

THE HOUSE OF REPRESENTATIVES
Wednesday, April 18, 2007

Committee Substitute for
ENGROSSED
Senate Bill No. 780

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 780 - By: WILSON of the Senate and LIEBMANN of the House.

An Act relating to public finance; amending Section 1, Chapter 85, 2nd Extraordinary Session, O.S.L. 2006 (62 O.S. Supp. 2006, Section 47), which relates to Economic Development Generating Excellence Trust Fund; modifying and adding duties for the Board of Investors; requiring Board to discharge duties in specified manner; providing for certain staff assistance; amending Section 2, Chapter 85, 2nd Extraordinary Session, O.S.L. 2006 (62 O.S. Supp. 2006, Section 52), which relates to the EDGE Fund Policy Board; modifying provisions related to compilation of list for purpose of appointments; providing effective dates; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY Section 1, Chapter 85, 2nd Extraordinary
2 Session, O.S.L. 2006 (62 O.S. Supp. 2006, Section 47), is amended to read as follows:

3 Section 47. A. There is hereby created a trust fund for Economic Development
4 Generating Excellence to be known as the "EDGE Fund". The trust fund principal shall
5 consist of all funds appropriated, transferred, donated or otherwise directed to the fund
6 by law.

7 B. There is hereby created the Board of Investors of the EDGE Fund. The Board of
8 Investors of the EDGE Fund shall:

- 1 1. Manage the assets of the EDGE Fund;
- 2 2. Invest monies in the manner in which a prudent person would invest it and in
- 3 accordance with laws applicable to the investment of monies in state retirement funds;
- 4 and
- 5 3. Certify the amount of funds available for expenditure each year from the EDGE
- 6 Fund. The amount of funds available for expenditure shall be limited to not more than
- 7 five percent (5%) of the assets of the EDGE Fund. Any amount not expended shall
- 8 remain in the EDGE Fund;
- 9 4. Retain qualified investment managers to provide for the investment of the
- 10 monies of the EDGE fund. The investment managers shall be chosen by a solicitation of
- 11 proposals on a competitive basis pursuant to standards set by the Board of Investors.
- 12 The investment managers shall manage those monies of the EDGE fund allocated to the
- 13 investment managers in compliance with the overall investment guidelines set by the
- 14 Board of Investors. The monies of the EDGE fund allocated to the investment managers
- 15 shall be managed by the investment managers in accordance with the investment
- 16 guidelines and other directions of the Board of Investors. The investment managers may
- 17 sell investments and realize losses if such action is considered advantageous to longer-
- 18 term return maximization. Because of the total return objective, no distinction shall be
- 19 made for management and performance evaluation purposes between realized and
- 20 unrealized capital gains and losses. The Board of Investors may have the State
- 21 Treasurer manage those monies not specifically allocated to the investment managers;

1 5. Select a custodial bank to settle transactions involving the investment of funds
2 in the EDGE fund and to hold custody of the securities in the EDGE fund portfolio. The
3 custodian shall be a bank or trust company offering pension fund master trustee and
4 master custodial services. The custodian shall be chosen by a solicitation of proposals on
5 a competitive basis pursuant to standards set by the Board of Investors. The Board of
6 Investors may also select professional investment consultants, auditors, and actuaries to
7 assist the Board of Investors in carrying out its fiduciary responsibilities. All these
8 professionals shall be selected by a solicitation of proposals on a competitive basis
9 pursuant to standards set by the Board of Investors; and

10 6. Choose the professional custodians and managers of the assets of the EDGE
11 fund, shall establish investment and fund management guidelines, and shall adopt an
12 investment policy. The selection and engagement of investment managers, investment
13 consultants, auditors, and actuaries, and a custodian bank shall be exempt from the
14 provisions of The Oklahoma Central Purchasing Act.

15 C. The Board of Investors of the EDGE Fund shall be composed of five (5) members
16 as follows:

- 17 1. The State Treasurer, or a designee, who shall serve as chair;
- 18 2. An appointee of the Governor;
- 19 3. An appointee of the State Auditor and Inspector;
- 20 4. An appointee of the Speaker of the House of Representatives; and
- 21 5. An appointee of the President Pro Tempore of the Senate.

