

ARKANSAS SENATE
86th General Assembly - Regular Session, 2007
Amendment Form

Subtitle of Senate Bill No. 1000

"TO CREATE THE ARKANSAS RISK CAPITAL MATCHING FUND."

Amendment No. 2 to Senate Bill No. 1000.

Amend Senate Bill No. 1000 as originally introduced:

Page 1, delete line 5 and substitute the following:

“By: Senators B. Johnson, Altes, Argue, Broadway, Bryles, Baker, Trusty, Malone, Madison”

AND

Add Representatives M. Martin, D. Evans, Ragland, Hyde, and Maxwell as cosponsors of the bill

AND

Delete everything following the enacting clause and substitute the following:

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

15-5-1601. Title.

This subchapter shall be known and may be cited as the “Arkansas Risk Capital Matching Fund Act of 2007”.

15-5-1602. Legislative intent.

The General Assembly finds:

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

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

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

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

(5) The provision of financial investment and assistance to aid early stage technology-based enterprises is expected to strengthen the



economic base of the State of Arkansas and create better paying jobs, thereby benefiting all citizens of the state.

15-5-1603. Definitions.

As used in this subchapter:

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

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

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

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

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

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

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

(A) Advanced materials and manufacturing systems;

(B) Agriculture, food, and environmental sciences;

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

(D) Information technology;

(E) Transportation logistics; and

(F) Bio-based products;

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

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

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

(a) There is established the Arkansas Risk Capital Matching Fund, and within that fund the Enterprise Development Account and the Technology

Validation Account, which fund and accounts shall be held by and maintained as a separate fund and separate accounts within the Venture Capital Investment Trust.

(b)(1) The Arkansas Risk Capital Matching Fund is created for the purpose of providing financial assistance to technology-based enterprises located in Arkansas, with the expectation of developing jobs paying in excess of county and state average wages, improving the growth, development, and advancement of technology-based enterprises, and converting research and development activities and early stage technology-based enterprises into viable and productive commercial ventures.

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

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

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

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

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

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

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

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

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

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

(f) Moneys shall be withdrawn from either the Enterprise Development

Account or the Technology Validation Account of the Arkansas Risk Capital Matching Fund, as appropriate, upon requisition from the trustees of the Venture Capital Investment Trust for achieving the purposes of this subchapter.

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

- (A) A sound business plan;
- (B) Market research;
- (C) Marketing plans;
- (D) Software or hardware and equipment relating to the particular technology or technologies on which the technology-based enterprise is being built;
- (E) Development of laboratory, pre-clinical or other testing procedures and results;
- (F) Attaining proof of concept;
- (G) Building of experimental or pilot-scale models of products or facilities; or
- (H) Achieving other similar milestones required for the advancement of very early stage technology-based enterprises as approved by the fund manager and the review committee.

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

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

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

- (A) One (1) or more owners of any technology-based enterprise receiving financial assistance from the Arkansas Risk Capital Matching Fund;
- (B) Proceeds of state or federal research grants, including without limitation federal Small Business Innovation Research grants, Small Business Technology Transfer Program grants, Department of Defense research grants, National Institutes of Health research grants, or from any successor programs or agency grants; or
- (C) Community-based investment sources.

(5) Any technology-based enterprise receiving financial assistance to be disbursed from the Technology Validation Account shall have

a business valuation as approved by the fund manager and the review committee, of not more than one million five hundred thousand dollars (\$1,500,000), determined as of prior to the making of the investment from the Technology Validation Account and as adjusted from year to year by the review committee on recommendation of the fund manager to take into account the effects of inflation.

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

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

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

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

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

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

15-5-1606. Fund manager.

(a)(1) The Trustees of the Venture Capital Investment Trust shall, using as guidelines the professional selection policy of any one (1) or more of the Arkansas Development Finance Authority, the Arkansas Science and Technology Authority or the Arkansas Department of Economic Development,

solicit proposals from fund managers for investing of capital and providing financial assistance in accordance with the requirements of this subchapter.

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

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

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

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

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

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

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

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

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

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

(1) Remove and replace the fund manager; and

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

(d) The Trustees of the Venture Capital Investment Trust, in consultation with the fund manager and the review committee, shall develop guidelines for investments of Arkansas Risk Capital Matching Fund assets in technology-based enterprises consistent with the provisions of this subchapter.

15-5-1607. Review committee.

The review committee shall:

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

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

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

15-5-1608. Annual report.

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

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

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

(A) Governor;

(B) House Interim Committee on Agriculture, Forestry, and

Economic Development;

(C) Senate Interim Committee on Agriculture, Forestry, and

Economic Development;

(D) Arkansas Development Finance Authority;

(E) Arkansas Science and Technology Authority; and

(F) Department of Economic Development; and

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

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

The Trustees of the Venture Capital Investment Trust shall have the power to promulgate guidelines and rules, and make any contract, execute any document, perform any act, or enter into any financial or other transaction necessary to implement this subchapter.

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

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

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

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

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator B. Johnson

MBM/MBM - 03-20-2007 09:35

MBM710

Secretary