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A Bill

HOUSE BILL 2611

By: Representatives Dickinson, Abernathy, Allen, Berry, Cooper, Davenport, Dunn, L. Evans, Everett,
George, Jeffrey, Kenney, Medley, Rosenbaum, Sample, L. Smith, Wills
By: Senator B. Johnson

For An Act To Be Entitled

AN ACT FOR THE PURPOSE OF ECONOMIC DEVELOPMENT
AND CREATING HIGH-PAYING JOBS; TO AUTHORIZE THE
CREATION OF THE ARKANSAS RISK CAPITAL MATCHING
FUND TO ASSIST IN THE DEVELOPMENT AND RETENTION
OF TECHNOLOGY-BASED ENTERPRISES IN ARKANSAS; TO
PROVIDE FOR THE MANAGEMENT AND OVERSIGHT OF THE
ARKANSAS RISK CAPITAL MATCHING FUND; TO PROVIDE
FOR THE ARKANSAS RISK CAPITAL MATCHING FUND TO BE
HELD IN THE ARKANSAS VENTURE CAPITAL INVESTMENT
TRUST; AND FOR OTHER PURPOSES

Subtitle

TO CREATE THE ARKANSAS RISK CAPITAL
MATCHING FUND.

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

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

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

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

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

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

17
 18 5-5-1603. Definitions

19 As used in this subchapter:

20 (1) "Angel investors" means high net worth individuals or
 21 networks of high net worth individuals who invest in early stage technology-
 22 based enterprises;

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

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

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

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

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

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

9 (A) Advanced materials and manufacturing systems;

10 (B) Agriculture, food and environmental sciences;

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

13 (D) Information technology;

14 (E) Transportation logistics; and

15 (F) Bio-based products;

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

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

27
 28 15-5-1604. Creation of Arkansas Risk Capital Matching Fund.

29 (a) There is hereby created and established the Arkansas Risk Capital
 30 Matching Fund, and within that fund the enterprise development account and
 31 the technology validation account, which fund and accounts shall be held by
 32 and maintained as a separate fund and separate accounts within the Venture
 33 Capital Investment Trust.

34 (b)(1) The Arkansas Risk Capital Matching Fund is created for the
 35 purpose of providing financial assistance to technology-based enterprises
 36 located in Arkansas, with the expectation of developing jobs paying in excess

1 of county and state average wages, improving the growth, development and
2 advancement of technology-based enterprises, and converting research and
3 development activities and early stage technology-based enterprises into
4 viable and productive commercial ventures.

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

10
11 15-5-1605. Funding of Arkansas Risk Capital Matching Fund.

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

14 (b)(1) Monies and funds received by the trustees of the Venture
15 Capital Investment Trust for the Arkansas Risk Capital Matching Fund shall be
16 dedicated and used solely as authorized in this subchapter.

17 (2) The Arkansas Risk Capital Matching Fund shall be a
18 miscellaneous fund whose balance shall not be reclaimed at the end of the
19 biennium but shall be carried forward for the same use in subsequent years.

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

28 (2) Monies deposited to the Venture Capital Investment Trust for
29 the purposes of providing financial assistance to technology-based
30 enterprises pursuant to this subchapter shall be allocated between the
31 technology validation account and the enterprise development account as
32 follows:

33 (A) Seventy-five percent (75%) of the monies shall be
34 allocated to the enterprise development account; and

35 (B) Twenty-five percent (25%) of the monies shall be
36 allocated to the technology validation account.

1 (d) The trustees of the Venture Capital Investment Trust will
2 establish separate accounting and tracking and will be responsible for
3 administering the monies in each of the enterprise development account and
4 the technology validation account of the Arkansas Risk Capital Matching Fund.

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

14 (f) Monies shall be withdrawn from either the enterprise development
15 account or the technology validation account of the Arkansas Risk Capital
16 Matching Fund, as appropriate, upon requisition from the trustees of the
17 Venture Capital Investment Trust for achieving the purposes of this
18 subchapter.

19 (g)(1) Monies and funds within the technology validation account of the
20 Arkansas Risk Capital Matching Fund shall be used within the parameters
21 expressed in this subsection (g) for the purpose of assisting very early-
22 stage technology-based enterprises in developing or achieving one or more of
23 the following: a sound business plan, market research, marketing plans,
24 software or hardware and equipment relating to the particular technology or
25 technologies on which the technology-based enterprise is being built,
26 development of laboratory, pre-clinical or other testing procedures and
27 results, attaining proof of concept, building of experimental or pilot-scale
28 models of products or facilities, or achieving other similar milestones
29 required for the advancement of very early-stage technology-based enterprises
30 as approved by the fund manager and the review committee.