1 Each appointed member of the Board of Investors of the EDGE Fund shall have
2 demonstrated experience in public or private investment fund management.

3 D. The initially appointed members shall serve staggered terms as follows:

4 1. The term of the appointee of the Governor shall expire on June 30, 2007;

5 2. The term of the appointee of the State Auditor and Inspector shall expire on
6 June 30, 2008;

7 3. The term of the appointee of the Speaker of the House of Representatives shall
8 end on June 30, 2009; and

9 4. The term of the appointee of the President Pro Tempore of the Senate shall
10 expire on June 30, 2010.

11 Thereafter, successors shall be appointed for terms of four (4) years. An appointee
12 may be removed for cause.

13 E. The members of the Board of Investors of the EDGE Fund shall discharge their
14 duties as trustees of the EDGE Fund:

15 1. With the care, skill, prudence, and diligence, under the circumstances then
16 prevailing, that a prudent person acting in a like capacity and familiar with such matters
17 would use in the conduct of an enterprise of a like character and with like aims;

18 2. By diversifying the investments in the trust fund so as to minimize the risk of
19 large losses, unless, under the circumstances, it is clearly prudent not to do so; and

20 3. In accordance with the laws, documents, and instruments governing the trust
21 fund.

1 F. Members of the Board of Investors of the EDGE Fund shall receive no salary for
2 serving on the Board of Investors of the EDGE Fund. All members shall receive
3 necessary travel expenses for the performance of their duties from the Office of the
4 Governor in accordance with the provisions of the State Travel Reimbursement Act.

5 ~~F.~~ G. The Board of Investors of the EDGE Fund shall annually elect a vice-chair,
6 who shall preside over meetings in the absence of the chair, and any other officers,
7 provided that no member shall be elected vice-chair for more than two (2) consecutive
8 years. The Board of Investors of the EDGE Fund shall meet at least quarterly. A
9 majority of the members of the Board of Investors of the EDGE Fund shall constitute a
10 quorum to transact business, but no vacancy shall impair the right of the remaining
11 members to exercise all of the powers of the Board of Investors of the EDGE Fund.

12 ~~G.~~ H. The Board of Investors of the EDGE Fund shall be subject to the Oklahoma
13 Open Meeting Act, the Oklahoma Open Records Act and the Administrative Procedures
14 Act.

15 ~~H.~~ I. Staffing for the Board of Investors of the EDGE Fund shall be provided by the
16 Office of the State Treasurer.

17 ~~I.~~ J. The Board of Investors of the EDGE Fund shall submit a report of the EDGE
18 Fund's investments and asset value annually to the Governor and the State Treasurer.

19 SECTION 2. AMENDATORY Section 2, Chapter 85, 2nd Extraordinary
20 Session, O.S.L. 2006 (62 O.S. Supp. 2006, Section 52), is amended to read as follows:

21 Section 52. A. 1. There is hereby created the EDGE Fund Policy Board. The
22 EDGE Fund Policy Board shall be responsible for the expenditure of funds certified as

1 available by the Board of Investors of the EDGE Fund, pursuant to subsection F of this
2 section, for projects and programs which will increase private and public applied
3 research and development, technology transfer and technology commercialization in
4 Oklahoma. Such projects and programs include, but are not limited to providing:

- 5 a. matching funds for applied research,
- 6 b. funds for proof of concept,
- 7 c. funds for purchasing equipment or applied research, and
- 8 d. seed capital including, but not limited to, capital for the OCAST Seed
9 Capital Revolving Fund.

10 2. In determining how funds from the EDGE Fund shall be expended, the EDGE
11 Fund Policy Board shall consider only those projects and programs which satisfy one or
12 more of the following criteria:

- 13 a. direct expansion of the number of researchers, technicians, support
14 services and associated business activity within Oklahoma,
- 15 b. high potential to result in the formation and growth of advanced
16 technology companies in Oklahoma,
- 17 c. high potential to improve the health status and quality of life for
18 Oklahomans, and
- 19 d. leverage of additional federal research grants and/or privately funded
20 and sponsored research in Oklahoma research institutions.

