

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.

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

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 TO CREATE THE ARKANSAS RISK CAPITAL
24 MATCHING FUND.
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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

36 *15-5-1602. Legislative intent.*



1 The General Assembly finds:

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

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

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

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

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

18
19 15-5-1603. Definitions.

20 As used in this subchapter:

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

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

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

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

1 development;

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

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

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

10 (A) Advanced materials and manufacturing systems;

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

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

14 (D) Information technology;

15 (E) Transportation logistics; and

16 (F) Bio-based products;

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

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

28
29 15-5-1604. Creation of Arkansas Risk Capital Matching Fund.

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

35 (b)(1) The Arkansas Risk Capital Matching Fund is created for the
36 purpose of providing financial assistance to technology-based enterprises

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

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

11
12 15-5-1605. Funding of Arkansas Risk Capital Matching Fund.

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

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

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

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

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

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

34 (d) The trustees of the Venture Capital Investment Trust will
35 establish separate accounting and tracking and will be responsible for
36 administering the moneys in each of the Enterprise Development Account and

1 the Technology Validation Account of the Arkansas Risk Capital Matching Fund.

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

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

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

21 (A) A sound business plan;

22 (B) Market research;

23 (C) Marketing plans;

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

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

29 (F) Attaining proof of concept;

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

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

35 (2) Financial assistance provided from the Technology Validation
36 Account may be made in the form of equity capital or near equity capital, as

1 recommended by the fund manager and approved by the review committee.

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

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

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

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

25 (C) Community-based investment sources.

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

34 (6) The maximum investment that may be made to any one (1)
35 technology-based enterprise from the Technology Validation Account of the
36 Arkansas Risk Capital Matching Fund shall be one hundred thousand dollars

1 (\$100,000), as adjusted from year to year by the review committee on
2 recommendation of the fund manager to take into account the effects of
3 inflation.

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

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

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

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

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

1 inflation.

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3 15-5-1606. Fund manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (d) The Trustees of the Venture Capital Investment Trust, in
35 consultation with the fund manager and the review committee, shall develop
36 guidelines for investments of Arkansas Risk Capital Matching Fund assets in

1 technology-based enterprises consistent with the provisions of this
2 subchapter.

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4 15-5-1607. Review committee.

5 The review committee shall:

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

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

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

14
15 15-5-1608. Annual report.

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

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

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

22 (A) Governor;

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

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

27 (D) Arkansas Development Finance Authority;

28 (E) Arkansas Science and Technology Authority; and

29 (F) Department of Economic Development; and

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

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

35 The Trustees of the Venture Capital Investment Trust shall have the
36 power to promulgate guidelines and rules, and make any contract, execute any

1 document, perform any act, or enter into any financial or other transaction
2 necessary to implement this subchapter.

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

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

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

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

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20 /s/ Altes
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