPMENT AND RETENTION
16 OF TECHNOLOGY-BASED ENTERPRISES IN ARKANSAS; TO
17 PROVIDE FOR THE MANAGEMENT AND OVERSIGHT OF THE
18 ARKANSAS RISK CAPITAL MATCHING FUND; TO PROVIDE
19 FOR THE ARKANSAS RISK CAPITAL MATCHING FUND TO BE
20 HELD IN THE ARKANSAS VENTURE CAPITAL INVESTMENT
21 TRUST; AND FOR OTHER PURPOSES
22

Subtitle

23
24 TO CREATE THE ARKANSAS RISK CAPITAL
25 MATCHING FUND.
26
27

28 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
29

30 *SECTION 1. Arkansas Code Title 15, Chapter 5 is amended to add an*
31 *additional subchapter to read as follows:*

32 *15-5-1601. Title.*

33 *This subchapter shall be known and may be cited as the "Arkansas Risk*
34 *Capital Matching Fund Act of 2007".*
35



1 15-5-1602. Legislative intent.

2 The General Assembly finds:

3 (1) There is a need to strengthen and advance the infrastructure
4 that supports and accelerates the advancement of the growth of technology-
5 based enterprises in Arkansas;

6 (2) There exists a shortage of risk capital and financial
7 assistance at the early stages of development for technology-based
8 enterprises;

9 (3) An improved investment climate for early stage technology-
10 based enterprises is expected to increase, advance and accelerate the growth
11 and development of technology-based enterprises in Arkansas;

12 (4) The ultimate goal of supporting technology-based enterprises
13 is to convert research and development activities and early stage technology-
14 based enterprises into viable commercial ventures; and

15 (5) The provision of financial investment and assistance to aid
16 early stage technology-based enterprises is expected to strengthen the
17 economic base of the State of Arkansas and create better paying jobs, thereby
18 benefiting all citizens of the state.

19
20 15-5-1603. Definitions.

21 As used in this subchapter:

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

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

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

33 (4) "Fund manager" means a private sector entity hired by the
34 trustees of the Venture Capital Investment Trust under this subchapter, to
35 develop recommendations, structure, and manage the investments of the
36 Arkansas Risk Capital Matching Fund, and to assist in the provision of

1 financial assistance to technology-based enterprises at the early stages of
2 development;

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

5 (6) "Review committee" means a committee comprised of the
6 President of the Arkansas Development Finance Authority, the President of the
7 Arkansas Science and Technology Authority, and the Director of the Department
8 of Economic Development;

9 (7) "Technology-based enterprises" means a group of growing
10 businesses in one (1) or more of the following business sectors:

11 (A) Advanced materials and manufacturing systems;

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

13 (C) Biotechnology, bioengineering, medical technology and
14 life sciences;

15 (D) Information technology;

16 (E) Transportation logistics; and

17 (F) Bio-based products;

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

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

29
30 15-5-1604. Creation of Arkansas Risk Capital Matching Fund.

31 (a) There is established the Arkansas Risk Capital Matching Fund, and
32 within that fund the Enterprise Development Account and the Technology
33 Validation Account, which fund and accounts shall be held by and maintained
34 as a separate fund and separate accounts within the Venture Capital
35 Investment Trust.

36 (b)(1) The Arkansas Risk Capital Matching Fund is created for the

1 purpose of providing financial assistance to technology-based enterprises
2 located in Arkansas, with the expectation of developing jobs paying in excess
3 of county and state average wages, improving the growth, development, and
4 advancement of technology-based enterprises, and converting research and
5 development activities and early stage technology-based enterprises into
6 viable and productive commercial ventures.

7 (2) The Arkansas Risk Capital Matching Fund shall target the
8 financial assistance toward those technology-based enterprises that are in
9 the early stages of development and are not yet able to attract adequate
10 private sources of traditional financing or venture or investor-backed
11 capital for their growth and development.

12
13 15-5-1605. Funding of Arkansas Risk Capital Matching Fund.

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

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

19 (c)(1) Moneys and funds received by any of the Arkansas Development
20 Finance Authority, the Arkansas Science and Technology Authority, or the
21 Arkansas Department of Economic Development designated for use or ownership
22 by the Arkansas Risk Capital Matching Fund shall be deposited to the Venture
23 Capital Investment Trust and held in the Technology Validation Account and
24 the Enterprise Development Account of the Arkansas Risk Capital Matching
25 Fund, as applicable and as specified in this subchapter, until used for the
26 purposes of this subchapter.

27 (2) Moneys deposited to the Venture Capital Investment Trust for
28 the purposes of providing financial assistance to technology-based
29 enterprises under this subchapter shall be allocated between the Technology
30 Validation Account and the Enterprise Development Account as follows:

31 (A) Seventy-five percent (75%) of the moneys shall be
32 allocated to the Enterprise Development Account; and

33 (B) Twenty-five percent (25%) of the moneys shall be
34 allocated to the Technology Validation Account.