31 (2) Financial assistance provided from the technology validation
32 account may be made in the form of equity capital or near equity capital, as
33 recommended by the fund manager and approved by the review committee.

34 (3) Financial assistance made from the technology validation
35 account may but shall not be required to be structured or approved based on a
36 market rate-based or other benchmark rate of return expected to be achieved

1 with respect to such investment, it being the primary purpose of investments
2 made from the technology validation account, within the reasonable discretion
3 of the fund manager and the review committee, to assist in validating the
4 technology or technologies on which these enterprises rely or are based, so
5 that such enterprises may be better enabled to attract additional investments
6 by angel investors or other investors.

7 (4) Financial assistance made from the technology validation
8 account shall be required to be matched by a contribution of equity capital
9 or near equity capital, or other sources of funds as set forth below, in some
10 proportion as determined by the review committee on a case-by-case basis or
11 as a matter of rule, but on not less than a one-to-nine basis, from:

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

14 (B) Proceeds of state or federal research grants,
15 including but not limited to federal Small Business Innovation Research
16 grants, Small Business Technology Transfer Program grants, Department of
17 Defense research grants, National Institutes of Health research grants (or
18 from any successor programs or agency grants); or

19 (C) Community-based investment sources.

20 (5) Any technology-based enterprise receiving financial
21 assistance to be disbursed from the technology validation account shall have
22 a business valuation as approved by the fund manager and the review
23 committee, of not more than one million five hundred thousand dollars
24 (\$1,500,000), determined as of prior to the making of the investment from the
25 technology validation account and as adjusted from year to year by the review
26 committee on recommendation of the fund manager to take into account the
27 effects of inflation.

28 (6) The maximum investment that may be made to any one
29 technology-based enterprise from the technology validation account of the
30 Arkansas Risk Capital Matching Fund shall be one hundred thousand dollars
31 (\$100,000), as adjusted from year to year by the review committee on
32 recommendation of the fund manager to take into account the effects of
33 inflation.

34 (h)(1) Monies and funds within the enterprise development account of
35 the Arkansas Risk Capital Matching Fund shall be used, within the parameters
36 expressed in subsection (h) of this section, for the purpose of assisting

1 early-stage technology-based enterprises in augmenting the investments made
2 or proposed to be made in such enterprises from angel investors and other
3 individual or institutional investors, where established milestones for
4 further development of such enterprises are set forth in a business plan to
5 be approved by the fund manager and the review committee.

6 (2) Financial assistance provided from the enterprise
7 development account may be made in the form of equity capital or near equity
8 capital, as recommended by the fund manager and approved by the review
9 committee, and shall be on substantially the same terms and conditions as
10 other investments proposed to be made by angel investors or other investors
11 contemporaneously with the assistance to be provided from the Arkansas Risk
12 Capital Matching Fund.

13 (3) Financial assistance made from the enterprise development
14 account shall be required to be matched by investments from angel investors
15 or other investors in some proportion, as determined by the review committee
16 on a case-by-case basis or as a matter of rule, but on not less than a one-
17 to-four basis.

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

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

32
33 15-5-1606. Fund manager.

34 (a)(1) The trustees of the Venture Capital Investment Trust shall,
35 using as guidelines the professional selection policy of any one or more of
36 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;

(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 monies 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

1 by the trustees of the Venture Capital Investment Trust in the selection of
 2 the fund manager;

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

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

8
 9 15-5-1608. Annual report.

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

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

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

16 (A) Governor;

17 (B) House Interim Committee on Agriculture, Forestry and
 18 Economic Development;

19 (C) Senate Interim Committee on Agriculture, Forestry and
 20 Economic Development;

21 (D) Arkansas Development Finance Authority;

22 (E) Arkansas Science and Technology Authority; and

23 (F) Arkansas Department of Economic Development; and

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

26
 27 15-5-1609. Powers of the Trustees of the Venture Capital Investment
 28 Trust.

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

33
 34 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
 35 General Assembly of the State of Arkansas that economic development and the
 36 creation of jobs is a critical need for the State of Arkansas; that this act

1 will assist in the development and retention of technology-based enterprises;
2 and this it is critical that the provisions of this act become effective as
3 soon as possible to accomplish its legislative intent. Therefore, an
4 emergency is declared to exist and this act being necessary for the
5 preservation of the public peace, health, and safety shall become effective
6 on:

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

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

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