1 3. The initial cycle of expenditures made after the effective date of this act
2 pursuant to this section shall be for projects and programs which may include, but are
3 not limited to:

- 4 a. agriculture,
- 5 b. aerospace/aviation,
- 6 c. biology/biotechnology,
- 7 d. genomics,
- 8 e. weather science and technology,
- 9 f. telecommunications,
- 10 g. advanced materials, and
- 11 h. sensors.

12 The EDGE Fund Policy Board shall annually review areas of research and
13 commercialization emphasis, with consideration given to the strategic strengths of
14 Oklahoma's research infrastructure.

15 B. The EDGE Fund Policy Board shall be composed of seven (7) members, as
16 follows:

17 1. Four individuals who serve as senior officers of an Oklahoma business or
18 financial company who have knowledge of the current Oklahoma economy and the
19 potential to advance to a technology-based economy; two appointed by the Governor and
20 one each appointed by the President Pro Tempore of the Senate and Speaker of the
21 House of Representatives;

1 2. One scientist, engineer or officer of a technology-based Oklahoma company or
2 public or private research institution appointed by the President Pro Tempore of the
3 Senate;

4 3. One attorney licensed to practice law in Oklahoma, who has experience with
5 start-up companies and business practices appointed by the Governor; and

6 4. One venture capitalist with experience in the commercialization of technology
7 and investment in technology-based companies appointed by the Speaker of the House of
8 Representatives.

9 The members of the EDGE Fund Policy Board shall serve at the pleasure of their
10 appointing authorities. ~~The Oklahoma Department of Commerce shall submit to the~~
11 Governor, President Pro Tempore of the Senate and Speaker of the House of
12 Representatives shall make appointments to the Board from a list of names meeting one
13 or more of the criteria provided in this subsection. ~~The Department shall develop the list~~
14 ~~in consultation with~~ list shall be compiled by the largest statewide organization
15 representing commerce and industry and the two largest metropolitan organizations
16 representing commerce and industry. ~~Not less than one-third (1/3) of the list shall~~
17 ~~contain names of individuals who reside outside the two largest metropolitan statistical~~
18 ~~areas in the state.~~ Each person recommended by each of the two largest metropolitan
19 organizations representing commerce and industry shall be residents of the metropolitan
20 area represented by the organization that makes the recommendation for inclusion of
21 such person on the list. Each person recommended by the largest statewide organization
22 representing commerce and industry shall be a resident of an area other than the

1 metropolitan areas represented by the two largest metropolitan organizations
2 representing commerce and industry. The list shall be maintained in a manner to
3 provide that at least one qualified person is eligible for appointment to each and every
4 position to which appointments may be made. The organizations described by this
5 subsection shall prepare a new list from which appointments can be made within sixty
6 (60) days after the effective date of this section.

7 The appointing authorities shall select appointees from the list submitted to serve
8 on the EDGE Fund Policy Board.

9 C. The members of the EDGE Fund Policy Board shall receive no salary for serving
10 on the EDGE Fund Policy Board. All members shall receive necessary travel expenses
11 for the performance of their duties from the Office of the Governor in accordance with the
12 provisions of the State Travel Reimbursement Act.

13 D. The Governor shall select a chair and a vice-chair, who shall preside over
14 meetings in the absence of the chair, and any other officers, provided that no member
15 shall serve as chair for more than two (2) consecutive years. The EDGE Fund Policy
16 Board shall meet at least quarterly. A majority of the members of the EDGE Fund Policy
17 Board shall constitute a quorum to transact business, but no vacancy shall impair the
18 right of the remaining members to exercise all of the powers of the EDGE Fund Policy
19 Board. Any vacancy in a position shall be filled by the appointing authority in the
20 manner prescribed by subsection B of this section. The EDGE Fund Policy Board may
21 employ an Executive Director, who shall serve at the pleasure of the EDGE Fund Policy
22 Board.

1 E. Except as provided by law, the EDGE Fund Policy Board shall be subject to the
2 Oklahoma Open Meeting Act, the Oklahoma Open Records Act and the Administrative
3 Procedures Act. Any information submitted to or compiled by the EDGE Fund Policy
4 Board with respect to the marketing plans, financial statements, trade secrets, research
5 concepts, methods or products, or any other proprietary information of persons, firms,
6 associations, partnerships, agencies, corporations, institutions of higher education,
7 nonprofit research institutions or other entities shall be confidential, except to the extent
8 that the person or entity providing such information or the subject of such information
9 consents to disclosure. Executive sessions may be held to discuss such materials if
10 deemed necessary by the EDGE Fund Policy Board.