35 (d) The trustees of the Venture Capital Investment Trust will
36 establish separate accounting and tracking and will be responsible for

1 administering the moneys in each of the Enterprise Development Account and
2 the Technology Validation Account of the Arkansas Risk Capital Matching Fund.

3 (e) Proceeds received by the Venture Capital Investment Trust as a
4 return on or in full or partial liquidation of any investments made from
5 either the Enterprise Development Account or the Technology Validation
6 Account, subject to § 15-5-1607, shall be restricted in their use and
7 dedicated and retained in the appropriate account from which the investment
8 was made and not commingled with other moneys held by the Venture Capital
9 Investment Trust, and such proceeds may be used and re-used from time to time
10 for the purposes specified for moneys held in such accounts as provided by
11 this subchapter.

12 (f) Moneys shall be withdrawn from either the Enterprise Development
13 Account or the Technology Validation Account of the Arkansas Risk Capital
14 Matching Fund, as appropriate, upon requisition from the trustees of the
15 Venture Capital Investment Trust for achieving the purposes of this
16 subchapter.

17 (g)(1) Moneys and funds within the Technology Validation Account of
18 the Arkansas Risk Capital Matching Fund shall be used within the parameters
19 expressed in this subsection for the purpose of assisting very early stage
20 technology-based enterprises in developing or achieving one (1) or more of
21 the following:

22 (A) A sound business plan;

23 (B) Market research;

24 (C) Marketing plans;

25 (D) Software or hardware and equipment relating to the
26 particular technology or technologies on which the technology-based
27 enterprise is being built;

28 (E) Development of laboratory, pre-clinical or other
29 testing procedures and results;

30 (F) Attaining proof of concept;

31 (G) Building of experimental or pilot-scale models of
32 products or facilities; or

33 (H) Achieving other similar milestones required for the
34 advancement of very early stage technology-based enterprises as approved by
35 the fund manager and the review committee.

36 (2) Financial assistance provided from the Technology Validation

1 Account may be made in the form of equity capital or near equity capital, as
2 recommended by the fund manager and approved by the review committee.

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

12 (4) Financial assistance made from the Technology Validation
13 Account shall be required to be matched by a contribution of equity capital
14 or near equity capital, or other sources of funds as set forth in this
15 section, in some proportion as determined by the review committee on a case-
16 by-case basis or as a matter of rule, but on not less than a one-to-nine
17 (1:9) basis, from:

18 (A) One (1) or more owners of any technology-based
19 enterprise receiving financial assistance from the Arkansas Risk Capital
20 Matching Fund;

21 (B) Proceeds of state or federal research grants,
22 including without limitation federal Small Business Innovation Research
23 grants, Small Business Technology Transfer Program grants, Department of
24 Defense research grants, National Institutes of Health research grants, or
25 from any successor programs or agency grants; or

26 (C) Community-based investment sources.

27 (5) Any technology-based enterprise receiving financial
28 assistance to be disbursed from the Technology Validation Account shall have
29 a business valuation as approved by the fund manager and the review
30 committee, of not more than one million five hundred thousand dollars
31 (\$1,500,000), determined as of prior to the making of the investment from the
32 Technology Validation Account and as adjusted from year to year by the review
33 committee on recommendation of the fund manager to take into account the
34 effects of inflation.

35 (6) The maximum investment that may be made to any one (1)
36 technology-based enterprise from the Technology Validation Account of the

1 Arkansas Risk Capital Matching Fund shall be one hundred thousand dollars
2 (\$100,000), as adjusted from year to year by the review committee on
3 recommendation of the fund manager to take into account the effects of
4 inflation.

5 (h)(1) Moneys and funds within the Enterprise Development Account of
6 the Arkansas Risk Capital Matching Fund shall be used, within the parameters
7 expressed in this subsection (h), for the purpose of assisting early stage
8 technology-based enterprises in augmenting the investments made or proposed
9 to be made in such enterprises from angel investors and other individual or
10 institutional investors, where established milestones for further development
11 of such enterprises are set forth in a business plan to be approved by the
12 fund manager and the review committee.

13 (2) Financial assistance provided from the Enterprise
14 Development Account may be made in the form of equity capital or near equity
15 capital, as recommended by the fund manager and approved by the review
16 committee, and shall be on substantially the same terms and conditions as
17 other investments proposed to be made by angel investors or other investors
18 contemporaneously with the assistance to be provided from the Arkansas Risk
19 Capital Matching Fund.