11 F. Expenditures from the EDGE Fund shall be subject to the following
12 requirements and limitations:

13 1. At least twenty-five percent (25%) of the monies available for distribution in any
14 fiscal year shall be allotted to support technology transfer and technology
15 commercialization; and

16 2. No more than twenty percent (20%) of the monies available for distribution in
17 any fiscal year shall be used for the purchase of equipment pursuant to subsection A of
18 this section.

19 G. The EDGE Fund Policy Board may elect to provide supplementary funding for
20 existing programs including, but not limited to, the Oklahoma Health Research program,
21 the Oklahoma Applied Research Support program, or such other programs as it may
22 deem are necessary to advance the technology-based economy in Oklahoma.

1 H. The EDGE Fund Policy Board is hereby authorized to enter into cooperative
2 agreements with the Oklahoma Center for the Advancement of Science and Technology
3 to provide assistance in program development, due diligence, project selection and the
4 administration and management of research and technology development programs.

5 I. The Oklahoma Center for the Advancement of Science and Technology shall
6 provide administrative, planning, and other assistance to the Board of Investors of the
7 EDGE Fund and the EDGE Fund Policy Board, including the preparation of an annual
8 report from each to the Governor, President Pro Tempore of the Senate and Speaker of
9 the House on the status of the EDGE Fund and impact of funded projects and programs.
10 The Executive Director of the Oklahoma Center for the Advancement of Science and
11 Technology shall employ one full-time-equivalent employee to provide staff assistance for
12 the purposes of implementing this subsection. Subject to the availability of funding, the
13 Executive Director, pursuant to a request from and approval by the EDGE Fund Policy
14 Board, may employ additional full-time-equivalent employees. Individuals employed by
15 the Oklahoma Center for the Advancement of Science and Technology pursuant to this
16 subsection shall be paid from the expenditures authorized by subsection A of this section.
17 In no event shall more than one percent (1%) of the total assets of the EDGE Fund be
18 expended annually for administrative expenses associated with the EDGE Fund and the
19 EDGE Fund Policy Board.

20 J. The EDGE Fund Policy Board shall attempt to leverage the research dollars of
21 the EDGE Fund through collaboration with the following entities:

22 1. Oklahoma Center for the Advancement of Science and Technology;

1 2. Oklahoma State Regents for Higher Education;

2 3. Oklahoma Experimental Program to Stimulate Competitive Research (EPSCoR);

3 4. Oklahoma Department of Commerce;

4 5. Oklahoma Capital Investment Board;

5 6. Any private, not-for-profit corporation created pursuant to Section 5060.26 of
6 Title 74 of the Oklahoma Statutes; and

7 7. Any not-for-profit organization which is a contractor of the Oklahoma Center for
8 the Advancement of Science and Technology pursuant to Sections 5060.20a and 5060.20b
9 of Title 74 of the Oklahoma Statutes.

10 K. The EDGE Fund Policy Board shall promulgate rules and develop timelines
11 governing the review of annual proposals. Such rules shall give preference to cooperative
12 proposals that include researchers from multiple institutions, including higher
13 education, nonprofit research institutions, and private enterprise.

14 L. With assistance from the Oklahoma Center for the Advancement of Science and
15 Technology, the EDGE Fund Policy Board shall:

16 1. Promulgate rules and develop procedures and protocols for establishing technical
17 advisory panels, selection review criteria and competition criteria; and

18 2. Develop procedures to account for funds and to measure the progress of projects
19 and deliverables.

20 M. The projects and funds of the EDGE Fund shall be subject to audit by the State
21 Auditor and Inspector.

22 SECTION 3. Section 1 of this act shall become effective July 1, 2007.

1 SECTION 4. It being immediately necessary for the preservation of the public
2 peace, health and safety, an emergency is hereby declared to exist, by reason whereof
3 this act shall take effect and be in full force from and after its passage and approval.
4 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
5 FINANCIAL SERVICES, dated 04-17-07 - DO PASS, As Amended.