20 (3) Financial assistance made from the Enterprise Development
21 Account shall be required to be matched by investments from angel investors
22 or other investors in some proportion, as determined by the review committee
23 on a case-by-case basis or as a matter of rule, but on not less than a one-
24 to-four (1:4) basis.

25 (4) Any technology-based enterprise receiving financial
26 assistance to be disbursed from the Enterprise Development Account shall have
27 a business valuation as approved by the fund manager and the review
28 committee, of not more than twenty-five million dollars (\$25,000,000),
29 determined prior to the making of the investment from the Enterprise
30 Development Account, and as adjusted from year to year by the review
31 committee on recommendation of the fund manager to take into account the
32 effects of inflation.

33 (5) The maximum investment that may be made to any one (1)
34 technology-based enterprise from the Enterprise Development Account of the
35 Arkansas Risk Capital Matching Fund shall be seven hundred fifty thousand
36 dollars (\$750,000), as adjusted from year to year by the review committee on

1 recommendation of the fund manager to take into account the effects of
2 inflation.

3
4 15-5-1606. Fund manager.

5 (a)(1) The Trustees of the Venture Capital Investment Trust shall,
6 using as guidelines the professional selection policy of any one (1) or more
7 of the Arkansas Development Finance Authority, the Arkansas Science and
8 Technology Authority or the Arkansas Department of Economic Development,
9 solicit proposals from fund managers for investing of capital and providing
10 financial assistance in accordance with the requirements of this subchapter.

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

13 (A) The level of experience of the fund manager;

14 (B) The experience of management of the fund manager;

15 (C) The investment philosophy of the fund manager as it
16 relates to investing in early stage technology-based enterprises; and

17 (D) Plans for achieving the purposes of this subchapter;

18 (b)(1) The Trustees of the Venture Capital Investment Trust shall
19 consider and select the investment and management plans and shall select one
20 (1) fund manager meeting the requirements of the professional selection
21 guidelines used by the trustees and best qualified to:

22 (A) Utilize the Arkansas Risk Capital Matching Fund in the
23 most effective and efficient manner; and

24 (B) Invest the moneys in the fund in a manner that best
25 promotes the growth of technology-based enterprises in Arkansas.

26 (2) The fund manager shall employ an individual who will be
27 active in the management of the fund, and who has demonstrated experience in
28 design, structure, implementation, and management of investments in early
29 stage technology-based enterprises.

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

32 (1) Remove and replace the fund manager; and

33 (2) Effect the assignment of all assets, liabilities, guarantees
34 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 and the review committee, shall develop

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

4
5 15-5-1607. Review committee.

6 The review committee shall:

7 (1) Participate in the professional selection process conducted
8 by the Trustees of the Venture Capital Investment Trust in the selection of
9 the fund manager;

10 (2) Recommend to the trustees the payment of fees and expenses
11 out of the Arkansas Risk Capital Matching Fund for the operation of the fund
12 and the payment of the fund manager; and

13 (3) Review and give final approval to the recommendations made
14 by the fund manager with regard to fund investments.

15
16 15-5-1608. Annual report.

17 The fund manager shall publish an annual report within three (3) months
18 after the close of each fiscal year, that shall:

19 (1) Include its annual audit of the activities conducted by the
20 fund manager;

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

23 (A) Governor;

24 (B) House Interim Committee on Agriculture, Forestry, and
25 Economic Development;

26 (C) Senate Interim Committee on Agriculture, Forestry, and
27 Economic Development;

28 (D) Arkansas Development Finance Authority;

29 (E) Arkansas Science and Technology Authority; and

30 (F) Department of Economic Development; and

31 (3) Document and review the progress of the fund manager in
32 implementing its investment and financial assistance plan.

33
34 15-5-1609. Powers of the Trustees of the Venture Capital Investment
35 Trust.

36 The Trustees of the Venture Capital Investment Trust shall have the

1 power to promulgate guidelines and rules, and make any contract, execute any
2 document, perform any act, or enter into any financial or other transaction
3 necessary to implement this subchapter.

4
5 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
6 General Assembly of the State of Arkansas that economic development and the
7 creation of jobs is a critical need for the State of Arkansas; that this act
8 will assist in the development and retention of technology-based enterprises;
9 and that it is critical that the provisions of this act become effective as
10 soon as possible to accomplish its legislative intent. Therefore, an
11 emergency is declared to exist and this act being immediately necessary for
12 the preservation of the public peace, health, and safety shall become
13 effective on:

14 (1) The date of its approval by the Governor;

15 (2) If the bill is neither approved nor vetoed by the Governor,
16 the expiration of the period of time during which the Governor may veto the
17 bill; or

18 (3) If the bill is vetoed by the Governor and the veto is
19 overridden, the date the last house overrides the veto.

20
21 /s/ Altes

22
23 APPROVED: 4/4/2007